



## Why I'm Posting About Jack Marshall Here

October 23, 2018 by Mark Draughn — 5 Comments

Over the last few weeks, I've been doing a series of posts responding to things that Jack Marshall writes in his [Ethics Alarms](#) blog. I'm getting a bunch of mini-rants out of my system, in the hope that it will help me end my obsession with his blog. I've been slacking off on the posts lately, so I think I'm almost done.

Meanwhile, Slickwilly left this comment on [an earlier post of mine](#), taking me to task for writing about Jack here instead of over at *Ethics Alarms*:

Wow. This is sheer cowardice, akin to knifing someone in the back. Jack is no saint, but he is miles higher than those who follow here: he bothers to have standards, and you don't.

Everything here is progressive emotional blather, so I guess I am glad you are too scared to post over at Ethics Alarms.

We will see if you have the guts to leave this post up.

Of course I'll leave that up. I normally only take down spam and trolling and the occasional literal Nazi or Stormfronter. But I remember you as one of the more reasonable commenters on *Ethics Alarms*, so I assume you're not just trolling.

And for the record, this blog is not progressive blather. It's *libertarian* blather. Get it right.

Seriously, Jack is conservative in a lot of ways (especially in the "tough dad" sense, as you might expect from a guy who expounds on ethics), and we actually agree on a lot of things, such as gun control or the idiocy of zero tolerance in schools. But I want to write now about some areas where we disagree, and those will tend to be areas where progressives would also disagree, thus much of my criticism of Jack appears progressive in origin. I have plenty of complaints about progressive ideas elsewhere on the blog.

I am a bit irked — and also amused — that you accuse me of "cowardice, akin to knifing someone in the back." This is a public website. Jack links to it from his blogroll. And I link to Jack's posts when I talk about them, so there

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are plenty of tools that will tell Jack I'm responding to him, if he's interested. That's how blogging has worked for as long as Jack and I have been doing it.

(Also, dude, I'm *right here*. I blog under my own name. And for some reason I'm responding to an accusation of "sheer cowardice" from a guy who signs his comment "Slickwilly" and leaves a fake email address in the comment form.)

As for Jack's standards, they are malleable at best. He used to complain all the time about *the appearance of impropriety*, but now that a walking, talking, in-the-flesh incarnation of impropriety is in the White House, he almost never brings it up. Instead, he excuses Trump's nonsense under the "[Julie principle](#)," which I'm pretty sure is something he just made up.

And after years of complaining (rightly) that "everybody does it" is sloppy ethical thinking, he's now attacking criticism of Trump with cries of "Obama did it too." (He did this again [just this Sunday](#) in a note about Trump's disturbing relationship with the Saudis.) Jack tries to justify his embrace of "everybody does it" by claiming he is engaged in media criticism. That is, he's not saying what Trump did is OK because Obama also did it, he's saying that the media has double standards because they're complaining about Trump when they didn't complain about Obama.

I find this explanation difficult to credit. If the media glossed over Obama's bad behavior (and I think they did) then the time to bring it up was when they were doing it. But now that the media are taking the current President to task for his bad behavior, you'd think an ethicist would congratulate them on calling out unethical behavior when they see it (as Jack routinely applauds himself for doing) but instead Jack attacks them for it and calls them "enemies of the people." It's this sort of thing that makes it hard for me to take him seriously any more.

Finally, I'm not scared of posting stuff over at *Ethics Alarms*. I've been contributing comments (and the occasional story tip) to Jack's blog for many years. I've always disagreed with him about some things, but I thought he did a good job thinking about and explaining his ethical reasoning, and I appreciated the way he engaged in dialog with his audience. He does blogging the way it's supposed to be.

The main reason I'm posting my commentary here rather than on his blog is because I'm taking a page from Jack's playbook: I'm doing media criticism. And the media I'm criticizing is Jack's blog. He complains (with some justification) that the left has gone crazy in its opposition to Trump. Well, I think Jack has gone crazy in his opposition to the left. He's turned his curmudgeonly but thoughtful ethics blog into some kind of liberal-hating Trump-apologizing shit-show.

