Auto da Fé

Conrad Black, Corporate Governance, and the End of Economic Man

by Adrian Stein and Olga Stein

At a black tie party at the Four Season's in Manhattan last November 2005, the literary, social and business elite of New York gathered to mark the annual *Kenyon Review* award for literary distinction. The propinquity of New York wealth and philanthropy, with the glitterati of the publishing and literary world made for a special frisson. The atmosphere was further excited by the presence of Michael Bloomberg who had just won a landslide mayoral victory. In his exuberance he composed a short poem: "On the Campaign, the question arose/What big second term plans proposed/Said I, 'First thing I'll do—Toast the *Kenyon Review*'/After that, really who the hell knows." The melange of pearl-covered and bejewelled women and prominent tuxedo-clad names erupted in a frenzied, excited applause, putting aside the foreboding of recent years.

The host for this special evening was the *Kenyon Review*, a sixty-year-old quarterly, with a long and well-established pedigree. Founded in 1939, by the poet John Crowe Ransom, the review was associated in its early years with Robert Penn Warren, Mark Van Doren, Delmore Schwartz, Robert Lowell, Flannery O' Connor, and other American literary lions. The publication reached its apogee during 40s and 50s. After a hiatus of ten years in the 70s, the publication was relaunched with a small staff. Its current editor is the Kenyon English professor, David Lynn. In recent years, the publication has garnered much attention with its annual literary award, now in its fifth year. Previously awarded to E.L. Doctorow, Joyce Carol Oates, and Seamus Heaney, the 2005 award was offered to two celebrated literary figures: Roger Angel and Umberto Eco. Angell is the long-standing *New Yorker* fiction editor and essayist, whose lapidary pieces on baseball and autobiographical reflections are well known to readers of the publication. His recent memoir, *Let Me Finish,* is the culmination of a long and open conversation about his family and life with the readers of the *New Yorker*. Umberto Eco, the other honored writer, and the original subject of our interest in the *Kenyon* event, is the world renowned Italian philosopher and semiotician. His labyrinthian and complex works have garnered him an international audience. His oeuvre includes: *The Name of the Rose*, *The Island of Day Before*, *Foucault's Pendulum*, *The Mysterious Flame of Queen Loana*, *Baudolino* and many non-fiction books on literature, semiotics, and criticism

Umberto Eco's novels are a sustained meditation on the nature of meaning, and the close proximity of invention to falsity, counterfactuality, prevarication and dissimulation in all of its multiform profusion. His novel, *Baudolino*, is a magnificent interleaved story, that has a honeycomb of other stories nested within it. The main narrative takes place in the year 1204 during the looting, pillaging, and raping of Constantinople that accompanied the fourth crusade.

Baudolino, the eponymous protagonist of the story, is a fantastic liar, fabulist and saint, named after the "only saint who [has] never committed a miracle." The adopted son of Emperor Barbarosa, Baudolino is sent to Paris for schooling. The story relates in a reverse narrative the adventures of Baudolino's fearless "band" of Parisian friends, a motley crew consisting of the Poet, Abdul, Boron, Kyot, and Rabbi Solomon. This merry band sets out to find Prester John, one of the descendants of the Magi, who, as legend has it, rules a lost land of Christians in the far reaches of Asia, a phantasmagorical place of exotic animals, eunuchs, and hypatias, beautiful virginal she-creatures with goat like bodies, whose eyes change color with their emotions.

MUSEO DE LA REAL ACADEMIA DE SAN FERNANDO, MADRID

The Inquisition Tribunal (1812-19, Oil on panel) by Francisco José de Goya y Lucientes (b. 1746, Fuendetodos, d. 1828, Bordeaux)

Umberto Eco's story takes place within the 'history' of the "Letter of Prester John", an actual epistolary wonder tale that circulated in Europe from the 12th century onwards. The fictional and historical are intricately knitted together in this marvelous confabulation. Many knowing readers have averred that *Baudolino* is as close as Umberto Eco has come to writing a self-portrait, with many tell-tale references to his own life, origins and family. Towards the end of *Baudolino* an extraordinary conversation takes place between a blind philosopher, Paphnutius, and a historian who is writing an account of the sack of Constantinople during the last crusade. The historian is surprised by the philosopher's suggestion that he, whose craft depends on the veracity and accuracy of sources, omit certain key details from his historical treatment. "Yes, I know it's not the truth," the philosopher explains, "but in a great history little truths can be altered so that a greater truth will emerge." Do not worry, the blind philosopher assures the historian, for "one day, sooner or later a greater liar will come around and will restore the tale."

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New Yorkers are astute observers. In a city attuned to minute social gradations, and where status has been reified by Tom Wolf and others as the defining sociological measure and cognitive ordering principle, it would be hard for any of the cognoscenti attending the *Kenyon Review* award party to escape the seating arrangements and pecking order at the Four Seasons. Nothing is coincidental and everything is carefully arranged. In the competitive world of New York culture, a seat at the 'table' comes at steep price. Sponsorship arrangements likewise yield immediate and vital social information; power and culture are more deeply intertwined in New York City than anywhere else in the world.

The cultural milieu of Manhattan is defined by subtle gradations of wealth, with ascent and descent carefully marked and calibrated. Along with Bloomberg Inc., the Mayor's information powerhouse, there were three other big-name event sponsors. Second on the 'list' was a new star on the cultural firmament, Richard Breeden of Richard C. Breeden & Co., the rising and prominent corporate governance company. The other major sponsor was the *Chicago Sun Times*, represented by the executive Paul Healy, manager of investor relations for Hollinger International, and the law firm of O'Melveny & Myers. Other lesser sponsors included Schulte Roth and Subel, Sonenshine Partners, and Forbes & McAndrews, the investment firm of billionaire Ronald Perelman.

The dapper, polished, and well-tailored Paul B. Healy acted as the evening's host, and worked hard to ease the evident social discomfort of Umberto Eco and Roger Angel as they moved awkwardly through the throngs of adoring socialites and littérateurs. As the head of the Board of Trustees for the *Kenyon Review* and as the principal fundraiser and organizer for the evening's social spectacle, Healy moved with grace amongst the city's elite citizens. One prominent personage, around whom Paul Healy had orbited for many years, was notably absent however; that figure was the publishing baron and raconteur Conrad Black, the founder and ex-CEO of Hollinger International. It was Black who had introduced Paul Healy to the denizens of high finance and haute culture. Many of the invited guests and the roster of firms lining up to support the lavish Kenyon fete, radiated out from Black's business interests and social circle. It was an absence that caught the eye of more than one discerning individual. In Black's stead was the rising star of corporate governance, and his usurper, the ethics czar and ex-SEC chairman, Richard C. Breeden.

Conrad Black, Lord Black of Cross Harbor, needs little by way of introduction. His life has been charted in five major biographies, hundreds of magazine and newspaper articles, multiple made-for-TV movies, and a raft of documentaries. A Google search turns up over 15 million individual items. A man of lively wit and intelligence, Black has stood athwart a number of distinct worlds, encompassing journalism, publishing, business and philanthropy, in a career that has spanned almost forty years. His most recent intellectual achievement is his 2003 Roosevelt biography, *Roosevelt: Champion of Freedom*, an immense 1,200-page masterwork of historical synthesis. It has been described by Tom Wolfe as a "Dumas Malone-scale study", and by John Lukacs as "extraordinary", inspired by a "conviction of Roosevelt's place in the history of an entire century."

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"I run a couple of papers. What do you do?" There is a manly swagger in [Citizen] Charles Foster Kane's remark that many budding newspaper tycoons would like to emulate. The list of wealthy business figures expressing an interest in buying the *LA Times*, the Chicago-based Tribune Company, *The Boston Globe* and other properties that distressed public newspaper firms may be forced to sell or auction, continues to grow: it includes such names as John Welch, the ex-CEO of General Electric; Eli Broad, the LA property billionaire and philanthropist; David Geffen, the co-founder of Dreamworks, who has apparently sold his much prized Jackson Pollack for $100 million plus to raise cash to bolster his bid; Maurice Greenberg, the deca-billionaire and deposed founder of AIG, the world's largest insurance firm; and Ron Burkle, the supermarket kingpin and President Clinton's globe-trotting pal. It would seem that newspaper proprietorship continues to exercise a fateful and seductive hold over the imagination of the powerful and ambitious. Profit and loss does not seem to be uppermost in their consideration set. The attitude of these tycoons could well be summed up with the same insouciance as John Foster Kane's: "Yes, you're right, I did lose a million dollars last year. I expect to lose a million this year and next year as well. You, know, Mr. Thatcher, at the rate of a million a year. I'll have to close this place in . . . sixty years."

The iconoclastic and dictatorial newspaper baron is one of the enduring legends of our times. The legend has its origins in the life of some extraordinary figures who dominated the newspaper industry when it was in its brawling and angry youth. The personalities of these larger-than-life figures have been reworked as fictional characters in so many countless novels, movies, television shows, and popular media representations, that they constitute permanent cultural archetypes.

Many writers have sought to find parallels between Conrad Black's character and career, and some of the flamboyant newspaper proprietors of the early 20th century. Most common are the references made to the protean William Randolph Hearst and the transplanted Canadian Lord Beaverbrook. Capsule biographies, although incapable of capturing the full dimensions of these men or the times in which they lived, give a few sight lines for scaling Conrad Black's personality.

William Randolph Hearst has, more than anyone, shaped the popular conception of the newspaper boss. Hearst's fame and fortune were well earned during his long life, but his immortality in the popular imagination is largely due to Orson Welles and Herman Mankiewicz's classic *Citizen Kane*. A cinematic masterpiece, *Citizen Kane,* best fits Jorge Luis Borges's description of the film as a "metaphysical detective story"—a story whose "subject" is the "investigation of a man's inner life, through the works he has wrought and the words he has spoken and the lives he has ruined."

Hearst lived in an era that had a degree of tolerance for extravagance on a scale that defies bourgeois comprehension. The indulgences of today's jet set and the wealthy, even the very wealthiest, pale in comparison to Hearst's sultanate and sumptuous lifestyle. Hearst's excess came to be symbolised by the vast art-filled palace that he constructed at San Simeon on the California coast. Hearst Castle, as it is now known, was, and remains, one of the most ambitious and expensive private architectural undertakings in American history. Set on 250,000 acres, the palace earned George Bernard Shaw's quip that it is "the Castle that G-d would build for himself if he had the cash." In comparison to such collecting and spending, Conrad Black's personal expenditures would seem to be a model of rectitude and modest Canadian Presbyterian frugality and measure.

Hearst was an indomitable presence not only in publishing but in American politics for much of his life, winning election to the House of Representatives in 1902. His run for the U.S. Presidency was unsuccessful, as was his run for the Governorship of New York State. He often used his sprawling newspaper holdings to wage political campaigns against his enemies, and was viewed as the bane of many politicians. His campaign against President William McKinley reached such a pitch of acrimony and incitement that he was publicly castigated and considered by many partially responsible for Mckinley's assassination. Although never reaching the same level of vitriol or incitement, a parallel could be drawn between the relentless pummeling that Black directed at the Canadian Prime Minister Jean Chrétien in the *National Post*, and the reciprocal acts of spite and retaliation Chrétien directed at Black. This tit for tat reached its climax when the Prime Minister blocked Black's peerage and election to the House of Lords in England, an unprecedented and singular event in Canadian history. As Black noted in a recent newspaper column, Prime Minister Jean Chrétien created a second class of Canadian citizenship, consisting of a single person, namely himself. At the end of a long career of political exertions, Hearst lamented: "I have had my day in politics. It was not a very long day, nor a very brilliant one. But it is over," a suitable and pithy epitaph to a remarkable life.

Lord Beaverbrook, the Canadian press Baron extraordinaire and *bon vivant* is another figure to whom Black could be compared. Beaverbrook cut a wide swath through London society, women, and politics in the 1920s, 30s, and 40s. His boast that he ran his papers for influence not profit is the sort of statement that, in today's world, would rile activist and minority shareholders. It was a different world then, a world that allowed for a greater degree of idiosyncrasy and expression. Beaverbrook inspired a great range of feeling, from admiration to hatred. Clement Attlee, who served in Churchill war cabinet with Beaverbrook, refused a request by the *Observer* to write an obituary for Beaverbrook, saying that Beaverbrook was the only "evil man he had ever met." A subject of endless fascination, Beaverbrook appears as a thinly disguised character in dozens of novels from the period: Sir Bussy Woodcock in H.G. Wells's *The Autocracy of Mr Parham*; Sir Magnus Donners in Anthony Powell's *A Dance to the Music of Time*; *Lord Raingo* by Arnold Bennett; as Francis Pitt in his mistress Rebecca West's novel, *Sunflower*; and as Lord Copper in Evelyn Waugh's satirical gem *Scoop*. Beaverbrook also appears in the 1924 silent film, *They Forgot to Read the Directions*, in which he "drugs three former mistresses before drowning their babies in the ornamental pool at his Cherkley Court residence." Apart from the fictionalised portraits, Beaverbrook's life was the subject of a serious biography by the pre-eminent British historian A. J. P. Taylor. Taylor wrote that he "loved Lord Beaverbrook while he was alive," and that "now that I have learned to know him better from the records, I love him even more."

His most recent intellectual achievement is his 2003 Roosevelt biography *Roosevelt: Champion of Freedom* an immense 1,200-page masterwork of historical synthesis. It has been described . . . by John Lukacs as "extraordinary", inspired by a "conviction of Roosevelt's place in the history of an entire century."

It would take the breadth of Randolph William Hearst's and Lord Beaverbrook's personalities, and the talent of Evelyn Waugh or A. J. P. Taylor to take full cognizance of Lord Black.

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Conrad Black's career has been profoundly set back over the last four years, in ways that far exceed the reversals of either Hearst or Beaverbrook. It is a spectacle that has captured the interest of much of the Canadian public and constituencies in London, New York, Washington, and Chicago. These setbacks, commencing in 2003, have their origins in a series of allegations that coincided with a concatenation of political and economic events, and with a sudden, sweeping and unexpected shift in the regulatory regime governing U.S. publicly listed corporations

The charges revolve around claims that Black and his managerial team misappropriated, or directed to themselves through various means or subterfuges, "unauthorized" funds from Hollinger International, a company that Black had built up into the third largest newspaper firm in the world. These charges were set forth in a special report of Hollinger's board of directors, in what has come to be known as the "Breeden Report", after its principal author, Richard C. Breeden. The report, in its strong condemnatory language and its narrative structuring of the events at Hollinger International, has exerted a tremendous influence on subsequent court and legal decisions, which have culminated in a series of civil suits and in a multicount criminal indictment.

In Umberto Eco novels much of the action and tension revolves around buried manuscripts, or the effort to piece together a narrative from fragments and shards. In one of his novels, however, a character opines that the most difficult and "painstaking task is to find the truth in a false document." This is the challenge that we have in attempting to deconstruct the Breeden 'manuscript', a document that by its very creation assumes institutional sanction and significance.

Richard Breeden was at the *Kenyon* as a sponsor and as head of the special board committee investigating Hollinger International and through Hollinger's control of the *Chicago Sun Times*. Richard Breeden has emerged in the last few years as the Grand Inquisitor of American business, a modern day Torquemada, and Conrad Black is without doubt his most important penitent, in an *auto da fé* that is certain to grow in intensity and ferocity.

As corporate monitor of Fannie Mae, Worldcom/MCI, Hollinger, KPMG, and other major firms, Richard Breeden has built up a formidable presence in American business; his corporate firm, Richard C. Breeden & Co., which frequently acts as consultant to the firms where he works as the titular CEO, has emerged as a governance powerhouse. Breeden's ascent has been marked in big stake dollars with the announcement, made this past August by his partner Steven Quamme, that Breeden Capital Management has raised in excess of 500 million dollars for a 'governance' hedge fund, with a commitment of 400 million dollars from CALPERS (California Public Employees Retirement System). Breeden Capital Management of Greenwich is registered, according to filings, as an investment advisor to Breeden Partners Ltd., a private fund organized in the SEC-exempt bastion of the Cayman Islands. Breeden Partners has approximately one billion dollars in assets. Breeden Capital, the Greenwich-based firm, in turn, is anticipated to be ultimately capitalised with more than a billion dollars in equity. This level of equity would give Breeden Capital the capacity to control as much as ten billion dollars in financial and other assets by applying conservative ratios of leverage and borrowing. As such, Breeden Capital is set to emerge as an important if not dominant force in corporate governance—a force that will play a big role in shaping corporate America. It is an event that requires close attention.

With a fortune that is already estimated at well in excess of 100 million dollars, Richard Breeden has the means to add cultural philanthropy to his jet set interest in transpacific sailboat racing. Jowly and pale, Breeden's demeanor hides an aggressive and competitive spirit that suits the rigours and demands of long-distance oceanic sailboat racing. It's a sporting passion that he takes seriously. Breeden and a number of other enthusiasts have created the new box class for the Transpac52, a racing category that has captured the interest and imagination of the world's super wealthy yachting class, including such international sportsmen and aristocrats as King Carlos of Spain, King Harald of Norway, and the software tycoon Philip Kahn. His Farr-designed and Goetz-built 52-foot racing sloop, Brightstar, is a custom built beauty. With monthly running costs of 30 thousand dollars, on top of a multimillion dollar design and construction cost, clearly corporate ethics has become a very lucrative pursuit.