It doesn't help that this period has also brought out the ugliness of Jack's authoritarian vision in a way I can no longer ignore. Not only does he support the drug war and restrictionist immigration policies, but he has neither respect for, nor understanding of, the role of the press in a free society, and his concept of civic duty leaves little room for dissent and opposition. (I may have more to say about all that in another post.)

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What it comes down to is that I'm angry at Jack. I'm angry at his lack of respect for freedom, I'm angry at what he's turned his blog into, and I'm angry that I've wasted so much time reading and commenting on his blog. Which is another reason I'm posting this on *my* blog.

And let's be realistic: Most of what I'm saying here is not anything Jack would want or allow in his blog comments. His posts are usually about specific topics, so my broad-ranging criticism of his viewpoint would come across as an *ad hominem* attack. This is the sort of thing that belongs in a separate post.

In the end, I'm posting my opinions on my blog rather than his because they belong on my blog rather than his.

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Filed Under: [Ethics](#)

## Jack Marshall Watch – Special Ethics Abdication Edition

October 5, 2018 by Mark Draughn — 6 Comments

Lately, *Ethics Alarms* has been pretty much *all* about the Kavanaugh confirmation shit show, and I'm just [sick of writing about it](#), so as a change of pace, I'd like to revisit [one of Jack Marshall's posts from January of 2016](#), and especially one of his responses to a comment that has stuck with me as an example of Jack at his worst.

In the post itself, Jack took on Univision anchor Jorge Ramos, who argued that Latino candidates Marco Rubio and Ted Cruz should do more to support "undocumented immigrants." That's a phrase that always sets Jack off:

Those who engage in *illegal immigration* are immigrants, and because their manner of immigration is illegal, they are *illegal* immigrants. Those who insist on calling them merely *immigrants* are lying; those who favor euphemisms like "undocumented workers" are engaging in intentional deceit.

Aside from the logical incoherence of accusing people of lying for calling them "immigrants" *right after* Jack himself calls them "immigrants" — which we can probably put down to hasty writing — there are plenty of legitimate things you can say about immigrants which are true for legal and illegal immigrants alike. Furthermore, it's entirely accurate to refer to these people as "undocumented" immigrants because, in fact, it is precisely their lack of documents that sets them apart from other immigrants and makes them illegal. And it's hardly deceitful, because everybody understands this.

I think Jack doesn't like "undocumented" because it doesn't carry the same stigma that "illegal" does. Jack is on team "What part of illegal don't you understand?" and he regards coming here illegally as the one unforgivable sin.

This is a convenient rhetorical crutch for Jack — arguing that once some conduct is outlawed it becomes irredeemably unethical — which he uses it to avoid having to argue for the law itself. I don't understand how anyone who is familiar with history and seen our elections could possibly believe that our

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legislatures consist of people who produce only ethical laws deserving obedience — slavery being the canonical counterexample — but it's an assumption Jack relies on all the time.

In the comments, Pieter van Megchelen challenges Jack on this point:

[...] I fail to understand how 'illegal' means the same as 'unethical' or 'immoral'. I can imagine many morally valid reasons to break the law of a country, especially if you perceive that law as unjust or even unethical. [...]

Breaking the law has many (other) ethical aspects, I might endangers others, etcetera, but I have always been taught that legality and morality are essentially different categories. What is illegal may be morally right, and what is legal may be morally abject (I know you agree with the last part of this sentence).

Of course, the ultimate 'proof' of the first half of this thesis is in historical extremes: there were laws against homosexuality in most countries, there have been laws against Jews and other groups, laws against abortion have endangered women's lives, etc. Rumour has it that in Iran, it's even forbidden to smile outside. If that is true, is it immoral to smile in the streets?

Jack's response is alternately authoritarian and idiotic.

A citizen is ethically obligated to follow a nation's laws as part of the social contract with that country. If he violates a law on principle, he is ethically obligated to voluntarily accept the consequences.

Jack is thinking of *civil disobedience*, where the goal is to protest an unjust law by flagrantly breaking it in a highly visible manner. But that only works when the punishment is not too severe. It makes no sense to break the law *to make a statement*, and then allow yourself to be silenced by a long prison sentence. The demonstrators who staged the Boston Tea Party wore disguises because they did not want to get caught.

Furthermore, protest is not the only reason good people break laws. Sometimes obedience to the law is harmful to society. The "conductors" who ran the Underground Railroad that helped slaves escape to the North didn't "voluntarily accept the consequences" by turning themselves in to the authorities. Instead they operated in secret for many years, freeing thousands of people from misery.

Moreover, from a utilitarian standpoint, it is the consequences of a bad law that make it bad. Years ago, many states had laws against sodomy which were enforced mostly against gay people. The harm from such laws did not come from their mere existence in the criminal code. The harm came from the fact that police enforced these laws by dragging gay people away in handcuffs and locking them in cages. By Jack's argument, people who engaged in sodomy should have "accepted the consequences," presumably by turning themselves in at the nearest police station.

Just violating laws when it's convenient or beneficial fails the Kantian test: if that were a universal standards, civilization would collapse.

Any idea will fail the “What if everybody did that?” test if you generalize it in the most stupid way possible. “Dance parties are unethical because if everyone danced all the time, no one would harvest the crops, and we would all starve to death!”

Jack is attacking a straw man by supposing that opponents of current immigration laws are arguing in favor of violating *all* laws. The appropriate generalization is that they think *everybody* should be allowed to violate immigration laws, which is a very different proposition.

(As a libertarian, I would consider an even wider generalization. Foreigners coming here to live normal lives — working, making friends, raising families — aren’t hurting anyone, so undocumented immigration is a crime without a victim, and it’s far from the only one. Applying the Kantian test, we should then imagine what would happen to our civilization if *everyone* was willing to break *all* laws against victimless crimes. Personally, I think it would be wonderful.)

Illegal aliens are violating the obligation to obey the laws of other countries, and worse, won’t accept the consequences. There is no ethical argument that supports this, just emotional ones.

I’ve never understood what Jack means by calling these arguments “emotional.” I think maybe he’s just tired of hearing sad stories about immigrants dragged away from their lives by the authorities, and he regards these as emotional appeals. And I guess that’s what they are. But they are also evidence of the enormous harm caused by these laws. Take any of those sad stores and multiply it by a few tens of thousands, and you have some idea of the scale of harm caused by immigration enforcement.

What I rarely ever hear from Jack is the argument in favor of these laws, other than the fact that they are laws, which is the rhetorical equivalent of *might makes right*. Winning the legislative battle doesn’t mean your side is right, only that your side is powerful.

Not to niggle, but saying breaking laws isn’t immoral is absurd, because morality is established by rules and laws. Breaking laws is by definition immoral.

Not to nitpick, but this is completely backward. Morality is *not* established by law. If law is the ultimate determinant of right and wrong, then by what principles should we determine what the law should be? If law is the ultimate determinant of right and wrong, how could we ever advocate changing the law? Ideally, the law must be crafted to serve morality. And here in the real world, where laws are created by imperfect people following imperfect processes, the law and morality are often at odds, sometimes in ways that justify defiance of the law.

Yes, in Iran, it’s immoral to smile in the street.

God, Jack is such an authoritarian bootlicker.

First of all, to use one of Jack's favorite phrases, *res ipsa loquitur*, "the thing speaks for itself." A law against smiling is too fucking stupid to be taken seriously. Everybody should just ignore it.

Second, you can't talk about the immorality of disobeying Iranian law without taking into account what kind of government Iran has. It's one thing to argue for a norm of obedience to the laws of a republican democracy like we have in the U.S., but it's crazy to expect that of people in a country like Iran, which is at least partially under the control of a theocratic dictatorship. It is **not a free country**. By the American standard — "of the people, by the people, for the people" — it doesn't even have a legitimate government. It's absurd to think there is any ethical duty to obey these laws just because autocrats with guns say you should.

(Note: I'm pretty sure that the Iranian law against smiling is a myth. On the other hand, the Gasht-e Ershad really do try to enforce equally vile and stupid rules on how women can dress in public.)

I really don't understand what's going through Jack's mind when he writes stuff like this. Maybe it's a hazard of his day job as a **professional ethics trainer**. In that role, he can't very well advise his clients to break the rules. He has to take things like laws and professional ethics codes as given. He can't tell someone, "That law uses a bogus public safety justification to protect politically powerful business interests, so there's nothing wrong with disobeying it." Not even when, in a case such as **Louisiana's florist licensing law**, there's nothing wrong with disobeying it.