As corporate monitor, governance consultant, research house, communication agency, and corporate hedge fund arbitrageur, Richard Breeden has at his disposal all the necessary coercive levers to take on major blue chip, NYSE- and NASDAQ-listed firms. Different arms of this governance octopus will be able to wrap themselves around large, established firms. In the face of any 'ethics' lapses, Richard C. Breeden and Co., the consulting arm, will be ready to offer an expensive selection of confessional and ethically corrective services; alternatively, the governance goliath will have the power to appoint Richard Breeden as the corporate monitor, and acting supervisory CEO. In the event of corporate intransigence or laxness in adjusting to 'higher' governance standards, Breeden Capital Management will have all the available financial means to arbitrage any moral gaps. With firms unable to certify their quarterly financial statements or meet SEC guidelines, and with bonds technically in default, bond arbitrage and other types of pressure can become an effective way to make firms capitulate and derive large profits at the same time. With the take-down of Black, an international businessman of immense talent, imagination, and a vast network of connections, it is unlikely that any CEO will choose to tangle with the tough new enforcer on the street. Few firms would be beyond the reach of this governance behemoth.

What Breeden's new hedge fund has in store can be seen from their first publicly announced investment. On the 10th of October 2006, Breeden Partners filed 13D SEC schedules indicating that they had purchased 5.24 percent of the restaurant chain Applebee's International. The fund managers announced that they were calling on Applebee's management to sell its real estate, and franchise more of their restaurants. At the same time, they applied the other side of the pincer by calling for changes in "certain undesirable governance and compensation practices," the signature tag-along threat of governance firms. The Applebee's investment plays indubitably to the experience and background of Breeden's principal partner and long-time associate, Steven Quamme; Quamme knows the restaurant franchise business well, having recently bought out such companies as Taco Bueno's, Bertucci's and Papa John's. Quamme was also involved in building up a large chain of Boston chicken and bagel franchises in the U.S. North East in the mid-90s, in conjunction with the current President Bush's brother, Marvin, and his Alexandria, Virginia-based investment company, Winston Partners. Their history and success in that business, however, was somewhat checkered; their franchise holding company, Mayfair Partners, was declared bankrupt in October of 1998, leaving many disgruntled shareholders, suppliers, and partners, and substantial financial losses with various banks. The Applebee's investment of about $70 million is relatively small in terms of the scope of Breeden's new fund. But it is just the first play; far more ambitious plans are in the making. Newspaper publishing and Telecoms must be high up on the shortlist, given Richard Breeden's familiarity with these industries as corporate monitor.

The attack on Conrad Black sets an important precedent. Other newspaper groups might make for tempting targets; they certainly are vulnerable as we have witnessed recently with Knight-Ridder's dismemberment, and the Tribune Company's ongoing woes and conflicts. Many of the old-line firms have shareholder structures that are identical or similar to that of Black's group, and they are managed in a strikingly similar style. The venerable NYT Company, the world's pre-eminent newspaper proprietor, and the publication- of-record for the U.S. establishment might also be within the sights of wealthy investors, hedge fund speculators, and governance arbitrageurs.

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Like Hollinger and many other newspaper companies, the NYT Co. has a dual class structure. The Sulzberger family controls 9 of 13 board seats through their 88 percent control of special class super-voting B shares. The family, however, only controls 4.4 percent of the publicly-traded class A shares. The Sulzberger's aggregate equity would be just under 19 percent if the B class shares were fully converted. With the NY Times Co. shares falling 47 percent since 2004, and 67 percent in the most recent quarter, and with its management fees climbing substantially in the same period, there is a clear disparity between performance and compensation. Dogged by the hangover from the Jayson Blair plagiarism scandal, manifest and glaring errors in Judith Miller's reports on weapons of mass destruction in Iraq, and other widely-publicised managerial issues, the company presents a tempting if somewhat ambitious target for governance sharks.

Like the Bancrofts of the Dow Jones Company and the Grahams of the *Washington Post*, the Sulzberger family has always placed journalism far ahead of any interest in profits or profitability; it is journalism before profits, not the other way around. The evident disregard for the cardinal rule of shareholder value maximization is alone sufficient to bring on 'minority shareholder' activists demanding changes and new managerial and governance supervision. *The Times* would certainly fail many of the governance tests that have been put to Conrad Black's publishing empire. Morgan Stanley's withholding of its 7.6 percent voting interest at last year's shareholder meeting might be the cue that the activist and governance funds are waiting for. Recently, Hassan Elmasry, the manager of Morgan Stanley Investment Management, has criticised through a "series of letters" the "company's capital structure, compensation, and strategy," and its "decision to build a new headquarters," along with its "governance practices" and "dual shareholding structure." All that is required for a governance attack now is the appropriate pretext. One can certainly envision a plausible scenario of how this might unfold.

What has happened to Conrad Black needs to be taken into broad and serious consideration. One can imagine the disruption that would ensue if another major newspaper proprietor, or a firm of the stature of the NYT Company or the Washington Post Co., were to be exposed to a similar assault.

Not only is Richard Breeden competitive and ambitious, he is ruthless. As SEC Chairman his motto for corporate offenders was that he wanted to leave them "homeless, naked and without wheels," not too far removed from the Spanish Inquisition's "death or the forfeiture of goods," decreed against all Lutherans in the Netherlands by Philip II. Financial accumulation, 'super-size' profits, and Breeden's personal financial interests are at the center of the whole governance play, just as surely as acquisitiveness and cupidity were at the centre of the Inquisition. When questioned at Bennett Funding, a finance firm in the sub-prime auto lending business that collapsed in a mountain of fraudulent paper, about the "20 million dollars he stood to make personally," while "investors are facing an 82 percent haircut," Breeden "snapped that he was worth every penny." If his attitude to good sportsmanship provides any insight, it appears that Breeden likes to sail pretty close to the 'wind'. At a regatta in Key West a couple of years ago, *Racing Week* noted that while Breeden took the prize "for overall performance", his "victory did not" earn him "an outpouring of affection," but rather elicited "intense irritation"; fellow sailors were quoted as saying that he "didn't win fairly," and that "he cuts corners in his racing." Others commented that he "takes advantage of box rules." His win was accompanied by "teeth gashing" among the "users and administrators of the sailboat handicapping system" called IMS.

With tremendous reserves of drive and ambition, and a burning desire to win at any cost, Breeden is on his way to building a large fortune. The addition of his new hedge fund to his existing corporate services would seem to be the perfect springboard; a standard 2/20 fee structure (2 percent of assets under management and 20 percent of total fund profit) on the new Breeden Capital fund might conservatively yield Breeden an annual pay-off in the tens if not in the hundreds of millions of dollars, given a good pay day. Breeden may yet become the first governance billionaire, a remarkable achievement to have turned the knotty subject of ethics, so deeply mooted with epistemological difficulties, into a financial fortune. Clearly, Richard Breeden is a man on the rise, and the first of a new kind of economic man—a new species in the ever evolving genus of *homo-economicus*. It is a breed of economic man that may not only change American business, but also damage for good the entrepreneurial culture that has generated much of America's wealth

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Cultural sponsorship is Richard Breeden's effort to burnish his good corporate name and to move into wealthy philanthropic circles. The opportunity to mix with the glitterati at the *Kenyon Review* party is a logical extension of his ambition. Easing Breeden's way was none other than the peripatetic Paul B. Healy. Well schooled in moving within the upper cultural tier during his apprenticeship with Black, Healy has been assiduous in cultivating a close relationship with Breeden. He has rendered, as many have said, invaluable assistance to Breeden's ongoing investigation. It seems their bond is very close; for reasons of social cachet perhaps, or, possibly, just to avoid all the negative publicity associated with Hollinger, Healy lists his corporate affiliation on the *Kenyon* web site as Richard C. Breeden & Co.

Fastidious, well dressed, and acutely self-conscious, Paul Healy has the multiple enthusiasms of a cultural dilettante. His interests range across the whole metropolitan spectrum, from jazz, photography, dance, opera, and modern art. Like many city butterflies, Healy is not a completely stable personality. Neurotic, narcissistic, and given to histrionics, he has the sort of diffuse and fragmented ego that coalesces and constitutes itself in the midst of drama and theatricality. A cataloguer of slights, Healy is quick to see flaws in others, particularly his imagined rivals, whom he is apt to cruelly mischaracterise. Wildly loquacious, his campy put-downs and catty insults have littered the tabloid press and the many sensational stories surrounding the Black and Hollinger affair.

Healy has, to his credit, put his inimitable stamp on the annual *Kenyon* literary event, which has carved out a place for itself on New York's busy social calendar, a place, albeit, far removed from the Midwestern home of Kenyon college. Healy's career, prior to his employment at Hollinger International, was uneventful, with stints at Chase Manhattan and TD Price Waterhouse Securities. With access to Black's contacts at Hollinger International, Healy was catapulted into the rarest and most elevated of social circles. The gilted sponsorship and guest list at the *Kenyon* evening speaks for itself.

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As Hollinger's Director of Investor Relations, Paul Healy was responsible for handling investment queries. One of Hollinger's early investors was a small well-established firm by the name of Tweedy Browne, a firm built around the long-term value investing principles of Benjamin Graham, the renowned Portuguese scholar and Columbia University Professor of Finance. Tweedy Browne's principal analyst working on the Hollinger file was a lady by the name of Laura Jereski, an ex-*Wall St. Journal* and *Forbes* journalist. Trying her hand at working as an analyst after serious legal and personal setbacks at the Dow Jones Company, Jereski was carefully cultivated by the ever astute Paul Healy.

In her previous journalistic work, Laura Jereski had shown a tendency towards credulous mismanagement of sources and the prejudgement of stories. Her understanding of technical and accounting issues was found to be wanting. Jereski's October 21st, 1993 article on the finance firm MMMR, titled "Regulators Study Texas Securities Firm and its Louisiana Fund Traders", resulted in a summary judgement against the Dow Jones Company, the owner of the *Wall Street Journal*, that was one of the largest in U.S. journalistic history, and almost without precedent in terms of the scope of negligence and implied malice that was found against Dow Jones and Laura Jereski personally. A Texas court awarded the plaintiff MMMR $222.7 million ($22.7 million in actual and $200 million in punitive damages), and found Laura Jereski personally liable, which is almost unprecedented in a suit of this sort. Fortunately for the Dow Jones Company and Laura Jereski, the award was later vacated and the issues settled privately. However, the findings of the summary judgement remain, and they have largely put an end to any hope Laura Jereski may have had of maintaining a career at the *Wall Street Journal*, *Forbes* or at any other major financial paper. Some of the findings of the Texas court, which are a matter of public record, are worth recounting and bear significantly on the Conrad Black case that she initiated. Amongst the most serious findings, was that Laura Jereski "started with a preconceived story line," that the "truth did not deter her," that the she "knew that the information contradicted the article," that she "used hostile and biased sources if she had any source at all," that "she had obvious reasons to doubt the veracity of these sources and did nothing to verify or corroborate the information she received from them," that "her article lacked balance," that "she distorted with the selectivity of her language and her choice of facts," and that her "choice of facts and the resolution of inferences and ambiguities [were] probative of actual malice." In addition, she used "misleading sequencing" and "she refrained from asking key questions." Her shortcomings are listed as "not knowing the [meaning] of editorial supervision," that she was "indifferent to the readers perception," that she had "no accounting training," and that "she does not know of or follow any standard of journalism." Tellingly, the summary judgement indicates that Laura Jereski made a similar false set of statements in another article that she wrote when she was at *Forbes* magazine, which was titled "Alice in Mortgageland". This article, like her *Wall Street Journal* piece, led to an investigation by the NASD (National Association of Security Dealers), when, in fact, she had suggested that an investigation was already afoot at the time she was writing her article. She had, in truth, caused the events she had described as being already in progress—dishonestly reversing order and chronology to suit her purposes. The most troubling aspect, and one of the reasons for the finding of malice, is the court's determination that Jereski faced no "deadline pressure," that she was "under no time constraints" or "financial pressures," raising very real questions regarding her character and emotional make-up.

Laura Jereski left journalism with a sense of injury, grievance, and frustration. Her background and personality difficulties were known to her new employer, and her abilities and weaknesses were employed accordingly. Soon she would find an outlet for venting her anger at the journalistic profession and the forces she viewed as having conspired to destroy her career. Paul Healy was to form a close rapport with Laura Jereski based on a traffic in mutual meanness and deception. Ultimately, highly inflammatory information was to make its way to Tweedy Browne. Jereski was to find in Conrad Black the embodiment of all of the elements that had conspired to thwart and harm her professionally. Black was to become the object of her vindictive fury. Important to her self-image was the idea that she was not just another analyst, but a gifted writer, investigator, and journalist. Her attack on Black would be as much about re-staking her name and re-establishing her professional credentials as it would be about performing her duties as an analyst.

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Christopher Browne is the CEO of Tweedy Browne, a firm that was founded by his father's employer, a man with the colourful period name Forest Berwind Tweedy, an enigmatic and odd figure on Wall Street, who specialised in finding buyers for poorly traded securities. Predictably, for Chris Browne, a second generation inheritor, the securities business is not an all-encompassing occupation, as it was for his hard-working father, who began his career as a sixteen-year-old runner and errand boy; cultural and literary pursuits occupy an equally important part of his life. Chris Browne and his handsome partner Andrew Gordon were *Kenyon* party invitees; they are regulars on the party and philanthropic scene in Manhattan, and move in the same social circles as Paul Healy. A Renaissance man, Christopher Browne has a range of sophisticated interests. His philanthropic contributions are diverse, including a major academic centre devoted to international studies, The Browne Centre for International Politics at the University of Pennsylvania. He sits on numerous boards and is involved in many charitable activities. He has an abiding interest in literature and the arts, acting as the treasurer and underwriter for a small journal, the *Journal of Classicism*. He has fine tastes which he can amply afford. His Further Lanes Estate in the Hamptons, previously the home of the socialite Liz Fondaras, is a showpiece of landscape architecture and design. It is listed on the local Hamptons real estate market for 25 million dollars. The Hamptons property has been the scene for many parties; Browne has become locally famous for his annual Empire State Pride Amendment Tea Dance. A local Hamptons real estate piece aptly and characteristically describes Browne—who is rather short and sweetly porcine—as a "well to do single gentleman of a certain age with many admirers." The house is described as "early Robber Baron."

Robber Baron would of course be a false attribution if it referred to anything other than Browne's taste in architecture. By seeking the highest value on his investment dollar, Browne is serving the larger public good, and the general advancement of society and the economy, if one is to accept the basic premises and reworked truisms of the laissez-faire creed. The Hamptons estate is Browne's condign reward for this service, for aligning his self-interest with the general market 'good'. Browne's financial interests are entirely—logically and completely—consistent with the reigning principle of the modern corporation and the modus operandi and guiding principle of Wall Street. That principle, exalted almost to the level of a natural law, is that "share holder value maximization" reigns supreme.

The famous Chancellor William T. Chandler of the Delaware Court of Chancery commented that shareholder value maximisation is a principle so deeply entrenched as "the dominant intellectual paradigm," that it would be "difficult to imagine any alternative view." And yet, the origin of this principle is relatively recent; it goes back no further than a 1919 decision of the Michigan State Supreme Court in Dodge versus the Ford Motor Company. The Dodge brothers, of automotive manufacturing fame, had brought a suit against Ford, claiming that Ford's management had taken steps that would benefit those we would now call "stakeholders"—i.e., consumers, suppliers, managers, and employees of the company—at the expense of shareholders, i.e., the Dodge brothers. The final decision of the Michigan court was that "the Business Corporation is organized and carried on primarily for the benefit of shareholders and the power of directors is employed to that end." The judge ruled in favor of Dodge, and in favor of shareholders, against the interest of other stakeholders. The shareholder maximization principle was enshrined by this ruling, and reinforced by a slate of regulatory and legislative acts, principally the creation of the Security and Exchange Act of 1934, creating the underlying legal foundation of the modern public corporation and the modus vivendi of the entire investment industry.

It is doubtful that the Michigan State Supreme Court foresaw hedge funds, with their aggregate assets now exceeding 1.2 trillion dollars—never mind the idiosyncratic Christopher Brownes of the world—when the Court articulated its conception of the corporation. The Michigan State Court spoke of shareholders as a generic "class". It did not envision the self-interested minority shareholders that are today represented by massively capitalised hedge funds, venture capital companies, and pension managers. Minority shareholder activists, many of whom were called "bottom feeders", "vulture capitalists", and worse things just a few years ago, before they wrapped themselves in the garb of minority shareholder rights, would have one believe that their interests align themselves more advantageously with the long-term interests of the firm, than those of the management or the founding entrepreneurs. The young hedge fund graduates in Connecticut, like their colleagues at Amanrath, who recently bet and lost 10 billion dollars on the wrong side of the natural gas markets, would like to convince the public that they have a better grasp of the workings of a particular business than the individuals who have spent a lifetime running and building them; likewise, we are supposed to think that the immensely intricate and complex workings of Hollinger International, or the NY Times Co., or the *Washington Post* could be better managed by a hedge fund jockey who knows how to read a Bloomberg terminal, and has a modicum of business school training.

The only clear interest that Tweedy Browne had in Hollinger was in raising the company's share price, through any and all means at its disposal, even if those means tip into unscrupulous exposure. The unholy alliance of hedge funds and well-orchestrated media manipulation, is an increasingly serious problem that has yet to be fully unmasked. Fortunately, there is a raft of such cases going before the courts. In Canada, we have the cases of Fairfax Financial and the pharmaceutical firm Biovail, both of which allege that short-sellers, hedge funds, and affiliated journalists conspired to drive down share prices and spread rumors. Similar circumstances have ensued with the internet retailer Overstock.com.

By retaining a journalistically-inclined analyst, such as Laura Jereski, with a known history of distorting facts, and engaging in disparagement and unwarranted attacks, and by moving to a more aggressive arbitrage program, Tweedy Browne has departed from the cherished principles of value investing pioneered by Benjamin Graham. Although far from typical, Christopher Browne is nevertheless emblematic of this new class of minority shareholders: wealthy, self-interested, and prepared to impose their views by whatever means necessary to realise the highest dollar on their investment.

Not only did Christopher Browne, through the active agency of Laura Jereski, spark the events that led to Black's resignation, the gutting of Hollinger, and the raft of criminal charges, but he petitioned the courts for compensation for the money his firm expended in bringing forth the various letters of protest and the supporting research. For these services, the Board of Hollinger was compelled to pay 3.5 million dollars. The legal basis for this claim is beyond the ken of this essay, but it certainly beggars belief.

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The class action Bar is also hungry and on the move. The raft of lawsuits leveled at Enron, Worldcom, and Arthur Andersen have given new hope to the ever-optimistic class action plaintiffs' Bar. Aggressive and sure steps are afoot to roll back the Private Security Reform act of 1995, an act of legislation that had essentially put public corporations beyond the purview of class action security suits. These suits had wreaked havoc before '95, threatening to do to American business what the plaintiffs' bar has done to U.S. health and medical care costs. The consequences of such a legal reversal would be ruinous, making the U.S. economy uncompetitive with the rest of the world. Class actions suits are, however, on the rise, and new types of derivative suits, where the shareholder sues ostensibly on behalf of the corporation itself—due to a perceived inability of the directors or officers to protect their own interest—are being extended in new and creative directions. The increasing use of these newfangled suits, and other means by minority shareholders intent on arguing their interests, is undermining the viability of the public shareholding corporation as the basis for much of modern commerce.

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The six-month period—between Oct 11, 2002, when the U.S. Congress authorized the use of military force against Iraq, and the opening of the War, Iraqi Freedom, on March 20, 2003—was a period of great anxiety and tension for much of the world. It was also a period of intense inter-factional Republican politics and maneuvering as various policy positions clashed and various interpretations of the threats that faced America were debated. On the 11th of October, one year after the terrorist attacks, immense mounds of debris still littered the World Trade Center site, and funerals and memorials were still being conducted as part of a daily round of grief and bereavement. The American public wanted revenge and answers. The October 11th authorisation set the military wheels in motion. Six weeks later, the administration started the process of finding answers. On the 27th of November, in the Roosevelt Room, President Bush, with Henry Kissinger at his side, signed the bill creating the 9/11 Commission. It was moment pregnant with national importance and it marked Kissinger's status as the preeminent elder statesman of America.

This period will be subject to considerable historical inquiry and searching analysis in years to come. The diplomatic and political events are so densely packed together that it is difficult to separate all the different threads and to trace the political cause and effect. Colin Powell's speech to the United Nations Security Council, and the President's State of the Union address are certainly important markers for this period. The grand effort to argue the rationale for invading Iraq, and to lay out the dangers of Saddam Hussein's putative weapons of mass destruction, was pulled into a maelstrom of public relations activity, disinformation, and covert battles. The intensity of the political activity was uncontainable; it spilled out in all kinds of internecine warfare and proxy fights. Some of this happened in the open, but most of it did not. However intense the public presentation may have been in the UN and elsewhere, the more intense battle to determine the course of action was being waged internally, within highly influential Republican cliques and powerful factional policy groups.

This half-year period of tension and national debate frames the events at Hollinger, and animates the sub-plot and machinations that dominated the boardroom. What would have otherwise been a series of prosaic internal legal-technical issues concerning a few inter-company loans and non-compete agreements to be settled amongst the parties, was utterly transformed under the force of the 'Planck-scale' political energies of Hollinger's board members. These forces and the swirling political storm outside were to exaggerate, twist, and magnify the original issues all out of proportion to their actual significance.

* * *

Hollinger International's board members, particularly the five-sided 'star' group of Secretary Henry Kissinger, Governor James Thompson, Richard Perle, Ambassador Richard Burt, and Marie Josée Kravis, were involved in outside business issues and political concerns of much larger import and moment than the mundane activities of Hollinger's newspaper business. These larger issues would envelop Black with the violence and ferocity of a storm on the open seas, and greatly exacerbate what would otherwise have been a set of manageable problems. A full comprehension of what has transpired is not possible without a description of the political backdrop and the pitched battle between two very prominent board members and adversaries, Richard Perle and Richard Burt—two individuals who had fought battles over policy during the defining moments of the Cold War, and who were deeply enmeshed in the politics of the Bush administration, although in opposing policy camps. That the conflict and rivalry between Perle and Burt pinned Henry Kissinger, one of the pre-eminent political figures of the 20th century, who had just been called upon by the the President to lead one of the most important investigations in recent American history, adds a further skein to the whole complex and tangled web.

The call for a special board committee at Hollinger International to answer questions about alleged improprieties had an immediate and almost electric effect on Hollinger's board. Instantaneously the 'phase structure' of the board assumed a new configuration and orientation, twisting like a matrix of amorphous crystals; all of the pre-existing relationships and bonds were ruptured and reordered into a new lattice structure. The influential board members had reputations and business and political interests to protect. The board members' exquisite sensitivity to pressure, in this hyperactive political environment, was none too difficult to grasp for Tweedy Browne or other investors looking to arbitrage their position. Like an exotic crystal, the board structure merely needed to be probed at the right point to shatter and dissolve. One could speculate that the decision to arbitrage Hollinger's 'governance risk' or 'hazard' took place during this period leading up to the war in Iraq. A moment of national urgency and importance was translated, by a calculus of self-interest and profit, into an opportunity for speculation and gain. As related in a recent book, "Chris Browne had no appetite either to orchestrate a campaign against Black or to institute legal action. That would be too costly. One option was to fan publicity about the failure of Kissinger, Kravis, Thompson and Burt. Those self-important personalities would scream embarrassment, compounding Black's predicament."

The cascade of intrigue and side agendas amongst the various Hollinger board members, with their long, involved, and complicated histories is in many ways evocative of the murder-mystery of Barbarosa in Eco's *Baudolino*. Each member of Baudolino's band of whimsical adventurers is suspected by the other members of the gang as being involved in the death of Frederick The Great, and each member feels and fears, without understanding how, that he *is* actually involved in some significant way. This combination of a spiraling, self-reinforcing pattern of external suspicion and a deeply felt internal sense of culpability captures the ineluctable essence of paranoia—particularly the paranoia that erupts in the discordant and ruptured reality that surrounds crimes and accusations of crime. This is the mood of paranoia and psychological unease that is captured in the best murder mysteries. A similar dynamic was at work amongst the Hollinger board members—a dynamic that produced the same urgency to frame a plausible explanation, that caused one to suspect others and oneself, and to identify an arch-villain at any and all cost. All of us have experienced something comparable at some point, and we know that such a dynamic leads inexorably to injustice and false accusation, to witch hunts and Inquisitions.

Richard Burt, with his well-honed sense of politics, was the first to grasp the significance of what had happened at Hollinger, and he had the diplomatic instincts and skills to move more quickly than any of the other board members. He also had an extensive network of business associates and politically connected partners who were primed and ready to exploit the circumstances for their own benefit.

Burt saw the quickly unfolding situation at Hollinger as a serious personal threat—to his reputation and to the many business interests he represented. Burt also saw these circumstances as a convenient means to block his old nemesis and fellow board member, Richard Perle. Perle, the self-described Prince of Darkness, was a figure who was rapidly gaining influence in the post-9/11 political environment of Washington. His reputation had grown dramatically since the world started to resemble in shape and contour the strategic-political picture he had sketched and argued for so long. His call for the invasion of Iraq was quickly becoming the Bush administration's action plan. His start-up venture capital and consulting firm, Trireme, seemed extraordinarily, if not ideally, well positioned to secure large security and military contracts. The depth of access available to Perle, and his unmatched contacts in the administration and Pentagon made many of the traditional Republican lobbying and consulting firms weary and anxious. Grave concerns were being widely expressed about the new power alignment extending from Cheney and Rumsfeld, and the prominence of the so-called neo-conservatives. Influential Republican lobbying groups were deeply worried about the risk of being displaced with all the fateful implications that this posed for their powerful clients and contractors.

Trireme, Richard Perle's venture capital firm, was a clear competitor to Richard Burt and his partners, whose own ambitious intelligence and security company, Diligence Inc, had also been launched in the aftermath of Bush's election victory in 2000. Other shell firms were incorporated after 9/11 expressly to exploit the pending war: New Bridge Strategies, an amalgam of Diligence, Milestone Merchant Partners, and Barbour Griffith & Rogers, were aimed solely at soliciting contracts in Iraq.

Perle and Trireme had, however, a clear head start and a decided advantage. Perle had greater insight into the administration, a more articulate vision of the military-political events that were unfolding, and was more adept at playing investors against one another. By 2002, Perle had already secured a major investment of 20 million dollars from Boeing, the world's largest aerospace company and a major military contractor. In addition, Perle had won the involvement of Henry Kissinger, which was no small feat given their past history of rancour and hostility. Kissinger's name confers immense weight in government and international political and investment circles; it was an association that sent out a strong signal. With Perle's Chairmanship of the influential Defense Policy Board, and with his many friends and allies in the Bush administration, his position appeared impregnable. Perle was tied intimately and inseparably to Cheney, Rumsfeld, and to a network of highly influential aides. With money and politically prominent backers, Perle would make for a formidable competitor and a business adversary of the first order. Influential firms throughout Washington took careful note.

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Something of Richard Perle's plan for Trireme is revealed in Seymour Hersch's piece in the *New Yorker* (March 17, 2003). The timing of the article was not coincidental; it was on March the 17th that Bush demanded, by way of a 48-hour ultimatum, that Saddam Hussein and his sons surrender or leave Iraq. The power of Perle and his group was at its zenith on the eve of the War, and the article may have been a round-about way of damaging Perle and blunting his influence; some, if not most, of the elements of Hersch's story were patently untrue and were likely leaked by individuals seeking to harm Perle's reputation and business connections.

Hersch chose to concentrate on Perle's supposed solicitation of Saudi investment money, the peddling of influence, and the apparent conflict of interest arising from his role as Chairman of the influential Defense Policy Board, an advisory group to the Pentagon. The more interesting story, however, did not concern influence peddling, but the intense rivalry between warring Republican cliques seeking to stake a position in what appeared to be a business opportunity worth billions of dollars. Hersch was in all likelihood caught unwittingly in this rivalry—a rivalry that was about the tens of billions of dollars that would be divvied up between contractors and consultants in the War Iraqi Freedom. It is highly significant that on the 7th of May, during that same interval, Chris Browne decided "to leak details of Black's investment in Perle's company Tririme, to a journalist." The leaking of this particular bit of information has to raise one's suspicions, and reinforce the sense that Browne was being duped by the same individuals as Hersch, with the same intentions.

Perle had been lobbying Black for some time to underwrite Trireme, with grand plans to dominate the intelligence field and capitalise on emerging global opportunities in electronic monitoring, surveillance, and security. It appears that Perle had all along been leveraging his connection to Black and Hollinger to solicit investments from prominent investors in London, Europe, and the Middle East. The account of this situation in the Breeden Report makes for fascinating reading. It is fascinating not because it discloses any improprieties by Black—it shows none whatsoever—but because it inadvertently portrays Perle in all of his extraordinary guile and kaleidoscopic charm, and exposes the various complicated ruses he used for securing investment.

Black, as the Breeden Report shows, reacted to Perle's various entreaties and stratagems with a bemused indulgence, and with arch politeness born of friendship and respect. Nevertheless, Black is, as the quotations clearly reveal, at all times cautious, circumspect, judicious, and intensely aware of "Richard's weaknesses" and his "shortcomings [as] a trimmer and sharper." Black is emphatically expressive of his fiduciary duties and obligations to Hollinger and related concerns. It is one of the few instances of something worth reading in the Report. This sub-section adumbrates an image of Black that is clearly at variance with the general picture the Report seeks to paint. Saliently, the quotations are mostly from internal memos and documents, and consequently are highly revealing of Black's control and management. The quotations are marshaled to damage Black, but their actual effect is entirely opposite. The exchanges between Perle and Black provide an unerring and impressive picture of Black resisting importunate demands made by an arch master of the art of inveigling dollars.

What is not revealed in the Report is that Burt and Perle were competing for the same investors, and each suspected the other of using Black to his own advantage. It was a scenario that could have been taken directly from *Baudolino*. What one is reading about here is a high-stakes poker game with hundreds of millions of dollars on the table. Burt, unlike Black, took much of Perle's bluster and idle boasting seriously; he and his partners were worried that Perle's plans for Trireme would undermine their group's strategy for Diligence. With Kissinger and possibly Black on Perle's side, Burt's group would be seriously disadvantaged. Kissinger's support of Perle had shifted the perception in Washington power circles.

Bob Woodward's recent book, *State of Denial: Bush at War,* points unmistakably to Kissinger's unparalleled access and influence in the current Bush administration. Kissinger did and continues to have monthly meetings with Cheney, and regular meetings with Bush himself. Kissinger's own business interests are sprawling and complex. His consulting firm Kissinger-McLarty is a global powerhouse, offering services to the world's leading business and political figures.

Although Hersch was reaching in suggesting that Perle was seeking Saudi investment money, Burt was, in fact, turning to capital and funding in Saudi Arabia and Kuwait. Burt's group, particularly its highly influential lobbying affiliate, Barbour Griffith & Rogers, has long-standing connections to Saudi money. Edward Rogers, deputy assistant to the first President Bush, was the founding partner of Barbour Griffith & Rogers. At the end of the senior Bush's presidency, Rogers was officially rebuked by a House sub-committee investigating the massive BCCI fraud, and forced to resign. The sub-committee found that Rogers had signed a contract for $600,000.00 with the Saudi Sheik, Kamal Adham. Adham, who passed away in 1998, was the brother-in-law of King Feisal, and the ex-head of Saudi intelligence. Rogers was thoroughly entangled in the BCCI scandal, acting as BCCI's front man for the illegal purchase of the Washington First American Bank. The theft of depositors' funds at BCCI, the Bank of Credit and Commerce International, is the largest bank fraud of all time. More than $20 billion was stolen, and the bank was indicted and convicted for acting as a front for money laundering and racketeering on a world scale; revelations continue to emerge with respect to BCCI. It is now believed that BCCI served as a major financial conduit for international terrorism and nuclear weapons proliferation, with early ties to the A.Q. Khan network and Pakistani intelligence.

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Kamal Adham, Roger's prospective partner was also the personal 'handler' for a Saudi operative, who was, at that time, of little significance. His name is Osama Bin Laden.

Rogers and Burt have not weaned themselves of Saudi lucre; it seems they haven't grasped that obtaining financing in the Middle East is a double-edged sword. In the absence of investor interest in North America and Europe, Burt and Diligence took the path of least resistance and secured financing through the Kuwaiti businessman and ex-politician Muhammad al Sager, and subsequently from the Argentine buy-out firm Exxel, whose principal and founder, Juan Navarro, sits with Burt on the Alfa Group board in Moscow.

* * *

The conflict and rivalry between Perle and Burt had a long history, and Burt had good reasons to overestimate Perle's capacities. Their rivalry had extended back almost thirty years, and had played itself out against the vast panoramic canvas of the Cold War. Jay Winik, in his book captures something of the tension between Perle and Burt during the heat of the critical arms control negotiations and treaties between the Soviet Union and the United States. Winik's *On the Brink: The Dramatic Saga of How the Reagan Administration changed the course of History and Won the Cold War* (1996) paints Richard Perle, the late Jeane Kirkpatrick and Elliot Abrams as heroes who literally altered history, winning almost bloodlessly the greatest ideological and military struggle the world has ever seen. Perle comes across as a passionate and unrelenting foe of the Soviet Union, a veritable Patton on the ideological war front, a hawk who opposed the arms negotiation treaties. Perle's framing of the Jackson Amendment to the SALT I agreement, which ensured weapons parity, and the important Jackson-Vanik Amendment, with its human rights implications, are represented as major articles of 20th century diplomatic history.

Perle's involvement in thwarting and undermining Kissinger's SALT II negotiations, by leaking information to the journalist Robert Novak, makes for equally fascinating reading. The sense of *déjà vu* thirty years later is overwhelming, with the events eerily recapitulating the journalistic intrigue and leaks around the Novak-Plame-'Scooter' Libby affair. We see many of the same personalities, such as Rumsfeld and Judith Miller, in starring and secondary roles. According to Winik, Perle's efforts during the nuclear disarmament negotiations were undermined at every turn by the dastardly Richard Burt and the venal Jim Baker. Burt and Baker are referred to as the "evil masters of the bureaucratic game," with unmatched capacities for duplicity and double-dealing.

* * *

Burt is a consummate master of the "game". Like all diplomats, he's capable of accepting two truths at the same time and adopting courses of action that seem counterproductive and contradictory.

Not only did Richard Burt see a way through the situation at Hollinger, he saw a way that satisfied multiple and simultaneous conditions—even though this solution was self-serving and in flagrant conflict with his fiduciary obligations as a board member of Hollinger.