But that's the wrong approach to ethical thinking when discussing issues of public policy. In fact, saying "the authorities have ruled and it's unethical to disobey them" isn't ethics at all. It's the *abdication of ethics* in favor of power.

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Filed Under: [Ethics](#)

## Jack Marshall Watch – 2018-09-25

September 25, 2018 by Mark Draughn — 9 Comments

Time to round up a few of the things Jack Marshall has been talking about this past week or so.

### Authoritarianism

On Wednesday, Jack **started out** with what he considers to be a mock definition of *authoritarianism* as he imagine's it's defined by Andrew Sullivan, or maybe the "New York Book Review" (whatever that is) or maybe the *New York Times* or the liberals or...I don't know, the paragraph is a total muddle and doesn't have any links... Anyway, he writes this:

The definition: *Authoritarianism* is when a President you don't like exerts strong leadership within his powers to accomplish policy goals you disagree with. When a President you *do* like stretches and exceeds his Constitutional powers to achieve policy goals you *approve* of, that's not authoritarianism. That's *great leadership*.

Jack's mocking definition implies that a President who "exerts strong leadership within his powers" somehow can't be authoritarian, as if legal authority can't be used to suppress freedom.

## It's Really About Ethics In Supreme Court Nominations

Later, Jack wrote about [the woman who accused](#) Supreme Court nominee Brett Kavanaugh of assaulting her in high school. As I write this, the story is a horrible mess that keeps getting worse, and I have no way of knowing who, if anyone, is telling the actual truth. Jack, to his credit, also recognizes that he doesn't know who's telling the truth, so he assumes for the sake of argument that she's not lying. And then he continues [his habit of attacking #MeToo victims](#) by attacking her for complaining now:

I had pretty much concluded that Christine Blasey Ford was contemptible based on her willingness to impugn a public servant's integrity, derail what should be an orderly and fair political process, and manipulate the U.S. Supreme Court's membership using a three decades old allegation that involved, at worst, teenage misconduct.

The pearl clutching about impugning "a public servant's integrity" is just weird. And for the record, Ford is not the one derailing the process. The Senate Judiciary Committee is doing that. Senator Feinstein, in particular, has a lot to answer for in her bungling and manipulative use of Ford's accusations.

That doesn't stop Jack from turning the insanity up to eleven:

In fact, it seems clear that she chose her course of action knowing that she could harm Brett Kavanaugh the same way. If the allegation was politically motivated, as I strongly suspect it was, she is unethical and despicable. If the motive was late vengeance for a teenager's indiscretion, she is unethical and despicable.

Imagine someone you may have harmed when you were an immature teen. That individual never calls you to account, privately or officially. She never urges you to apologize, accept responsibility, or make amends, or gives you an opportunity to do so.

Hey ladies, Jack the Professional Ethicist says: If a man sexually assaults you, you owe him the courtesy of explaining what he did wrong, so that he can apologize and try to make amends. If you fail to do that in a timely manner, then aren't *you* the one who's *really* the problem? Shouldn't you be asking yourself, "Have I done everything I can to help my attempted rapist become the best version of himself?"

First Ford attempted to harm Kavanaugh anonymously. Then, when that wasn't going to work, she announced her accusation in the news media.

That's a disingenuous account of what happened. Ford told her story in a letter to the Judiciary committee weeks ago, requesting that it be kept confidential. When Feinstein blabbed and the story began to leak to the media, she took responsibility for it under her real name.

What is being ignored by all those rationalizing Ford's actions is that that the harm to alleged wrongdoers is magnified and multiplied the longer a victim delays calling for accountability.

That's demonstrably false in this case, given that no one has charged Kavanaugh with a crime. The passage of time almost always works in favor of the accused, as evidence is destroyed, memories fade, and statutes of limitations run out. If this had come out when they were both students, it could have done a lot more damage. Of course, we'd never have heard about it, since people with criminal records don't usually get to be federal judges.