Richard Burt is a dashing diplomat, an international businessman, and a man of the world; as the ex-Ambassador to Germany at the height of the Cold War, Richard Burt is well versed in matters related to intelligence and espionage. Intrigue comes naturally to him. Burt's self-made career traces a trajectory of achievement and success. He was born in Chile, where his father was stationed as an employee of Kennecott-Copper. The Burt family ultimately moved back to Utah, settling near Magna, close to the large Kennecott smelter. As a student at Highland High School, Burt had already formed conservative and Republican ideas. He was expelled from school for wearing an elect Barry Goldwater pin. After a stint at the Fletcher School, where he earned a Masters degree, he studied at the International Institute for Strategic Studies in London. After completing his Master's degree, he landed a job as a *New York Times* journalist. His articles on the Soviet-U.S. conflict were strongly supportive of increased American assertiveness, and a tough Cold War approach, emphasising the growing threat and capabilities of Soviet missiles. For this he was accused of deliberately relaying "threat inflation information," to rally and mobilise political opinion. In some quarters Burt was actually accused of shamelessly relaying "truck loads" of ill-considered propaganda. His situation vis-à-vis the Nixon administration was not strikingly different from that of Judith Miller and the current Bush administration. Burt and Miller share a modus operandi that may be more than coincidental given their familiarity with one another.

From the *New York Times* Burt moved predictably to the State Department as Director of Military Political Affairs. He proved himself useful during this period; in a reversal of roles, he covertly disseminated military-political information to well-placed journalists. During the confirmation hearings for his German ambassadorship, Orrin Hatch brusquely wrote to Burt that "it would help [your] chances of confirmation if you could lay to rest rumors about your girlfriend Judith Miller, whose articles on arms control appear so soon after your meetings with her." Jessie Helms, the Republican firebrand must have seen the same background reports and security checks as Hatch; he likewise raised frank questions about Burt's "social relationship with his former girlfriend Judith Miller." Judy the "Mattress", as she was described by the pseudonymous gossip columnist J.S. Hunseker (the name of the publisher in the movie *The Sweet Smell of Success*), was working hard then as now by "pounding the mattresses" for the news. It's no small feat to have kept up this 'pounding' for thirty years, through a series of different administrations.

Diligence Inc., the intelligence and security company that Richard Burt and his partners at Barbour Griffith & Rogers organised, is a Who's Who of intelligence, finance, and political movers and shakers, including: William Webster, the only individual to head both the CIA and the FBI; Mike Baker, a James Bond-type individual, who spent fourteen years in covert operations; Whitley Bruner, the ex-Baghdad CIA Station Chief; and a clutch of other identifiable CIA and MI5 agents. Other board members include: Lord Powell, the policy advisor to Margaret Thatcher; Edward J. Mathias, the managing Director of the vastly wealthy and influential Carlyle Group; and John Major, the ex-British Prime Minister. A recent high-profile appointment to the Diligence board, suggesting another shift, is Thomas F. "Mack" McLarty, the former Chief of Staff for Bill Clinton and Henry Kissinger's consulting partner. As anyone can see, this is a serious group of individuals, organised to solicit business from supra-national industrial and military concerns, and political elites around the world.

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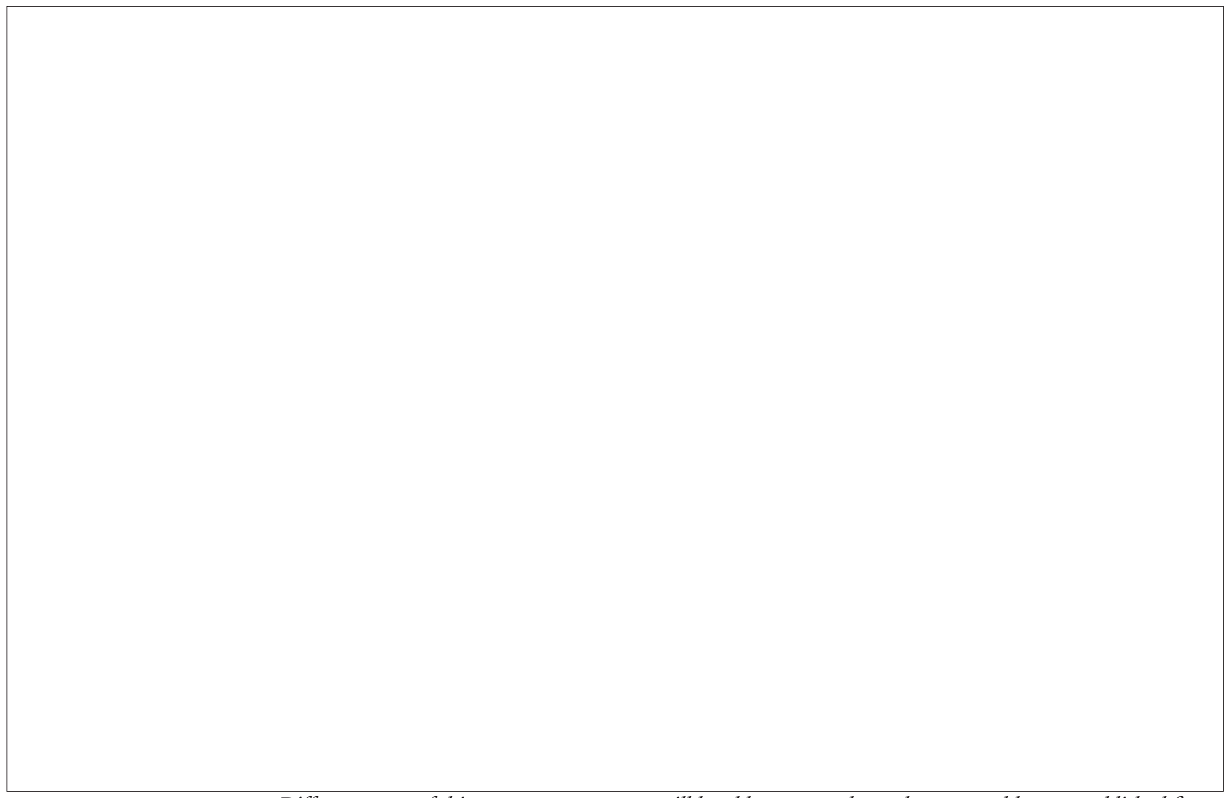
Richard Burt's solution to the Hollinger situation was to turn to his close business associate and business partner, Steven J. Quamme, who is also a managing partner at Richard Breeden & Co. By the time of the annual 2003 meeting, Burt had already worked out a strategy. At that meeting Burt "handed Paul Healy a piece of paper with a telephone number." The note read: "Paul call Richard Breeden," send him "Tweedy Browne's filings and ask if he can help Governor Thompson and the internal inquiry." Steven Quamme is the main fundraiser and booster for Breeden's new governance hedge fund. Quamme is also the head of Milestone Merchant Partners, a venture capital and investment company. Quamme, like Breeden, is an ex-Baker & Botts attorney, and is closely associated, as is Richard Breeden, with the Bush family. Milestone, like Diligence, is closely connected with the Republican lobbying firm and powerhouse of Barbour Griffith & Rogers. Diligence, Milestone Merchant, and Barbour Griffith & Rogers share numerous overlapping directorships and advisors, including James A. Baker IV (son of Secretary Jim Baker III), Haley Barbour and the aforementioned Ed Rogers, Burt's partners; Burt sits on the existing board of Milestone, and was, significantly and *crucially*, the Chairman of the predecessor company, International Equity Partners. This is an undisclosed fact that has been glaringly ignored in all of the published accounts of the Hollinger-Black investigation to date. International Equity Partners was ostensibly renamed and rebranded as Milestone Merchant Partners, with Steven Quamme as the new President. The companies are identical with the names and boards shuffled to bury or obfuscate past business dealings.

International Equity Partners was established to invest in emerging markets. The company sought out opportunities in Eastern Europe and the ex-Soviet republics. As Chairman of International Equity, Richard Burt was instrumental in introducing the firm to various Eastern European politicians, many of whom were unsavoury figures previously associated with the defunct Communist regimes or ex-intelligence operatives seeking fast cash by privatising state assets and industry. International Equity's largest and most important investment was in the privatisation and financing of a company by the name of Rompetrol, Romania's second largest oil company. It was Burt who introduced Philip Stephenson, a colleague of Quamme and Breeden, to the ex-Romanian politician and legislator Dinu Patriciu. It was International Equity that put up the seed money for Rompetrol and structured the business relationship between Patriciu, the legislator, and Stephenson.



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Different arms of this governance octopus will be able to wrap themselves around large, established firms.

All fair and dandy it would seem—a simple privatisation of a state industry. This is Romania, however, and nothing is simple or straightforward. The business environment in which Burt and Quamme negotiated the Rompetrol investment is one of the most dangerous and corrupt in the world. Many international firms and competing Romanian political interests were attempting to secure this lucrative energy franchise. Romania sits at the centre of the European oil economy, and the franchise's importance was perceived by a number of powerful interests. The dealings behind the transaction have been the subject of many accusations and much speculation; Romanian papers have been rife with stories for a decade. The Centre for Public Integrity quotes an international watch dog group, Transparency International, describing Romania as a country of "rampant corruption", ranking on a corruption scale they have created at the same level as the Dominican Republic and Iran, and slightly ahead of Albania and Sierra Leone. The oil business is at the heart of corruption and intrigue in Romania. The business deal conducted with Rompetrol would be literally impossible to conduct, according to Romanian sources, without involving ex-Communist government officials, criminals, and branches of the intelligence services. The International Equity-Rompetrol investment was mired from the beginning in charges of corruption, payoffs, bribery, and other more lurid allegations. The privatisation remains to this day one of the most controversial business deals in modern Romanian business history, with continuing political and economic fall-out. Just this past September, Dinu Patriciu was arrested and indicted, along with Philip Stephenson and eleven other individuals, on stock market manipulation charges. These charges are on top of charges laid in 2004 of money laundering, fraud, and conspiracy. In addition to all of this, Rompetrol and Patriciu are also facing serious allegations of kickbacks and bribes associated with the Iraqi Food for Oil Program. Rompetrol appears in the 2005 Paul Volcker report (the UN's Report of the Independent Inquiry Committee) as a firm believed to have paid bribes to Saddam Hussein's regime in exchange for oil contracts.

In an interview in the Romanian daily *Evenimentul Zilei*, Patriciu denied paying bribes, suggesting that these surcharges took place when the firm was under "American management" (i.e., Stephenson and International Equity), but acknowledged paying 700Gs in extraordinary transportation costs on approximately 2 million barrels of crude oil. The unauthorized sums were for "local agents, insurance, lawyers, and consulting services, including paying for Rompetrol's offices in Iraq."

International Equity Partners ultimately capitalised on its investment in Rompetrol and rolled its equity and profit into Milestone Merchant. The names were shuffled but the business trail is easy to espy. In the musical chair charade, Burt assumed his existing position on the advisory board of Milestone, and Quamme became President. Burt's position belies, however, the important role he played in earning the firm its key grub stake in the European oil industry. Philip Stephenson remains, along with Dinu Patriciu, the joint CEO of Rompetrol, facing a raft of charges in Romania. Quamme's and Burt's involvement in the formation of Rompetrol is well known. The whole twisted story is revealing of the situational nature of the interest in ethics and governance, and the hypocrisy that runs rampant through much of the claims against Black.

* * *

A complete understanding of Breeden's career would not be possible without considering his role as SEC Chairman and top cop at the time of the investigation of Harken Energy and the charges of insider trading against President George W. Bush .

Breeden was nominated to head the SEC by President H. W. Bush on the 14th of August, 1989. The nomination surprised many Washington insiders and SEC

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watchers; he had not been considered a front-runner for the job—or, for that matter, to have been on the shortlist. Breeden, at the time of his nomination, had been working for six months as part of the White House senior staff, as an Assistant to the President for Issues Analysis. Before that, from 1985–89, he had worked as an attorney at Baker & Botts. Breeden had a lengthy and extensive history with President H. W. Bush, however, having worked from 1982–85 as his Deputy Counsel. Richard Breeden was known as an utterly devoted Bush loyalist. A *New York Times* reporter noticed so many pictures of President Bush and his family in Breeden's office when he took over the SEC job, that he was quoted as saying that "George Bush is Breeden's Mao."

During his term at the SEC, Breeden was largely responsible for increasing the SEC's authority and its enforcement powers. Breeden pushed through the little-noticed but institutionally all-important 1990 Remedies Act. This act has shaped the modern SEC with its massive enforcement and policing powers. Prior to the Remedies Act, the SEC had little in the way of enforcement recourse. The SEC only gained the authority to levy any kind of statutory penalties for insider trading in 1984. Prior to 1984, the SEC could only issue "obey the order type injunctions." Breeden's call for tougher corporate sanctions and a zero-tolerance policy for insider trading and other types of corporate malfeasance was to contrast sharply with the SEC's treatment of a very exceptional individual, facing serious charges of insider trading and failure to meet statutory filing requirements. The individual involved happened to be the son of President H. W. Bush, and currently happens to be the sitting President.

On the 2nd of July, 2002, in the aftermath of the Enron collapse, and in the midst of the Worldcom accounting scandal, Paul Krugman wrote an editorial addressing the SEC investigation, or lack thereof, of President Bush's insider trading while he was an investor and Director at Harken Energy, a small Texas oil company. Krugman recounted the murky shenanigans at Harken and suggested that the whole set of circumstances "truly deserves a full public airing." On the 9th of July, during a press conference, President Bush was asked to address questions raised by Krugman's article and the circumstances surrounding the transactions with Aloha Petroleum, a subsidiary of Harken, that was engaged in gasoline retailing in Hawaii. Aloha was purchased by Intercontinental Mining and Resources (IMR), a company that was controlled by Harken insiders, including Alan Quasha, a director, executive officer, and ex-CEO of Harken. The structure of the Aloha transaction resembled the phony side partnerships that were set up by Enron to conceal losses, and the collapse of Enron had brought renewed attention back to Harken and the SEC's treatment of the company's file. Bush responded by saying that there "was no malfeasance at all. This was an honest difference of opinion over accounting procedures," and that "in the corporate world things aren't exactly black and white."

The chronology of events at Harken energy has been described elsewhere, in lengthy articles in the *Washington Post* and the *New York Times*; it is an old story at this point, but one that will likely be revisited as the Bush administration's economic legislation, and the circumstances surrounding the collapse of Enron are reappraised and re-examined in years to come.

The facts are that just two months after signing a letter promising to hold on to his stock for six months, Bush sold the securities he promised to retain. Bush sold his shares for $848,560.00 on June 22, using the proceeds to pay off a $600,000.00 loan he had taken out to purchase a two percent interest in the Texas Rangers. Bush had attended a meeting of the Harken audit committee on the 11th of June, just eleven days before his stock sale. That meeting was attended by the Chairman of Harken and the company's auditors from Arthur Andersen. It is almost inconceivable that the substantial losses for the second quarter period ending June 30th, amounting to more than 23 million dollars, would not have been discussed, even assuming some sort of reasonable accounting lag. The firm was bordering on insolvency, and internal memos indicate that Harken Energy Corp "[would] deplete all available cash to pay payroll and other basic needs by June 15/90." Whether or not Bush saw these internal memos or realised the full scope of the financial difficulties is not clear. What is clear, however, is that George W. Bush failed to file on four separate occasions insider trading reports as dictated by Federal Statutes. He did not file his insider trading declarations until eight months after the stock sale. There are three different and contradictory versions of what happened with the filings.

The issue with the SEC filings is only a side issue. The real issue was the legality of the whole transaction with Aloha and IMR. Harken had a much larger financial skeleton in its closet. It appears that Harken had been setting up sham corporations—held by insiders, and financed by bogus loans from Harken itself—to cover up losses and to sustain itself in the late 80s. The transaction with IMR resulted in Harken issuing a press release boasting of an 8 million dollar profit, greatly burnishing its financial results for 1989, and increasing stock volume and price in its wake. Paul Krugman likened the transaction in his July 2002 article to "an individual selling his old ice cream truck to XYZ Corp, for an outlandish sum, and claiming a capital gain. The transaction is a sham, since XYZ Corp is actually you under a different name. Before investors figure this out you sell a lot of stock in your ice cream truck company." Krugman's analogy doesn't capture the full scope of the transaction, in that IMR went and sold the "ice cream truck" to another company by the name of APM (Advanced Petroleum Marketing). This additional transaction would lead one to question the value and fairness of the IMR sale. It looks like, at least from a financial tyro's point of view, as an effort to "kite" the "bad paper" through a daisy chain of companies.

The SEC was investigating Harken in the fall of 1990 with regard to this transaction. On January 23rd, 1991, the SEC forced Harken to restate the results for the 1989 year end, reversing $7.916 million of the 8 million dollar transaction. Only $84 thousand was allowed to stand of the original $8 million. The transaction was clear evidence of a deliberate effort to defraud Harken investors and shareholders and to make a weak financial statement look good. The transaction is technically almost identical to the so called "Jeddi" and "Chewco" transactions that were engineered by Andrew Fastow (a Star Wars fan) at Enron, and which have led to his imprisonment and jail sentences for other implicated executives.

The SEC investigation of Harken and Bush was handled by Herb Janick and Paul Gerlach, assistant Directors who reported to Bruce Hiler, under-Director, and William R. McLucas, the Director of the SEC's enforcement division, who in turn reported to Richard Breeden. McLucas had been a Breeden appointee, and was loyal to and supportive of Breeden.*

In the middle of 1991, the SEC, under Richard Breeden's and McLucas's authority and direction, suddenly dropped the investigation of Harken and the insider trading charges against Bush. McLucas was to be subsequently quoted as saying there "was no case." As George Lardner Jr. and Lois Romano pointed out in a July 30th, 1991 front page *Washington Post* article, McLucas's statement went considerably "beyond" the actual and more "cautious" letter that was issued by the SEC's Associate Director Bruce Hiler. Hiler's letter stated that the parties "should not in any way be construed as being exonerated." The Centre for Public Integrity has obtained substantial documents over the last five years under the Freedom of Information Act from the SEC that throws some doubt and suspicion on the treatment of Harken, and of Bush in particular. Questions have been raised with regard to all three of the grounds cited by the SEC in dropping the investigation of insider trading against Bush, especially its claim that George Bush did not have advance notice of the second quarter loss, that his consultations with attorneys and the Harken CEO make it difficult to prove that he acted with scienter (i.e. knowingly), and, finally and most importantly, that the market reaction to the significant second quarter losses was not material in any event.

The situation with Harken leaves many unanswered questions. The critical factor in the SEC decision not to charge Bush with insider trading appears to be the analysis of the market reaction to the announcement of the losses. The SEC concluded that the market announcement of the substantial and unanticipated losses had no effect on the stock market price, so that Bush's sale in no way prejudiced existing holders of the stock, or benefited him as an insider. The analysis by Lisa Meulbroek, a young MIT graduate, who had just completed her PhD thesis on insider trading appears to be the crucial document.

Meulbroek extends her analysis—for reasons that are not at all obvious and contrary to standard statistical practice—to a two-day period, and ignores or downplays the effects of a positive *Forbes Magazine* article that appeared coincidentally on the same day as the Harken loss announcement. The *Forbes* article "Fuel for Fantasy" by the well-respected journalist, Toni Mack, an expert on the oil and energy industry, was published in the September 3rd, 1990 edition, hitting the street on the 22nd of August. The article wasn't just a favourable review, but a glowing recommendation of the company. Mack noted that Harken had just been "awarded" by Bahrain "exploration rights" to "almost all of its off-shore acreage." This acreage "lies between the world's largest oil field in Saudi Arabia, and one of the largest natural gas fields off-shore

*William McLucas is now a partner at the Washington based Wilmer Cutler Pickering Hale & Dorr, a prominent firm that was involved in significant aspects of the Enron litigation; McLucas is also perhaps, not so coincidentally, representing Richard Burt in the Hollinger suits.

in Qatar." Mack also noted that two of the most sophisticated and influential investors in the U.S. had made investments in Harken, including "a seven-million dollar infusion by the Harvard endowment." Harken could also "pick and choose any investor among the major foreign oil companies." Harken "settled on the Bass brothers"—needless to say, one of the wealthiest families in the world. There is no question that this article, in the largest circulating financial publication, would have had a considerable effect on the share price of Harken. A statistically solid one-day analysis would indicate that the stock fell 23 percent, a significant fall, indicative of material consequences vis-à-vis Bush's stock sale. The correct analytical treatment of the *Forbes* piece, and the difference between a one-day and a two-day analysis would likely have made the difference between Bush being charged with insider trading and his being cleared of such charges. Was the young and impressionable MIT student instructed to do a two-day analysis? If so, by whom?

The role of political influence within the SEC has long been a mooted question. The independence of the investigative and enforcement arm of the organization insulates it from apparent political machinations. The prosecutors and attorneys largely set the agenda that is then decided by a consensus vote amongst the commissioners. The agency is not, however, immune to political tampering and corruption.

The best known incident is the Watergate-Nixon-era scandal involving the wanted fugitive Robert Vesco. In that case, the SEC filed a complaint in November 1972 against Vesco, charging him with swiping 200 million plus dollars from mutual funds managed by Investors Overseas Services. The complaint contained an easily overlooked mention of an all-cash campaign contribution of $250,000.00. In 1973, a federal grand jury charged that Maurice Stans, the ex-Secretary of Commerce and Nixon's leading political bag man, had pressured the SEC chairman to remove the political contribution from the complaint. The SEC Chairman, G. Bradford Cook, was found to have surreptitiously removed the political contribution from the file. The incident rocked the agency and has had a considerable influence on its subsequent agenda. During the post-Watergate period, the government was viewed by investigators with as much suspicion as big business or Wall Street. The 70s saw the SEC going aggressively after illegal campaign contributions by corporations, and a distancing of the agency from the executive arm of the U.S. government. In large part, this agenda was not reversed until Richard Breeden's term, which saw a renewed focus on corporate malfeasance and a close relationship between the SEC Chairman and the U.S. presidential office.

More recently, an ex-SEC investigative attorney, Gary Aguirre, has brought forward allegations that senior officials within the SEC "blocked the issuance of subpoenas" in an insider trading investigation of Pequot Capital, in General Electric's purchase of Heller Financial. The individual who allegedly leaked the information to Arthur Samberg, the head of Pequot, was John Mack, an influential Wall Street executive and leading fund raiser for George W. Bush's 2004 campaign. The allegations are being investigated by both the Finance and Judiciary Senate Committees. Mack has been cleared of wrongdoing by the SEC, but the Republican Senator Charles Grassley of Iowa has stated publicly that the investigation tends to support the accusations. At the same time, a second official, Eric Ribelin, an investigator at the commission, has come forward, saying that he "asked to be removed from the Pequot inquiry because of his serious misgivings about decisions being made on the case by senior SEC officials." With widening implications, the Government Accountability Office has opened its own review. The investigations are expected to be concluded in early 2007. The charges, if true, would be a major blow to the agency, and would open a hornets' nest of questions.

UPPA/PHOTOSHOT

Dinner party, November 15, 2005

The set of circumstances with regard to Harken as a whole has cast some shadows over the current Bush administration's get tough anti-business Sarbanes-Oxley legislation. As Ann Richard, the incumbent Democratic governor said in 1994, the SECs behaviour is "at best incomplete, [and] at worse a cover-up." If it was a cover-up, then Richard Breeden was deeply involved. Indeed, it seems peculiar that Breeden, who was aggressively lobbying for greater policing powers for the SEC, would allow, under his watch, what seems to be an egregious case of insider trading and out-and-out fraud of investors and accounting manipulation, to be summarily dropped. To contrast the case against Black—which involves no insider trading, no accounting manipulation or fraud, no substantial losses to shareholders, no sham companies set up by insiders—with the Harken case, is to direct a harsh and unflattering light on the double standards and the dramatic changes in the U.S. regulatory regime, a regulatory regime that Breeden helped create and that he is currently turning to his considerable financial advantage, at great risk and cost to U.S. public corporations. Breeden's subsequent involvement with Steven Quamme and various branches of the Bush family does nothing to lessen suspicion of his motives and interests.

Governance and investigation are closely aligned. Richard Burt's corporate intelligence firm Diligence, and Breeden's consulting boutique and governance firm are not only interlocked in terms of overlapping directorships, partnerships, consultancies, banking, political and communication connections, but are co-evolving in a new environment of stridency and corporate paranoia.

The shared modalities of the investigators and governance watchdogs can be seen at all levels of their activities. Especially of note is their thoroughness with respect to errant documents, e-mails, black-berry transmissions, and garbage "recon"; dumpster diving has taken on a whole new meaning and vocational significance.

If one wants to comprehend where this collusion of ethics, super-stringent reporting guidelines, and new types of conduct control is moving, one need not look any further than the utter fiasco of Hewlett-Packard. It provides a good case in point—a microcosm of all the elements at play and in movement. The sheer scale of the idiotic behavior is breathtaking. Details of the internal ethics probe were recently released to a US congressional panel and they are indicative of what has gone so terribly wrong. One person involved described the internal HP report as both "childish" and "chilling". These terms put it mildly. The investigation demonstrates how rapidly the business culture of America is deteriorating in the face of an insidious threat, a threat that is disguised as a new type of 'ethical' correctness, parading under the rubric of "good governance". Most galling is the sheer impoverishment of language, the descent into a degraded argot of acronyms, of laboured idiocy; we can only be witnessing an end stage of a terminal disease. We are so far removed from the subtle hermetic and esoterica of Umberto Eco as to be literally on a different cultural continent; there are no clever references, no arcane asides to distract—only endless, repetitive acronyms, and deracinated abbreviations.

What is truly remarkable is how quickly the disease has set in and how rapidly it has spread. The *NY Times* cites a few examples from the investigators' report. With regard to the phrase feeling "pooped" the investigators opine that "this is an unusual term", and that a number of key witnesses interviewed indicated that George Keyworth often uses "casual, colloquial terms in conversation." George Keyworth is an ex-Presidential scientific

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advisor and prominent academic who was the target of the internal investigation along with the venture capitalist Tom Perkins, the co-founder of one of the most important venture capital firms in United States, Kleiner Perkins Caufield & Byers. That the internal probe and purge was directed at the two most knowledgeable figures on the board, reveals the self-serving ends to which ethics can be turned for purposes of intimidation and control.

The investigators seized, we are told, on the use of the term "lectures", linking this back, with requisite powers of deduction, to Keyworth's academic background! A $83,597.42 invoice is described as for "Multiple Surv. And Sting Activity Palo Alto, Piedmont, SF, LA, CA &Denver." A "parenthetical note" clarifies that the surveillance included "trash re-con of all areas." Exhaustive background checks reveal that George Keyworth's son and one of the reporters likely "attended the same elementary school."

How did this come to pass? It came to pass because the chairman of the board, Patricia C. Dunn, viewed herself as a "governance perfectionist", "uncompromising" on "ethics". The author of the report was none other than an expert on "ethics", the director of Corporate Ethics and senior lawyer, Kevin T. Hunsaker.

"Pretexting", another infelicitous term that has entered our vocabulary in the last few months, is the other side of the ethical 'coin'; the calibre and maturity of the board room actions are a generative function of the ethical culture that is being inculcated in this emerging governance environment. The end product of this vaunted 'ethical culture' is a shoddy, cheap, and almost moronic level of conduct that has few parallels. The ethical signal "in" produces the ethical signal "out". Ethical considerations are not formulaic and the very act of arrogating to oneself ethical or governance oversight leads to an accumulation of power that can be abused.

The situation at Hewlett-Packard, however serious, is symptomatic of even larger problems. What is clear is that a new pathology has taken hold of boardrooms, a stultifying, morally strident, rule-bound pathology that brings to the fore a new class of bureaucrat whom we cannot but fear. It is a pathology that also engenders and promotes a humorless, colourless work environment. Internal Hewlett-Packard memos from the Chairman's office suggested that Tom Perkins should be officially reprimanded, if not removed from the company, for his jest that the board consider his request to purchase large quantities of his recent book, *Sex and the Single Zillionaire*, for all of Hewlett-Packard's employees. The seventy-four-year-old Perkins is a product, quite apparently, of a different 'ethical culture' and a different world, if not planet. His world encompasses a more flexible, more tolerant, and, one could suppose, a more 'unethical' culture. And yet, it is this 'unethical culture', for want of a better term, that has created a stupendous amount of wealth in the United States, with some estimating the total capitalisation of firms underwritten by Perkins's firm, Kleiner Perkins Caufield & Byers, at upwards of seven or eight hundred billion dollars. This is what is at stake here in the new straitened ethical culture of corporate governance, as practiced by Patricia C. Dunn and Richard Breeden.

The corporate governance environment is an environment that promotes self-righteous martinets, and moralising mediocrities; it is an environment that self-selects a certain type of individual, and provides him or her with the means, through its own modus operandi, to intimidate and remove the most effective and talented entrepreneurs and independent-minded directors. If one of America's high-technology icons—a business that has been guided by a pioneering, innovative spirit that has defined American ingenuity and know-how—can descend to this level, it augurs very poorly for the future of American business.

The ouster of Maurice Greenberg, the dominant figure in the global insurance industry for more than half a century, and one of the world's pre-eminent business figures, although beyond the scope of this essay, would provide another case in point; the absence of any trenchant analysis of what has transpired with Greenberg at AIG, represents a glaring inadequacy on the part of the business press and the media as a whole.

* * *

One can see without any prophetic talent where this collusion of corporate intelligence, and heavily financed corporate governance hedge funds will ultimately lead; it will lead to the destruction of the most valuable corporate structures in America, while the conspiring parties lend their services to the most craven and corrupt organizations outside of the United States. We can see this trend with Richard Burt's Diligence Inc. While partnering with Breeden's corporate agent Milestone Merchant, it is cementing relationships with corrupt Russian potentates and Third World political leaders and businessmen. This past August, *Harper's Magazin*e, in its on-line edition (Aug 9, 06) reported that Richard Burt was seeking business with Teodoro Obiang Nguema, the African dictator of the tiny republic of Equatorial Guinea, a country of 500,000 people that is the largest producer of oil in sub-Saharan Africa. *Mother Jones* magazine referred to the country as a "parody of an oil kleptocracy," a "Blazing Saddles of the world of Petroleum." Nguema gained power by overthrowing his uncle in a coup, whom he then summarily executed. His uncle has been described as a "morph of Idi Amin and Pol Pot." He would murder his opponents in a public arena, drowning out their screams to the music of "Those were the Days". Burt, according to the *Harper's* article, was apparently seeking to set up an investment fund with the half-billion or so dollars that multinational oil companies have deposited directly to his accounts at the Riggs National Bank in Washington. That Amnesty International has cited Nguema and his brother for engaging in torture of political prisoners, has little bearing on Burt's interest or Nguema's suitability as a client.

Richard Burt also serves on the board of the Russian billionaire Mikhail Fridman's Alfa Group. Fridman has accumulated a fortune of eight billion dollars, if *Forbes* is to be trusted, in less than fifteen years by rather energetic and aggressive means. These energetic means included cornering Iraqi crude oil under the United Nations Resolution 986 chartered "Food for Oil Program" (OFFP). The UN program allowed the Iraqi government to sell more than sixty billion dollars of oil, with the administration of the proceeds controlled by the UN for humanitarian relief in Iraq proper and for reparations to Kuwait." On September 7th, 2005, Paul Volcker, the ex-Federal Reserve Chairman released his final report of the "Independent Investigation" of the program. The Volcker Report, which many are calling a whitewash due to the involvement of various elements of the UN, nevertheless paints "an ugly tableau of bribery, kickbacks, and corruption on a global scale"—possibly the "biggest financial scandal in modern history" involving more than 2,200 firms. The Cole Report, just released in Australia (November 28, 06), provides a counterpoint to the Volcker Commission. It has been cited as a model of transparency, clarity, and accountability. The Cole Report found that the Australian Wheat Board (AWB) paid more than 220 million dollars in illegal kickbacks. The Report has recommended the criminal indictment of eleven individuals involved at the AWB. The Report has rapidly led to a world-wide call to open the UN files and investigation. Incoming US senators have promised to make the Food for Oil matter a priority.

It appears that the UN program had a 'small' loophole in its design, which allowed the Iraqi government to determine the buyer of its crude. As the Volcker Report illustrates, the Iraqi government used this discretion as a preference policy, directing crude to countries and companies that Tariq Azis described as "friendly". As we have learned, these contracts were directed largely to Russian and French firms, and politicians who were expected, and did, exercise their influence on the UN Security Council, and on other forums, to stave off war and protect Saddam Hussein. Other nationals, such as George Galoway, the British MP, and even some Americans are cited as having received preferential and very lucrative oil contracts.

The largest buyers of crude were the Russians. Alfa Eco, a subsidiary of the Alfa Group, was a massive purchaser of Iraqi oil, buying roughly fifty times the aforementioned amount purchased by Rompetrol. Alfa Eco is dealt with extensively in the Volcker Report. The company was the 4th largest purchaser of Iraqi crude in the world, buying 2.8 percent of the entire Iraqi output. The Volcker Report could identify 15 major oil contracts, consisting of over 106 million barrels of oil, although the entire activity of Alfa Eco could have been much larger, given the frequent use of nominees and representatives. The profit on these contracts alone would amount to more than a half-billion dollars. The report provides a detailed picture of Alfa Eco's bribery and kickback scheme based on documents uncovered in Iraq during the course of the war.

Unauthorized payments are handled somewhat differently in Russia than in America. The reports describe the payoffs: Every week a courier carrying a briefcase handcuffed to the wrist would arrive by way of a chauffeured Mercedes at the Iraqi embassy in Moscow. Inside the briefcase were stacks of mint quality US one-hundred-dollar bills. The "cash" would be counted in the presence of "three members of the Iraqi Ministry of Foreign affairs" and "receipts in triplicate" would be exchanged. The cash would then be "collected into bundles amounting to 1.5 million dollars." This, according to the Volcker Report, was the "exact amount" that could be packed into the "Iraqi diplomatic pouch." These "red diplomatic

We can see this trend with Richard Burt's Diligence Inc. While partnering with Breeden's corporate agent Milestone Merchant, it is cementing relationships with corrupt Russian potentates and Third World political leaders and businessmen.

bags" would then be "sealed with wax" and taken to the airport, where they would "bypass Russian customs," using the shield of diplomatic immunity. From there they would be sent on a "direct Moscow to Baghdad flight" through the chartered airline "AVM Air". Upon arriving, the monies would be counted and deposited in the "State Oil Marketing Organizations (SOMOs) USD accounts" at the Rifidain Bank. Hundreds of millions of dollars in cash were moved to Iraq in this fashion. The Volcker Report looked at 4 of 15 of Alfa Eco's identified contracts and found, with respect to these four contracts, that "$2,351,880.00 in direct kickback payments" were made. Of this sum, "$2,039,161.00 were made in cash payments" of one-hundred-dollar bills at the Iraqi embassy in Moscow. The total sum paid in cash must have been many multiples of this number.