It also creates the equivalent of ethics toxic waste. In a just society, nobody is pronounced guilty until guilt is proven, and nobody is publicly accused unless the offense is provable. A prosecutor who knows that there isn't evidence to convict someone of an offense is violating prosecutorial ethics to bring charges.

No charges have been filed against anyone, and there are no prosecutors involved in this mess. Jack is trying so make some kind of analogy to criminal procedure, but he's getting it wrong: Even by analogy, Christine Ford is not acting as a prosecutor. She's a witness. She has no obligation to prove anything to anyone. She just has to testify to the truth as she understands and remembers it.

If Kavanaugh did what he is alleged to have done, he should still have the right to deal with the consequences, accept punishment if any, and be able to get on with his life, set a straight course, and prove his character and values as an adult. Wouldn't anyone want that opportunity? Shouldn't any 17-year-old miscreant have that opportunity? As I have already noted, Ford's conduct is an anti-Golden Rule monstrosity.

This situation is not primarily about Kavanaugh's rights or Kavanaugh's due process. It's about filling a vacancy on the Supreme Court with someone who will do a good job. The Senators who will make the decision have the right to hear from anybody they think will have something to say that could inform their decision.

In any case, Jack had a lot more to say about some of the other women involved:

Today competition arose for Ford in the "Most Unethical Non-Senator To Board The Brett Kavanaugh Nomination Ethics Train Wreck" pageant. Cristina Miranda King, a former classmate of Ford's, decided to grab 15 minutes of undeserved fame by recalling that she "heard" about the incident.

[...]

Stuff you hear about in high school when you don't know the participants or details is called gossip. It isn't even hearsay.

It was just a comment she was sharing with friends on facebook. When the story went wide in the media, she clarified that she didn't have any reliable information about the alleged incident.



Now 900 more unethical women, all alumnae of the Holton-Arms School, the private school for girls in Bethesda, Maryland Where Christine Met Brett, signed an open letter, voicing their support for Ford even though they don't know her. She's a woman, you see, and of course one who is impugning a man 30 years late, so she must be telling the truth. "Dr. Blasey Ford's experience is all too consistent with stories we heard and lived while attending Holton," they write. This convinces me that Holton Arms graduates a lot of bigoted idiots incapable of critical thought. These women have no valid reason to believe or disbelieve Ford with such certainty. Because they know that students have been assaulted at Holton Arms, this means that Ford must have been assaulted by Brett Kavanaugh? I dare anyone to support this "reasoning." X must be guilty of conduct Y, because other people like X have been guilty of the same conduct.

Unethical women, as far as the eye can see...

That's just one post. Jack has gone on and on all week about this. I'm just too tired to write it up.

## Kaepernick Kunundrum

Almost anybody who bothers to learn about Colin Kaepernick kneeling during the national anthem knows that he's doing to protest racism and especially police mistreatment of people of color. Except Jack, who makes a [tiresome pretense](#) of not understanding:

Kaepernick, distinguished for his incoherent on field protest during the national anthem, instantly setting off the NFL's version of #MeToo, as in "I want make my own pointless, annoying protest that I can't adequately explain!"

## Sibling Quiz

Apparently, all six of Republican Congressman Paul Gosar's brothers and sisters have spoken out in favor of his opponent, Democrat David Brill. Jack offers this item up as [an ethics quiz about the siblings](#). When you see his list of possible responses, it's not hard to figure out which way Jack is leaning:

Unethical. Family disagreements should not be exploited for political agendas.

Unethical. This is a pure Golden Rule breach.

Unethical. It's an appeal to authority, as if they have any special expertise or credibility.

Unethical. It's a cruel thing to do to a family member, and indefensible.

Ethical. They care more about liberal policy items than they do about him, and that's OK.

Jack makes his position clear in the comments.

The vast, vast majority of ethical humanity would regard turning on a family members and trying to lose him his job absent any criminal activity but based purely on political disagreements as obviously wrong. The only possible counter argument is that their policy agenda is so crucial and ineffably right that it justifies the conduct.

Jack has often shown that he has very little respect for policy analysis. For example, he says it's wrong to support politicians who make unethical choices in their personal lives (e.g. Bill Clinton) just because you like their policies. That's kind of a weird ethics calculation, because their personal lives only affect a few people but their policies can affect millions.