It is interesting, and obviously more than coincidental, that on the very same day that the Volcker Report was released, another important—although entirely ignored—announcement was made. That announcement was that the "core investigative group" of the Volcker Commission had joined Richard Burt's firm Diligence Inc. The seven individuals joining Diligence thus comprise the entire "global fraud and corruption team" that had spearheaded the Volcker investigation. This team will give Burt's firm extraordinary insight into the 2,200 plus firms that are implicated in the Food for Oil scheme. The opportunities for consulting, and for offering a variety of security and intelligence services are enormous, as is the ability to extract extortionate fees from thousands of very nervous firms that will be facing a raft of investigations in the wake of the Volcker Commission and the more thorough Cole Report. One can well imagine the costly services that will be rendered to Rompetrol, Alfa Group, and all the other implicated firms.

Richard Burt's relationship with the Alfa Group has already ensnared Diligence Inc. in an international corporate espionage case involving the theft of accounting records from a KPMG office, as well as bribery charges in Bermuda and elsewhere. Extensively covered in the small Bermuda business press, the business scandal involves the Russian cellular phone companies Vimpel and Megaphon, and various Bermuda-based shell firms. The allegations are quite serious and they were recently featured in the October 9th cover story in *Business Week* magazine. According to a complaint filed in the Federal District Court in Washington, Diligence Inc. "infiltrated a confidential financial examination of the Bermuda based firm IPOC" that was being conducted by KPMG's Financial Advisory Services for the Bermuda Finance Ministry. The complaint states that the Diligence employees managed to accomplish this "infiltration" by "impersonating US or British Intelligence agents." The 'agents' used "fraud and bribery" to obtain additional records according to the statement. It is ironic, to say the least, that Diligence stands accused of theft and bribery with respect to KPMG, the company where Richard Breeden is acting as the corporate monitor. That Richard Burt and Breeden's partner Steven Quamme are part of the same corporate nexus seems to have escaped the attention of the governance and ethics folks. One might ask what sort of services Diligence might be prepared to offer the multitude of clients implicated in the UN Food for Oil program.

* * *

The board of Hollinger was not, despite all the claims in the Breeden Report, craven in its behavior. If anything, the actions of the board reveal anything but subservient or subordinate behavior. Black did not strong-arm or intimidate the board members as has been suggested. What is patently clear is that Black had a weak hold on the board; they neither did his bidding, nor did he ask them to. Formidably intelligent and experienced, they are individuals most capable of rapidly synthesizing complex information, assimilating new plans, and fastening on to anything unusual or anomalous. The board was comprised of some of the finest minds that one could assemble: Henry Kissinger, 1973 Nobel Prize winner, the eminence grise of the American diplomatic and political establishment; Richard Perle of the "Reykjavik and Zero Option", as Black aptly describes him; Richard Burt of le Carré Cold-War West Berlin antics; Josée Marie Kravis of the Hudson Institute Think Tank, a disciple of Dr. Strangelove himself, Herman Kahn; Jim Thompson, the longest serving governor of Illinois and Chairman of the large Chicago-based law firm, Winston & Strawn, and a representative to the 9/11 commission. These are men and women capable of grasping immensely complicated agendas. Collectively, they represent a particularly independent-minded, critical and intelligent group. These are not people who could be duped or deceived.

* * *

The political and economic events surrounding Hollinger define two sets of events, overlapping like concentric circles in a Venn Diagram: the period from 2002 to the outbreak of the War in Iraq, in March of 2003, circumscribes a defining radius of political activity; this circle is, in turn, encompassed within a larger circumference, a radius that connects the economic and market events of 2000–2004. The events at Hollinger International are anchored in the larger economic time period of 2000–2004.

The period of 2000–2004 corresponds to the last few months of the Clinton Presidency and the first four years of the Bush administration. This was a period of tremendous economic upheaval, marked by the stock market and dot.com crash in March of 2001, the massive financial and stock market collapse of Enron later that summer, the even larger accounting scandal and failure of Worldcom in June 2002, and by a raft of smaller scandals. It was a period when the image of business and businessmen took a bad turn.

The apocalyptic fears surrounding the new millennium did not materialise. The new era did not begin, as many had speculated, with a software failure and the worldwide paralysis of air traffic control, telecommunication, and banking systems. The signal economic event of the new millennium took place some months later in March of 2001, in the form of the collapse of an enormous stock market bubble—a bubble that had been driven by a high-tech frenzy and unrealistic business expectations. Stock market losses amounted to trillions of dollars and the American public was left gasping. Many of the dot.com stocks fell 90 percent in value over the course of 2000. These market losses triggered a raft of legislative efforts, but it was the collapse of Enron, one of the ten largest companies in the world, that caused massive public fallout, and precipitated a political reaction along with congressional steps to address what were seen as the underlying problems in corporate America.

What began originally as a business-friendly piece of accounting reform legislation sponsored by the Republican Senator Oxley, was transformed by the collapse of Worldcom in June 2002, into the Sarbanes-Oxley Act, a draconian anti-business legislative framework. It is a legislative act that was characterised by President Bush himself as the "most far-reaching reform of American business since the time of Franklin D. Roosevelt" in the 1930s.

The new governance regulations, inaugurated by the passing of the Sarbanes-Oxley Act on July 25th, 2002, were rapidly implemented. Two weeks after the legislation was announced, on the 14th of August, CEOs and CFOs of the 947 largest firms in the United States had to certify the truthfulness of their financial statements. The burden of these regulations is indicated by the inability of the most financially savvy global corporations to meet the standard. By the end of 2005, according to an article in *The New York Times*, more than 1,250 companies, out of a total of 15,000 reported that they had serious problems and weaknesses in their internal accounting control.

As has been widely reported, the legislation was motivated as much by political considerations as by any assessment of the merits of the legislation. With crucial mid-term congressional elections, the Bush administration aggressively sought to counter widespread outrage brought on by the Enron, Worldcom, and other corporate scandals, and the lingering after-effects of the dot.com meltdown. With war pending in the Middle East, the Bush administration was not prepared to allow a fight to break out in relation to corporate laxness. The legislation has had an immense impact.

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One of the most sophisticated analytical studies was conducted by Ivy Zhang of the William E. Simon Graduate School of Administration at the University of Rochester. Zhang attempted to estimate the approximate total loss of market value around the "rule-making events" of SOX. Zhang estimated a loss of market value of 1.4 trillion dollars. The internal compliance costs for new so-called "404" reporting rules are estimated at over 100 billion dollars based on an average cost of 30 million for 7,000 listed firms. The man-hours involved in meeting the internal compliance costs have been estimated by one major survey at approximately 26,000 hours of internal time (30 man-years) and 5,000 hours of external time (3 man-years).

The larger concern is that SOX is a road that will lead to ever greater government intrusion and supervision of American business. The Governance revolution that we are witnessing is largely a product of SOX. One cannot understand what has happened at Hewlett-Packard, or the emergence of Breeden-type governance hedge funds, without understanding SOX. Likewise, one cannot understand what transpired at Hollinger, and Black's predicament, without understanding the radical and pervasive effects of the changes in the regulatory regime governing publicly listed US firms.

The SOX legislation in its totality represents a massive transfer of wealth from the producers of wealth and innovation to those who consume wealth and staunch economic creativity. Much, if not all, of this wealth will be transferred to the accounting profession and consulting companies. The remaining product will be divvied up between various governance and hedge firms, such as Breeden & Co., and security firms such as Diligence Inc. The opportunity costs are entirely beyond the scope of calculation or estimation. One can assume that thousands of creative technological and other business concerns will never see the light of day. This massive transfer of wealth will have a baleful and profound effect on the U.S. and global economy, and it is the first step in an unwanted, and unplanned move towards a managed, statist economy, run and directed by administrators and bureaucrats, with the methodology of corporate governance reigning supreme. As G.L.S Shackle wisely and brilliantly expounded in his magnificent book, *Decision, Order and Time in human Affairs*:

> "There is no more insidious danger lurking for the economic theoretician or the economy than the methodology of the accountant. For the accountant is compelled by the most basic imperatives of his discipline to account for all items as coming from somewhere and going to somewhere. In accountancy there are, in the language of physics, no 'sources' and no 'sinks' in the ultimate sense. There is a law of conservation. The idea of an economic valutum arising *ex nihilo* or vanishing inexplicably is contrary to the whole meaning of the accounting operation. Valuation is an act of mind. It can be an agreed act of all of the persons in the market, or a compromise between their judgements. A private judgement of value is, of its nature, essentially and inescapably, a conjecture of what the valued object or system will be able to do, a conjecture of its potentialities, of its future. Valuation is expectation. This is the mutable and shifting world of lights and shadows which the accountant is supposed to pin down in definite numbers which can change only when we show from whence they are augmented or by what change they are diminished. In the accountant's world everything must be accounted for. By the unaccountable shifts of the expectational kaleidoscope, everything must be disrupted."

The changes comprised by the SOX legislation amount to a tectonic shift in business practice with profound implications for the whole free enterprise system. It is this wholesale shift that engulfed Hollinger, a small ship caught in a ferocious typhoon on the open seas, with a mutinous crew on board, fighting over booty in a faraway land.

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Remarkably, Hollinger and Black largely avoided making any disastrous technology bets in the dot.com run-up. Hollinger Digital, by dot.com standards and the wild enthusiasm that prevailed, was a conservative affair that is entirely mischaracterised in the Breeden Report. Hollinger Digital is described as having lost $68 million without taking into consideration that gains and losses do not come in at the same time; it was anticipated at the end of 2003 that the cash losses, about half of the $68 million figure booked, would be made up by gains of the assets Digital still held. The Report exists in some sort of ahistorical framework, utterly and almost stunningly removed from the events of day, including the dot.com mania that gripped much of corporate America. One could catalogue the disastrous and near-disastrous decisions during this period by some of the world's pre-eminent media and publishing firms. It was a period during which the massive Bronfman family fortune almost disappeared into the meretricious 'convergence of media' vision of Jean-Marie Messier's Vivendi. Bertelsmann, an arch-conservative German firm, plunged into various e-commerce and Internet plays that cost the firm hundreds of millions. The NY Times Company dropped $410 million on About.com, another $100 million on the Discovery Times channel, and various other undisclosed sums on two other Internet ventures. As yet, none of these ventures have turned a profit.

* * *

Against this background of unparalleled economic upheaval, sweeping regulatory changes, and rampant Machiavellian intrigue—interboard rivalry, undisclosed partnerships, flagrant conflicts of interest, and self-dealing—we come to the document itself, the so-called Breeden Report.

The Breeden "manuscript" is a highly constructed document; the entire veracity of this document depends on the integrity of the writer and the process that led to its construction. The document is stunningly short on corroborative details, supporting comment or remarks, and so riven with rhetorical and intemperate language that one wonders why it has not been subject to a more searching critique in other essays or exposés.

In Umberto Eco's brilliant book, *Foucault's Pendulum,* the entire concocted and preposterous fiction that the protagonists invent of a conspiracy that is a composite of plots, not only proves persuasive but, wonderously, takes hold of reality, embedding itself in such a way as to alter the events and life of its creators. Reality in its manifold complexity is a 'mobious strip' that bends fiction back on itself, creating a new reality. The Breeden Report is likewise the product of a fiction that has generated its own self-sustaining institutional reality, with charges, lawsuits, and indictments.

Breeden, the composite writer of the report bearing his name, is under the misperception that a listing of unsubstantiated charges, made in the strongest adjectival language, swollen by hyperbole, can confer some special credence and credibility, and rescue what is otherwise a series of weak arguments with no probative value. The effect is entirely opposite; it only serves to evoke suspicion and skepticism. The writing in the Report is so infuriatingly poor that one wonders if anyone has had the will to slough past the first few pages, a factor that may have saved the document from the scrutiny it deserves.

The Report begins by couching the Hollinger International situation as a "story", which "chronicles events at Hollinger"; it is not "about Hollinger's valuable publishing assets" or the "quality of its staff or its many publications," but rather, as we are told, "this story" is about the "systematic manipulation of the company." In the beginning, sticking to the grade school format, the "principals did well," and put their "energies into building Hollinger [International] into a major publishing enterprise." Over time, "however, that changed." Hollinger, in this unfolding story, went from "an expanding business to one whose sole preoccupation was generating current cash." The committee in its endless umbrage and outrage could find "no parallel" to the "self-righteous and aggressive looting of Hollinger [International] to the exclusions of all other concerns and interests." It was driven by insatiable pressures from Black for Hollinger's income to prop up the highly-leveraged corporate structure of Ravelston and HLG (Hollinger Inc.), and to satisfy the "liquidity needs [Black] had arising from the personal lifestyle [he] and his wife had chosen to lead." Hollinger International was a victim of Black's "ravenous appetite for cash." The controlling shareholders had been "dismantling Hollinger for their own benefit." The "self-described proprietors" sought to "line their pockets" in "almost every way" they could "devise". The opening burst of the Report describes a "corporate kleptocracy" and an "overwhelming record of abuse, over-reaching and violation of fiduciary duty."

* * *

So much of what has happened to Hollinger and Conrad Black pivots on a decision that was made in a courtroom in Delaware on Jan 16, 2004; the finding of the Delaware Chancery Court Judge, Leo E. Strine, Jr., on the narrow matter of one clause of the Restructuring Agreement that Black negotiated in November 2003, has essentially determined the course of all of the subsequent events. The vice chancellor Strine's finding with respect to this single clause was that Black "had persistently and seriously violated his fiduciary duty." Eight months later, in August 2004, this finding is represented in the Breeden Report as a general comment on Black's administration of all of the Hollinger-affiliated companies. In his November decision, the judge pointedly noted that a "reasonable man could find otherwise" than he did. The decision made by the Judge in Delaware is the fulcrum around which all of the important elements of the Hollinger case revolve.

The Delaware decision relates to an interim agreement between Conrad Black and the Special Committee (set up to deal with Tweedy Browne's complaints), and the role Black would subsequently play in the Special Committee's continuing investigation and management of the company. The decision in Delaware related to an interpretation of whose interests and rights were uppermost in an offer that Black had brought to the table from the reclusive Barclay brothers, Sir David and Sir Frederick. Landlord and property billionaires, the Barclays are fascinating figures. Identical twins born to Scottish-Catholic parents of modest means, they have accumulated a fortune that is estimated at 2.3 billion dollars. Eccentric and shy, their domicile is a castle constructed on the Channel Island, Brecqhou, south-west of Sark. In publishing circles, the Barclays were known for their heroic but failed effort to rescue the *European,* Robert Maxwell's utopian vision of a pan-European English newspaper.

The Barclay offer appears to be an act of consummate deal-making by Black. In retrospect, it appears to have been the best deal that could have been negotiated at the time. The court's ruling involved weighing the interests of Black as the company founder, controlling shareholder, and largest minority holder of equity through Hollinger Inc., against the interests of Richard Breeden, the other board members, and the shareholders they represent. The judge sided with arguments that Black had violated his fiduciary responsibilities on the basis of a narrow interpretation of Black's economic range of action, freedom, and liberty, and, in effect, granted control of the company to Richard Breeden and the directors, including Richard Burt, Richard Perle, Henry Kissinger, Marie Josée Kravis and the rest of the gang.

The decision by Chancellor Leo Strine was a mistaken one on a number of levels. The decision unquestionably denies Black something which should be inalienable—his economic liberty as an individual. The Delaware judge's decision rests at the most basic level, on a false conception of economic behavior and economic life itself; liberty not only circumscribes some range of activity, as scholars such as Ludwig von Hayek and Isaiah Berlin have argued, but it also admits—necessarily within this sphere of activity—a degree of disclosure, posturing, and tactics in the face of unknowns and in the context of economic circumstances that cannot be predicted and are not calculable. Strine's conception of business is that it is essentially a coordinating activity, rather than a contest between business combatants. As G.L.S. Shackle so eloquently argues in his scholarly masterpiece, *Decision Order and Time in Human Affairs*, the "appropriate theory" for business is the "theory of battle rather than pre-reconciliation." Shackle's elaborate and deeply considered conception is built around the nature of "uncertainty", a notion that is profoundly important to all of economic thought. Shackle argues that if business is seen as a "contest" instead of as a universal coordination of activity, its "supreme secret is epistemic, the gaining and use, the denial and disguise, of knowledge." Bargaining, or what he calls "bilateral monopoly", is a "contest, and success in it is won by the bargainer who best conceals from the other his absolute limits of action and [who] fill[s] the gap of knowledge in the opponent's mind by false beliefs." Our literature seems "to pass over this paradox in silence." The "suppression of knowledge is also an aspect of the exploitation of novelty, new knowledge, which must be denied to rival firms as long as possible while the possessor of it makes his profit."

What the judge failed to account for in his determination was Black's economic liberty, vouchsafed not by the restricted duties of the stand-alone agreement, but by the epistemic conditions, as Shackle would have it, of his circumstances, which were circumscribed not by what Black knew, but by what he could not know. What is being denied by Strine's interpretation is Black's right to advantage himself of new knowledge and novelty. Furthermore, in looking back at the agreement Black had signed, Strine was attributing to Black some sort of Archimedean vantage point, a foreknowledge of how events would unfold.

Our rationality, in the words of the Nobel Prize winner Herbert Simon, is "bounded". According to Simon, agents "face uncertainty about the future and a cost in acquiring information in the present." We are forced to make decisions not by "maximization" but by "satisficing" (Simon's neologism) an "aspiration" level that we set. This is the best that we can do in the face of uncertainty. Black had done exactly that; he had set and "satisfic[ed]" an aspiration level when he signed the stand-alone agreement with his board. It did not account for all factors, all future scenarios, because he could not have known them.

The judge makes the same error is his understanding of the actions of the Barclay brothers, the prospective purchasers of Hollinger Inc. and Hollinger International. His portrayal of the Barclays' activities reflects the same impoverished understanding of human psychology and the basic economic liberties that should be due to any party in similarly complex circumstances. Why, for instance, would the Barclays, whom Strine castigates, not exhibit a "complex of strategies," and why should their conduct not be "highly pragmatic"? Is this not what business is all about? Is this not precisely the type of "contest" G.H.L Shackles is describing? The Barclays were negotiating a billion-dollar business transaction, with all of its implications; they were not politely bringing their activities into some sort equilibrium, in a predetermined process of legal and technical coordination.

Many economic principles are sacrificed in the Delaware judge's ruling for the sake of upholding the sanctity of the Special Committee's "strategic process", as if this rashly constructed interim agreement deserves the same consideration as the inextinguishable right to a demarcated realm of economic liberty. This Hayekian 'sphere' of activity has to be respected because in a real epistemological sense one cannot fully understand the nature of the activity taking place; it is not only beyond our ability to calculate—it is beyond our comprehension. There is an important distinction to be grasped in this point. The outer boundary of this 'sphere' is akin to an 'event horizon', a physical limit beyond our inspection and 'knowledge'.

In denying what appears to be Black's basic economic prerogatives, an independent sphere of action and freedom, or even a semblance of this independence, the judge in Delaware bought the poorly-posed argument that Breeden and his acolytes could do better for the international shareholders than Black and his management group. This has not proven to be the case, a fact that glaringly exposes the flaws in the judge's rationale and decision.

The Barclays, with whom Black reached an agreement, declared in a securities filing (known as a 13D) in February 2004, a willingness to bid $18 or $19 for all the shares. With special dividends added back, that is nearly double the present stock price of the newly-titled Sun Times Media Group ($4.82 + $5.50 special dividend), with no prospect of it being achieved again. And the Hollinger Inc. share price at $2.00 is but a fraction of what the Barclays bid. Black aggressively pursued his fiduciary duty to Hollinger while serving the interests of *all* the shareholders, and has been savaged for doing so.

Black was to pay a double penalty for the Delaware judge's decision. The Breeden Report was published the following August. In its form and content, it exploits the outcome in Delaware and the heated acrimony of Black's effort to wrest back his company and his reputation. The authors of the Breeden Report have done everything to ensure that Black would be separated from his company, his equity, his wealth, and his good name.

The Breeden Report revolves around the theme of theft, a theme that is endlessly romanced, and which suggests, among other things, that Black ran a "corporate kleptocracy". It states, with prosaic and numbing redundancy, the same charges over and over again, but without providing a thread of support. We are told that Black engaged in an overwhelming record of "abuse and over-reaching" in violation of his fiduciary duties, which "transferred to Black and his associates" the entire earnings output of seven years. It is only grudgingly acknowledged, and then as an afterthought, that "deleveraging the company had real advantages." It is then suggested that "deleveraging" the U.S. and Canadian community papers merely opened the opportunity for Black and his Ravelston associates to "direct tens of millions in sales proceeds to themselves," and then use that cash in part to buy up many of the same publications at "cut-rate prices or for nothing at all."

Stock price, that verity of corporate performance, cannot be ignored in any final assessment of Hollinger. It is plainly true, in looking at the stock charts, that Hollinger International's stock price did not move much after the sale of most of the Canadian and U.S. community papers, but Black cannot be held responsible for this. The weak stock price was largely the result of dramatic changes affecting the newspaper industry as a whole; this factor should have been mentioned in the Report, but was not touched upon at all. Richard Siklos noted in a recent *NY Times* article on the newspaper industry that if there is any "trend in the newspaper business," it is that "for now, at least," being a "media company dependent on newspapers is probably no longer tenable." The shares of most newspaper companies over the course of the last three years have been "deflated by more than 25%" (*NYT,* Siklos, Oct 1, 06). Black's success and boldness in selling assets was a canny business move that led the market. His decision to sell was supported by Hollinger's largest shareholder, next to his own group, the Southeastern Asset Management Fund, whose chairman stated at the 2003 annual meeting that Black and his associates had created two billion dollars of value and that compensation levels were not excessive.

The Report's acknowledgement that "deleveraging" the company was useful is the closest that the Breeden Report comes to admitting that the entire company was built in fourteen years, almost entirely on borrowed money, and that Black and his associates tripled the operating profits of their British, Australian, and Canadian assets.

The American and Canadian community newspapers, as monopolies, had high operating margins, and their sale generated profits of just over $500 hundred million in slightly over ten years. They were not growth assets and have declined in profitability and value since they were sold.

More astutely than other proprietors, Black and his executives perceived the approaching difficulties of the entire industry. The industry's woes can be discerned readily from recent financial information. The New York Times Co.'s profits plummeted more than 69 percent in the first quarter (*G&M*, March 1, 06), McClatchy fell 14

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percent, and the *Tribune*'s profits fell 28 percent. Circulation also continued to slide for the six-month period ending March 06; total newspaper circulation dropped 2.5 percent in the same period, according to figures released by the audit bureau (NJT, May 9, 06). Sunday circulation fared even worse: the declines "were comparable to the previous six month period, which were the steepest in any comparable period in the last 15 years." It is an industry that is in dire shape. The readership is also "older and they're dying and they're not being replaced by younger readers." As of March 06, daily circulation had dropped to 45,414,979 readers in aggregate across all papers in all U.S. markets. This is down from the 63.3 million readers of 1984. Some of the drops in circulation are simply startling. The circulation of the *San Francisco Chronicle* fell by 15 percent in the same quarter to 398,246; the *Boston Globe*, which is owned by the NYT Company, fell by more than 8 percent to 397,288.

These dismal numbers are brought into clearer perspective by contrasting the collapse of circulation after 2000 with the growth of the industry in its heyday at the end of the 19th and early 20th centuries. Joseph Pulitzer's *World* circulation soared, for instance, from 60,000 in 1884, to 250,000 in 1886, to 1 million at the time of the Spanish American War of 1898. Hearst's papers and Beaverbrook's papers could boast similar numbers. In 1900, the newspaper industry was the "world-wide web" of its day, exploding in growth, opportunities, and potential.

In 1999, Andrew Grove, the CEO of Intel, made a prediction that in five years every company would be an Internet company, or they wouldn't be a company at all. Grove referred to the Internet as a tsunami of immense magnitude and destructiveness. The time frame he gave has been somewhat tested, but the long-term shift, a Kondratiev wave of vast technological change rolling in from the deep, remains as a compelling view of the future.

It was Black's management group's decision to sell ahead of the market. They saw the first signs of this tsunami, and grasped the rapid change undermining the newspaper industry. It is this foresight, ironically, which has allowed the company to absorb the massive costs and expenses associated with the four-year campaign of litigation waged against Black and his group—a campaign waged, it can't be stressed enough, against the individuals who generated the wealth in the first place. Gordon Paris, the now departed Interim CEO of Hollinger, stated at the 2006 meeting that the sale of the *Telegraph* (London) had been timely, as its circulation and advertising revenue have declined. Black, in what can only be described as a business coup, acquired control of the *Telegraph*, one of the world's pre-eminent newspaper franchises for $30 million, and ultimately purchased all of its shares for about a third of the sale price. What Paris conveniently forgot to mention is that Hollinger International sold the paper to the same buyer, the Barclays brothers, at a share price that was identical to the deal negotiated by Black in 2004, the deal that was blocked by the decision of the Chancery Court in Delaware. Even so, Black's deal would have been far better for Hollinger; it would have led to an offer for all of the shares of Hollinger International and the Toronto-based holding company Hollinger Inc.

* * *

The Breeden Report is rife with hyperbole, endlessly describing the high percentages of income that have been "diverted" to the Ravelston group—$196 million in seven years "in executive and unjustifiable management fees." Assuming for a moment that this number is correct, a simple back of a napkin calculation shows that the five senior executives would have received an average of $5.5 million per year. That they received this compensation while defending their interests in one of the most competitive industries in the world, and in the face of an all-out newsstand price war with Rupert Murdoch's News Corp in London, is glossed over. Hollinger International had created the western world's third largest newspaper company in circulation, and then downsized the company—ahead of the industry's decline, advertising recession, and credit squeeze—at a gain to shareholders of 1.5 billion dollars.

The $196 million Breeden's Report harps about represents 13 percent of the net transactional gain to shareholders. This remuneration becomes all the more reasonable in the face of the sheer consumption of corporate resources by Richard Breeden's Special Committee. As of June 30th, 2006, the Special Committee has consumed, according to public filings, a total of $54.1 million. An additional $21.273 million has been spent on litigation. A further fee of $3.5 million was paid to Tweedy Browne's counsel. Indemnification costs amount to $51.9 million. The Special Committee investigation also inadvertently turned up overstatements of circulation figures at the *Chicago Sun Times*, which necessitated reimbursements and compensation to advertisers. Rather than dispute this complicated issue, the firm paid with atypical alacrity an aggregate penalty of $20.575 million. A straight summing of these numbers produces a staggering figure of $151.348 million. The litigation will likely cost another $50 million, with no chance of the money being recovered and without any entrepreneurial benefit to the business.

"diver[sion]" of money, "camouflaged" payments, "looting", and "kleptomania" are completely unsubstantiated. The management did not, as has been alleged, receive any compensation that was not approved by the well-qualified Audit Committee, which took into consideration the large added value the management generated as operators, buyers, and vendors of assets in a weak industry. The amounts were not disproportionate to the gains they racked up for the shareholders, and would be in line with the opinion of compensation experts.

If anything can be gleaned from the sub-text of the Breeden Report, it is the constant back-and-forth between Black and Paul Healy, doyen of the *Kenyon* party fete. Healy, representing shareholders, requested that Black conserve cash or find additional ways to raise the share price. When Paul Healy told Black that concern had been expressed about the size of the management fee by a few shareholders, Black unilaterally reduced the fee by almost ten percent of what had been approved by the Audit Committee. When Paul Healy told him that some concern had been expressed about attendance fees for directors, the fees were dropped. When he advised Black that some concern had been expressed about the apartment the company owned and that Black and his wife had on occasion occupied along with other directors, Black bought the apartment.

The apartment sale has received extensive newspaper coverage. Despite the valuation intricacies, it appears to be a pretty straightforward New York apartment transaction. In the Breeden Report, the Special Committee complained that Black bought the apartment for a discounted and artificially low price, and this allegation is now part of the criminal charges. When Black went to sell the apartment in October 2005, a month before the

Grove referred to the Internet as a tsunami of immense destructiveness. The time frame he gave has been somewhat tested, but the long-term shift, a Kondratiev wave of vast technological change rolling in from the deep, remains as a compelling view of the future.

Richard Breeden himself appears to have taken 10–15 million dollars from Hollinger International, greatly adding to his already sizable fortune. This money will no doubt be rolled into his hedge fund, to be compounded further.

The much trumpeted claim in the Breeden Report that management fees comprised a significant portion of the firm's entire profit is false. The management fees only appear to be disproportionate because of the company's well-publicised tax policy, which involved the application of non-cash reserves and discounts to produce relatively low income levels. Black operated the company on an entrepreneurial basis of buying with borrowed money, building and selling assets, amplifying soft costs and non-cash income that could be deducted from taxable income. This basis of operation was well known to the Special Committee, but they chose to ignore this essential aspect of the company's financial operations. The compensation levels were not disproportionate given the activities undertaken, or by any other measure, and were found to be entirely competitive by the company auditor, KPMG, in a report on the subject made during the period examined.

Breeden and the authors of the Report deliberately leave out many key factors of which they were certainly apprised. The charged and emotive references to *Kenyon* event at the Four Season's, the FBI seized the proceeds on the basis of an affidavit that claimed that Black had underpaid the company by $2.4 million. What was omitted in the affidavit was that the $2.4 million was fully covered by expenses Black had incurred renovating the apartment, and bringing it up from the World War I condition it had been in. To secure the false $2.4 million claim, the FBI successfully seized, under the misapplied Civil Assets Forfeiture Reform Act, $9 million in proceeds. We can only presume that the seizure was part of the effort to strangle Black financially, and prevent him from exercising his constitutionally-guaranteed right to self-defense. When Black protested, pointing out the fraudulent nature of the seizure, an act which his counsel described as an "attempt to take away David's slingshot as he is about to meet Goliath," criminal proceedings were launched and the civil action was stayed, freezing Black's $9 million.

There is literally nothing that New Yorkers talk about more than real estate. A good number of the attendees at the *Kenyon* event could likely cite the renovations and changes in interior detail. There are no secrets here and the particulars are easily corroborated with local real estate agents in New York. The affidavit was clearly false and misleading.

* * *

If there is one consistent theme in the turgid verbiage of the Breeden Report, it is the claim that Black and his associates were "addicted to cash" to sustain their control position. Like junkies, Black and his cronies appear from the language to require injections of cash *mainlined* directly to the vascular artery. This picture couldn't be more misleading. Black controlled Ravelston and Hollinger Inc. and all of the Hollinger International B shares that carried ten votes per share. Their control was obviously unassailable by any normal means, as is the case with most of the other major newspaper companies, such as the NYT Company, or the Washington Post Company, or the Dow Jones Corporation; the dual class structure not only protects the founding families, but recognises, as Siklos points out in his recent article, that newspaper companies must be given "shelter from unwelcome influences" and from "intrusions on their public-service mission."

It is also untrue that Black's personal expenses had grown into an "insatiable appetite" for cash. Most of the management fees and other money that came to Ravelston went to sustain that company's debt, which had been incurred and was being carried to maintain a large shareholding in single voting A shares. This was an exigency created by the corporate structure of the entire family of companies. The single voting A shares were not necessary for control, and the easy course for Black and the others would have been to sell those shares, eliminate the debt, and pocket all the income that came to Ravelston for their own purpose.

Black did nothing of the sort. Instead he demonstrated faith in the company he had built, and at a great cost to himself and others in the executive group, held onto the stock that was irrelevant to his control position, i.e., the single voting A shares. Despite the uncertain future the entire industry was facing, and cautious with respect to new technologies, Black set out to reduce the size of the company. This was a highly propitious business move, and a decision that was clearly prescient. The sales allowed Hollinger International to eliminate its entire debt. At the same time, management incomes and fees were reduced commensurately with the reduced dimensions of the firm.

There is no evidence that Black was particularly dependent on the current flow of cash for his own needs, or that his standard of living was excessive. He had accumulated substantial wealth from a lengthy business career that predated his publishing forays in the United States. He has resided in the same Toronto family home for the last fifty years, and his extended family has substantial assets. There are no Hearst-like expenditures, no purchases of art treasures, no architectural monuments. Collectively, his houses would not occupy the guest structures and secondary quarters at Hearst's palace at San Simeon. Black had no armies of servants and staff. He explained with great courtesy, and to the satisfaction of the auditors, the nature of some corporate expenses at his home in London. He operated an office there, with a secretary who worked for his wife in an executive capacity. The house was a more convenient and discreet meeting place for many corporate occasions, and as KPMG has confirmed, great care was taken to ensure that the allocation of expenses was exact and fair. When the partial payment of Black's chef and butler was questioned, Black told the annual meeting in 2003 that he would absorb these costs himself.

In order to add verisimilitude to the Report, or to satisfy the public's prurient interest in Black's personal life, a number of trivial matters are thrown into the mix of allegations by Breeden and his writers. These trivial matters include the much-publicised $20 Bergdorf tip, and the equally famous tracksuit for Black's wife, the journalist Barbara Amiel. These little trills focus attention on small abuses and let the mind extrapolate to the larger frame of argument. What is not mentioned, with the sort of guile that runs through the whole infernal document, is that Black paid many of his own personal bills through the New York office, and that the staff there were under strict instructions to ensure that all of his and his wife's personal expenses were to be sent on to him so that the books could be kept straight. Black and his wife are not responsible for any error made by one of the staff, or for the alacrity of a disgruntled employee in finding or putting aside some minor book-keeping error. The issue here is with tickets and receipt stubs that were dumped from a wallet into an envelope for petty cash accounts. We are back, it seems, in the realm of the Hewlett-Packard investigators and their exegesis of the word "pooped". One wonders what resources and what forensic accounting talents have been expended in bringing these revelations to the public's attention.

* * *

The newspaper business in many ways resembles the restaurant business. A chef at a fine restaurant can walk out the door and open a competing restaurant down the street. With a star chef little else can be done, short of offering him a majority interest, to secure his long-term loyalty. Situations often occur with minority investors in restaurants, wherein the chef signs an agreement ostensibly not to compete with himself; the arrangement appears counterintuitive, but it is a common one. Publishing is not too far removed from the restaurant business in this regard. Non-competition agreements mushroom around transactions, and are 'papered' in a Byzantine manner by lawyers that specialise in these matters. They are largely taken for granted. Radler's and Black's non-compete agreements were written in this pervasive environment of competitive threat and proliferating non-compete agreements.