That last response on the quiz is also a bit of a tell, because Jack specifically refers to "liberal" policy. Jack takes this attitude when the policies in question are liberal. He's been much more tolerant of Trump's personal choices, probably because Jack likes his policies. I can't prove it, but I doubt that Jack would have written this same quiz if it was about a Democratic candidate being attacked by his pro-life siblings. I think he would be arguing that they were fulfilling their civic responsibilities.

Finally, there's [some context](#):

In an interview earlier this month with Vice News Tonight, Gosar floated the theory, propagated previously by fringe personalities like Alex Jones, that billionaire George Soros somehow instigated or bankrolled the white supremacists and neo-Nazis who converged on Charlottesville.

Gosar also raised the false accusation that Soros, an 87-year-old investor and Holocaust survivor, "turned in his own people to the Nazis" in Hungary.

Gosar's brother David told Phoenix New Times on Friday, "At what point do you draw the line in your family?"

Exactly. When someone around you is saying or doing things you profoundly disagree with, at some point you have to distance yourself from them to avoid appearing complicit. Even if they're family.

## Word Salad

Finally, on Monday, in a nearly incoherent post, Jack lets rip:

I have been criticized, and this blog has been attacked, for taking the position that the "resistance's" effort to undermine democracy, weaken or national institutions, and move U.S. society toward increasingly totalitarian values and methods as a radical response to the election of Donald Trump is by far the most important and threatening ethics development in the culture. To paraphrase William Saroyan, I'm right and everyone else is wrong. The Kavanaugh fiasco proves it, and the latest smear tactic proves it further.

"Totalitarian values and methods." Sure. We all remember that one time Stalin publicized a woman's accusations of attempted rape against a powerful judge, who consequently endured the terrifying prospect of having to remain a powerful judge. The horror. The horror. The horror.

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Filed Under: [Ethics](#)

## Jack Marshall Watch 2018-09-18

September 18, 2018 by Mark Draughn — [Leave a Comment](#)

Jack had a lot to say last week about [the Serena Williams incident at the U.S. Open](#), but since I'm not interested in Serena Williams, the U.S. Open, or sports ethics in general, I have nothing to say. I also have nothing to say about [Mark Knight's editorial cartoon about the incident](#). Or any of Jack's [other posts about Serena Williams](#). Nor will I make more than a passing mention of [Jack's tiresome pretense of not understanding why players are kneeling](#) during the Anthem at football games.

**Later in the week**, Jack touched on some science-related issues, starting on Wednesday, when he wrote about a report put out by something called the Center for WorkLife Law that examines [bias in the legal workplace](#). Jack's [not impressed by the study](#).

At least the New York Times headline, for once, was accurate., at least the online version: "Lawyers Say They Face Persistent Racial and Gender Bias at Work." Yup, that's what the survey showed. What it didn't show is that there really is such discrimination, how much there is, or how it manifests itself. Here's part of the executive summary:

*Prove-It-Again.* Women of color, white women, and men of color reported that they have to go "above and beyond" to get the same recognition and respect as their colleagues.

- Women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men.
- White women and men of color also reported high levels of PIA bias, 25 percentage points higher than white men.
- Women of color reported that they are held to higher standards than their colleagues at a level 32 percentage points higher than white men.

This demonstrates, at least within the reliability of the survey, that minorities and women perceive that they are being discriminated against more than white males.

Jack is correct about the general nature of the study. It's not a statistical smoking gun, it is based on self-reports by employees, and it is based on subjective perceptions. However, Jack slightly mischaracterizes the study when he says it is about perceptions of discrimination. From what I can figure out from [the executive summary](#) (the main report is hidden behind an expensive ABA paywall), the perceptions are actually about behavior and actions which can reveal discrimination. This is a subtle distinction, and I can't really blame Jack for missing it.

A survey about perceptions of discrimination might ask lawyers a direct question like "Are women in your firm more likely to be the target of personal insults by their bosses?" The results would then be reported directly from the responses. E.g. "49% of lawyers report that women in their firms are more likely to be the targets of personal insults by their bosses."

The survey under discussion uses a different approach. It would ask lawyers a question about specific behavior, such as "Have you been the target of personal insults by your boss?" The answers of men and women could then be compared. E.g. "49% of women report being the targets of personal insults by their bosses, verses 28% of men." That's a more powerful

conclusion, because it compares women's reported perceptions of their treatment against men's own reported perceptions of their own treatment.

The quoted example above falls into the latter category, as do other questions mentioned in the executive summary. Obviously, there's still room for bias in any survey this subjective, but it's not as bad as Jack claims.

That's a useless result. We have seen and read, for example, how various African American activists and celebrities like Charles M. Blow and Ta' nahisi Coates teach their sons that police are racists, and that they must fear them. As a result, they interpret all interactions with police through this prism. One doesn't have to be a research ethicist to conclude that this warps their perception.

Oh, geez, I can't even with this... Does Jack really think black people wouldn't worry about racist cops if they weren't being deceived by race-baiting activists and celebrities?

**In other science news**, on Friday Jack [attacked the Milken study on the death toll in Puerto Rico](#) from Hurricane María. I addressed the Milken study in detail in [an earlier post](#).

**On Sunday**, Jack brought up the Kavanaugh hearing and the [accusations of sexual misconduct](#) coming from one of his former high-school classmates. Unsurprisingly, Jack thinks her accusation is unethical.

2. The accusation was over 30 years old, meaning that all aspects of it, including the recollections of the alleged participants, would be inherently untrustworthy. This is why we have statutes of limitations. UNFAIR, and IRRESPONSIBLE.

There is no statute of limitations on Senate hearings for Supreme Court nominees. It's up to the Senators to weigh the value of her testimony

3. The accusation was, and still is, unsubstantiated by anyone else. UNFAIR, and IRRESPONSIBLE.

This isn't a civil suit. Substantiating her claims is not really her responsibility.

4. The accusation was made against a distinguished public servant and family man with no documented blemishes on his record or character as an adult, stemming from an alleged incident that occurred, if it occurred, while he was a minor. UNFAIR

And? And?

Look, it wasn't an "alleged" incident to her. She knows what she believes happened. So unless we're sure she's lying, there's nothing unethical about saying things she believes to be true.

5. No complaint had been made against Kavanaugh by the accuser at any time in the intervening years, until his nomination by President Trump became a political rallying point for the Left. IRRESPONSIBLE.

I'm really tired of this argument, from Jack and everyone else who makes it. You say she should have complained earlier? Well then, *in what forum* should she have made her complaint? In 1982 she was a 15-year-old high-school girl attending a party with boys and drinking and no parents, and she may have been drinking herself. From her point of view, admitting any of that to her parents or school authorities or the police would just get her in trouble, making the whole incident even worse.

And once a few years went by, telling her parents or the school wouldn't do any good, and telling the police after so long probably wouldn't help either. There'd be no one she could tell that would be able to do anything about it... until the nation's political engines presented her with an opportunity to get revenge. Kavanaugh's nomination is the first time in decades she's been able to tell her story to someone who could make it matter.

**On Monday**, Jack again touched on [the Kavanaugh hearing](#), and Jack's outrageous response deserves note:

Apparently the Trump administration has decided to pander to the worst of #MeToo fanaticism. I just heard Kellyanne Conway say "This woman should not be insulted, and not be ignored."

Yes, she should be. She should be insulted because she has interjected herself into a Supreme Court confirmation based on a distant memory she cannot prove, denigrating a veteran professional based on alleged conduct that he may have engaged in as a minor

I can't see any way Jack's response is ethical.

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Filed Under: [Ethics](#)

## Jack Marshall Watch 2018-09-10

September 10, 2018 by Mark Draughn — 7 Comments

Jack started the week with a bang, as he tore into... wait, let me check my notes... [Senator John McCain's funeral](#), which he describes as "a perfect example of hypocrisy for the ages."

It was undeniably *uncivil* to dis-invite the President of the United States from what would otherwise be a display of unified and bi-partisan Washington community respect for a departed public servant. That was an insult, and intended as one.

Maybe, but it was also a courtesy to McCain's family and friends. I certainly wouldn't want President Trump at *my* funeral, because I love my family and wouldn't want to subject them to that. It's arguable that McCain also did Trump a favor, because you know that if Trump was there he would have said some stupid shit.