At Hollinger, all non-compete payments to executives were approved by the Audit Committee either before they were paid, or, as was the case with the $16 million on the 10 k's (special SEC forms that are required by law). The 10 k's were individually signed by the Audit Committee members. The unauthorized payment of $16 million was also noted in a proxy circular, and discussed in a bond issue due diligence teleconference. The idea that David Radler, who ordered the controversial payments, deliberately stole the money on the supposition that no director or auditor would notice in a firm that is subject to continuous supervision and auditing, is preposterous. Richard Breeden himself acknowledged, at the time that the 'incompleteness' or 'unorthodoxy' of the approval process came to light, that he had no reason to believe that Black had engaged in any wrongdoing. He said this to the directors, as has been publicly reported in November 2003, and in another public statement in January 2004. The Restructuring Proposal of November 2003, at Black's insistence referred to the payments as "improperly authorized" rather than "unauthorized", and there is nothing connecting Black to the origination of them. This is the core of the counter-suit which the authors of the Report will have to face when Black is acquitted.

The Report makes much of the fact that the buyers did not allocate the non-compete payments. This is not unusual; buyers often do not take it upon themselves to dictate how such payments should be allocated. The Report states: "Black and Radler would insist" on non-compete payments. The only deal Black negotiated, which produced the largest non-compete payments, was with CanWest. Israel Asper, the late Chairman of CanWest, stated in writing that he himself asked for the non-compete payments. His son, David Asper, has written to the same effect in a nationally published Canadian paper. The Report asserts that "Hollinger Inc. and Ravelston could not compete even if they had wanted to." This is a completely false statement; they could have entered into competition with any newspaper in the world, had either company chosen to do so. The Report reproaches the directors because "Hollinger International's Board could simply have refused to allow them [the management] to have any other business activities while they were officers of Hollinger International." No, they could not have, and had no reason to try, since the management was evidently one the most competent groups in the world's newspaper industry. Radler had, in fact, been planning to leave the Hollinger companies and take himself elsewhere, so that the non-compete payments made to him were potentially very significant, as has been demonstrated by his recent re-purchase of the *Sherbrooke Record*, the first paper Black and Radler bought back in the 70s. At the time of the CanWest transaction, the Sun newspapers were for sale. These papers competed with the set of papers CanWest bought from Hollinger in Toronto, Ottawa, Edmonton, and Calgary, and the Aspers did not want Black and Radler to buy them.

Perhaps one of the most serious claims made in the Breeden Report is that Black, in arranging with CanWest a 6-million-dollar annual fee to assist in the management of the Canadian newspaper assets that Hollinger had sold to CanWest, was depriving the company of $60 million of consideration in the sale of the newspaper properties, given that the agreed upon multiple of EBITDA was ten. (EBITDA is a commonly used measure of cash flow—basically, earnings before certain write-offs, such as interest, taxes, and depreciation.) But CanWest had intended to allocate $18 million to new management for administering the assets, thereby reducing the purchase price by $180 million. By making this arrangement, which may have actually cost Ravelston more money than it would earn in management fees, Black and his associates saved the Hollinger International shareholders a $120-million deduction from the sale price. The deal reached is almost a classic case of successful business negotiation. It addresses the issue—always a subject of heated discussion in any acquisition—of the real cost of running and managing the assets that are being acquired. Sellers always want to say that the cash flow is practically unencumbered, that the assets just about run themselves, while

The dual class structure, not only protects the founding families, but recognises, as Siklos points out in his recent article, that newspaper companies must be given "shelter from unwelcome influences" and from "intrusions on their public-service mission."

buyers wish to attach a high cost to management and reduce the purchase price accordingly. Black's handling of the situation was masterful, and he had the credibility and confidence to back up his negotiating posture.

Breeden's Report states that "it is difficult to ascribe the wrongful actions we document to anything other than deliberate intent." This statement applies more accurately to the clear errors and falsehoods in the composition of the Report itself. Breeden's Special Committee skates around the inconvenient fact that Hollinger's Audit Committee approved each and every dollar paid to the executives by claiming that "Black and Radler" misled the Audit Committee. In fact, with regard to these payments, Black never appears to have met the Audit Committee, was never asked to meet them, and was repeatedly assured by each member of the Audit Committee—together at board meetings and separately—that they were fully satisfied with what they had been told and with the research they had done on every item. In the summer of 2003, the chief audit officer of KPMG assured the Special Committee that they had gone through all of the audit's notes and records and found nothing that was insufficient or unsatisfactory.

The payments to Hollinger of $16 million that were not authorized by the Hollinger International Audit Committee were well known to the Auditors, as KPMG audited both companies. The Auditors had obvious reasons to believe that there were parallel arm's-length negotiations taking place on behalf of both Hollinger Inc. and Hollinger International respecting the non-compete payments. This would certainly have been the case given Black's negotiating stance. Any buyer would assume that Hollinger Inc. was bound by a non-compete, given the logic of the negotiating strategy and bargaining process. Small community newspapers are vulnerable to competition, and buyers want to avoid any and all competition, especially with those who have a track record in their markets.

In any group of companies there are bound to be some imperfections, some irregularities, and some technical difficulties in sorting out the myriad agreements and potential conflicts that arise in complex intercompany transactions. The Hollinger group encompassed a family of companies. Imperfections, various rigidities and patterns inherent in a collective enterprise do not necessarily undercut a group's overall economic productivity. As George Barclay Richardson, a leading 20th century economist points out in his classic work, *Information and Investment*, the "market system works, not in spite of, but because of 'imperfections'." These imperfections "ease knowledge flows, reduce information costs and provide commitments." In Richardson's view, existing market arrangements, particularly the institutional rigidities one finds in large intermingled industrial and financial entities are "manifestations of transaction and information cost minimizing behavior," rather than as manifestations of "monopolistic exploitation, misallocation and self-dealing." It is a view that is increasingly influential and approaches the Neo-Institutionalist conception of the firm, a line of academic and scholarly interest that is the object of robust research, inquiry and scholarly publication.

* * *

Nowhere does the Report mention that the corporate "imperfections" produced an economic product of 12 billion dollars during Black's eleven-year tenure, paid as much as four billion dollars in payroll, supported countless thousands of families, and produced probably on the order of ten billion newspapers, in twenty-five million separate editions. It takes some knowledge and experience to grasp the magnitude and scope of these numbers. This immense economic product was produced while serving the duplicate public service function, with its attendant financial burden, of communicating the news and buttressing the basic institution of free speech and expression. Without dedicated newspaper proprietors prepared to serve this function our democratic freedoms would be greatly imperiled.

Again, the pertinent fact, entirely over-looked and left unmentioned in the Breeden Report, is the timely sale of assets, which yielded 1.5 billion dollars in transactional profit. One may ask, what happened to this money? Apart from eliminating nearly two billion dollars of bank debt by rough calculation, the principal use of the funds obtained from the sales of these mature newspaper assets was the cancellation of about 34 million common shares at an average price below $10, compared to the $18 or $19 that the Barclays were prepared to bid for the stock in 2004. This stock buy-back allowed for the elimination of almost 30 percent of the company's stock, and was approved by the continuing shareholders as a sensible use of the company's money. It sharply increased asset value per share.

The Special Committee was oblivious to this substantial reduction in indebtedness and the increased asset value as a ratio of shares. Yet these very same authors, who are so oblivious to these overwhelming facts, have created no wealth, innovated no new products, and have in no way added value to the company. On the contrary, they have drained the company of about 150 million dollars, with a significant part of this money going directly to themselves, while destroying the lives and reputations of people who are entitled at the very least to the presumption of innocence.

The Breeden Report rounds out its attack on Black by making a series of charges against Conrad Black's wife, the author and writer Barbara Amiel. A noted journalist with extensive experience in the publishing and newspaper business well before her involvement with Conrad Black, Barbara Amiel was at the height of her career when she moved to the *Telegraph* from *The Times*. It appears from all sources that she worked hard and effectively as an editorial vice president and it is acknowledged that almost all of the Hollinger newspapers improved under her supervision. The Report states that Barbara Amiel received a large on-going retainer from the Chicago office even though she was rarely there. Barbara Amiel had no reason to be present in Chicago. Hollinger International is an American company, and it was merely administratively convenient for her to be paid from the Chicago office. The misinterpretation is deliberate.

* * *

One of the most disconcerting aspects of the Breeden Report is the selective organisation of materials, which belies the tendentious nature of the whole undertaking. Findings are used to support pre-established and preordained conclusions. The treatment of the Roosevelt papers deserve special attention in that a peculiar animus is at work here; an animus that is driven by envy, an emotion, as it is said, that never sleeps, and which is never satisfied until it destroys the object of its attention and fury. The overall effect of the presentation is to embarrass Black and to impugn his credentials as a biographer and student of Roosevelt. American corporations are large purchasers of art work and historic documents. The decision to purchase these items is almost always, if not invariably, the prerogative of the CEO. One senses an overzealous interest and excitement at trying to find some sort of malfeasance in the purchase of the Roosevelt documents. There is none. The writers state disingenuously that the special committee is trying to sell the papers for $2.5 million, even though the report notes in a footnote that the leading rare manuscript dealer is prepared to support a value of $15 million. The U.S. National Archives fortunately intervened here, fully realizing the documents' treasured value as part of the U.S. historical record.

The Report throws what amounts to a canard into the long litany of alleged abuses by Black, by suggesting that Black exploited the Roosevelt materials or availed himself of these documents in some sort of 'unethical' fashion in order to assist with his study and biography. There is the further odious claim that Black wanted to use them, essentially as wallpaper, to "decorate his house."

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It is no coincidence that the legal and regulatory attack on Black coincided with his decade-long endeavour to write the Roosevelt biography. It was an opportune moment to attack Black; his vulnerabilities and sensitivity to negative media attention was fully apparent. At all cost Black wished to avoid social scandal or having any opprobrium attached to his name. It appears that Black's effort to subdue and placate his assailants, rather than to confront them, had a great deal to do with his desire not to disrupt the imminent publication of *Roosevelt: Champion of Freedom*.

Roosevelt: Champion of Freedom is a massive undertaking. It would be difficult for a non-scholar or writer to grasp what is involved in writing and seeing such a book through to publication. Black's study is an ode and testament to Roosevelt.

It is upsetting to witness the full impact of the disappointment. The Roosevelt book represented a lifetime of work and reading on Black's part. It is a huge endeavour and a personal exertion of the highest order. The treatment of Black by his board members and the authors of the Breeden Report stands in stark contrast to the attitude and perspective that animates the entire 1200-page book. The book is written with discipline, verve, nobility, and a respectful and observant distance. Those who attack Black in the Breeden Report and elsewhere lack any consciousness of what is involved in assembling and organising such a large body of materials: the concerted, systematic, sustained serious reading of hundreds if not thousands of books over the course of many years; the honesty and integrity that is required to weigh sources; the sound, sober state of mind to judge opinions; the copious note-taking; the unyielding inquisitiveness; the patience required to track timelines and chronologies and to fact-check endless details; the mental energy to synthesise broad historical perspectives; and beyond such rare capacities, the sheer stamina required to slog through the whole thing to the end. None of this can be admitted by the authors of the Breeden Report, because in admitting what is required, his prosecutors would have to dismiss their case. As Alexander Pushkin conjectured, "Villainy and brilliance are two things that can never go together."

* * *

At the deepest level, the much vaunted governance revolution that has trapped Black in its bared fangs is based on a series of fallacious conceptions. One can not develop a complete system of governance, a comprehensive framework of corporate ethics, without articulating an adequate economic ontology; an 'ethical' superstructure has to be built on a foundation that grasps, or at least grapples with, the underlying nature of economic reality.

This ontology has to recognise the primary fact, as outlined by Frederick Von Hayek in his monumental series of economic studies, that we act on the "basis of rules which we do not, nor cannot know, and in all probability cannot fully elucidate." Abstract "ethical rules" are part of the "evolved social order in which we live." These rules have "never been invented," and no one, "so far, has ever succeeded in producing a rationale foundation for the whole of the existing system of ethical behavior." We have to frame our economic ideas on this limited grasp of the ethical basis of behaviour and the uncertainty that surrounds any set of economic decisions. It is this fundamental inability to elucidate the ethical basis of behavior and the epistemological limitations of the information that we have immediately available to us at any given moment, that vouchsafes the very basis for individual liberty.

As has been emphasised in this essay, corporate governance, and the 'ethics' it espouses is nothing but a hidebound knee-jerk reflex to a massive welter of bureaucratically-mandated compliance, reporting, and accounting rules. The mandated accounting and reporting rules do not amount to an ethical system in any true sense. In fact, these new regulations engender a restrictive and coercive regime of government control and oversight. The final product of this restrictive regime can be seen in the routine surveillance, and internal harassment of board members at numerous firms, from AIG to Hewlett-Packard to dozens of other companies. "Pretexting" and "garbage recon" is a tiny, but representative sample of the intellectual by-product of this regime and its ethical heuristic.

The corporate governance movement has a silent partner that is marching in step with its routines and methodology. That silent partner is the gorgon of corporate security and intelligence. Corporate surveillance and spying are the other side of the 'ethics coin'. Richard Breeden's corporate governance firm is evolving and adapting in this environment along with such firms as Richard Burt's Diligence Inc. These parallel but related developments pose significant threats to the integrity of the free enterprise system, and in particular to the open system of public shareholding that has dominated much of 20th century commerce. Working within the complexities and the compliance requirements of the Sarbanes Oxley legislation, and given impetus by the availability of hedge fund money, along with a subservient media, corporate governance firms will entangle, vine-like, all of corporate America.

The damage that has been done by the Breeden Report is inestimable. What was in effect a flawed judgement in Delaware on an interpretation of a single clause in the "Strategic Process" was conflated into a broad indictment of Conrad Black's management and control of Hollinger's group of companies. The claims against Black cannot withstand any level of scrutiny or intelligent analysis. The Breeden Report itself is a poorly organised and written compendium of hearsay and malicious gossip.

The Breeden Report abides in an ahistorical realm, strangely removed from the context of turbulent economic events, and the political and business involvements of many of Hollinger's main players and board members. Fashioned in an intensely political environment, the Breeden Report has given form and structure to the subsequent legal events and the criminal indictment. Legal and technical issues concerning non-competition agreements and inter-company transfers and obligations were magnified and distorted out of all proportion to their original significance.

For the stock markets, the attack on Conrad Black is a setback. Entrepreneurs are the signaling element in the whole market nexus. They represent an invaluable economic and cultural resource, and in many ways the whole social order depends on them. Creative business figures need to be institutionally protected not attacked, molested, and persecuted. They are the discovery function of the markets and their activity provides critical information to other investors.

One of the leading intellects of the 20th century and its foremost economic theoretician, John Maynard Keynes, observed that the "hiatus" between "rational calculation and entrepreneurial action" is filled with "animal spirits", a "subjective construct" that "moves the entrepreneur" beyond rational calculation. This "subjective construct" converses with a much larger imaginative world, a world far beyond the routines of accounting, and the edicts of regulators. This "hiatus" opens onto a mysterious and magnificent realm where men dream of castles, adventurers are forever seeking the land of Prester John, and confabulating Baudolinos deceive the world into taking a step forward. This is the universe that Umberto Eco paints, where the fictional bends back and alters the continuum of the 'real world'.

The prosecutors of Conrad Black know nothing of the "animal spirits" to which Lord Keynes refers. Their only interest is to squash any independent spirit in the interest of defending the mirage of ideas that falls under the rubric of corporate governance. For the general public the challenge is to realise that injustice can conceal itself in attacks on the powerful, the privileged, the wealthy, and the elected; natural objects of resentment and envy, they are people for whom we tend to think a 'fall' or redress is in order. The injustice proceeds in small and public acts of complicity, and finds an abode in various subconscious registers of the psyche where schadenfreud and vicarious pleasure in the failures and misfortunes of others fester. The Spanish Inquisition, the French revolutionary trials, the Alfred Dreyfus Affair, the Soviet show trials, and the McCarthy-era hearings all happened within a sanctioned legal framework, with voluminous evidentiary support, cooperative witnesses, and with broad public consent. These trials were often conducted by zealous prosecutors. All of them maintained the pretense or facade of pursuing justice. It is only with the passing of time and the shift in the historical frame of reference that we come to understand the 'injustice'. The imperative is to see injustice in all of its guises, to face it squarely, and confront it with courage. •

Further reading in Books in Canada

1. See December 2002 *Books in Canada* essay, an excellent piece on Umberto Eco's *Baudolino* by David Solway, "Seeking Prester John: Umberto and his Messenger". The review provides a good description of semiotic codes and Eco's Encylomedia project.
2. See June/July 1996 issue of *Books in Canada*, Scott Disher's well written essay and profile of Conrad Black, "Conrad Black: Press Lord Redux". The long essay offers sketches of Hearst, Beaverbook and Lord Northcliff, with many interesting asides.

past reviews/essays available on: www.booksincanada.com

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4. *On the Brink: The Dramatic Behind-the-Scenes Saga of the Reagan Era and the Men and Women Who Won the Cold War* by Jay Winik (1996, Simon & Schuster)
5. *Roosevelt: Champion of Freedom*, by Conrad Black (2003, Public Affairs)
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9. United States District Court; Southern District of Texas; Houston Division; MMAR Group Inc. (Plaintiff) v Dow Jones & Co and Laura Jereski; C.A. No. 95-1262 (Plaintiff's Response in Opposition to Defendants second motion for Summary Judgement and reply to brief in support of Defendants second motion for summary judgement)
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12. *Conrad and Lady Black*, by Tom Bower (2006, Harper Press)