Jack likes rules, so here's a rule that applies: Don't invite a clown to perform at a funeral.\*

Insults are not civil. The retort to this is that the President was not civil to McCain, which is true. However, if the professional duty of civility is waived by another's breach of it, then there is no such duty.

Correct. There is no such duty. This is not like a customer service situation, where employees are supposed to remain unilaterally polite even to the rudest of customers. Civility is a two-way street. If you don't give it, you have no right to claim it from others. Trump is reaping what he has sown.

McCain's own daughter launched the proceedings with her own uncivil rant, saying in part, "We gather here to mourn the passing of American greatness—the real thing, not cheap rhetoric from men who will never come near the sacrifice he gave so willingly, nor the opportunistic appropriation of those who lived lives of comfort and privilege while he suffered and served." Later, she added, "The America of John McCain has no need to be made great again, because America was always great."

Defending her father at his funeral? What a bitch! Why wasn't she thinking more about Donald Trump's feelings!

In addition to being uncivil [...] the attacks on the President, like Meagan McCain's, were cowardly. The man (and the office) being savaged wasn't present, and the crowd was united in its hostility to the target. George Washington's 110 Rules of Civility cover that kind of conduct neatly:

89. Speak not evil of the absent, for it is unjust.

I guess by the time Washington got to number 89 he was just padding out the list, because that makes no sense. It's an impossibly restrictive standard. Also, I'm no historian, but I'm pretty sure Washington had some nasty things to say about King George. And if Jack is really concerned about speaking ill of the absent, why is he calling Meagan McCain a coward when she'd not around? For that matter, Jack also criticizes Senator McCain, who is about as absent as it gets.

Seriously though, I don't know what Washington meant when he wrote this, but the usual social rule about not speaking ill of someone behind their back is an admonition against spreading rumors that they won't know about therefore cannot attempt to counter if they are untrue. That's not relevant here because Meagan McCain wasn't passing around rumors. She was expressing an opinion. And she wasn't saying this behind Trump's back. She spoke in public, in front of the news media, where Trump could easily find out about it and respond.

**On Tuesday**, Jack [complains](#) about this passage from [a story](#) about the family of 15-year-old Jordan Edwards, after a police officer was sentenced to 15 years in prison for killing him:

Edwards also acknowledged that before the start of the murder trial she was pessimistic about the prosecution's chances, after watching police shooting cases like those involving Michael Brown, Tamir Rice, Philando Castille, Clinton Allen, Alton Sterling, Terence Crutcher and others.

Jack objects, not without some merit, to the article's grouping together of those cases.

Michael Brown attacked a police officer and was shot.

That's a fair description, given what we know. But Jack doesn't stop there.

Tamir Rice, the 12-year-old boy, died as the result of a series of mistakes by all involved, at the hands of a police officer who never should have been allowed to carry a gun. Rice's death was negligence, not murder.

Tamir Rice was innocent, and he was shot dead by a police officer, and no one was ever charged for killing him. Jack's remark about it being negligence changes nothing. No one was charged with negligence either. It's not hard to see how this would make someone worry that a child shot dead by a police officer might not receive justice.

Philadro Castile, a black motorist who insisted on reaching into his pocket for his license after announcing to a panicky officer that he was carrying a gun, was shot after the officer screamed, "Don't pull it out!" more than once. I don't think any jury would guilt beyond a reasonable doubt in that fact pattern, and the officer's jury didn't.

This is a bit disingenuous. For one thing, you wouldn't know from Jack's description that after the officer screamed "Don't pull it out!", Castile did not, in fact, pull out his gun. Jack also omits the salient fact that the officer also asked Castile for his driver's license and registration. In other words, he told Castile to get something he'd have to reach for, and then shot him for reaching for something. This is bad police work and arguably a criminally bad shooting.

Jack also has this to say:

I honestly don't know what the right approach is to sentencing police officers who kill citizens without justification or cause in the throes of panic, bad judgment, poor training, or tragic error. I believe that the perilous job police officers perform should be a mitigating factor in sentencing.

**Which contrasts disturbingly with [his next post](#)**, about some people who encountered a moose near a bike path and accidentally frightened it into a body of water, where it drowned:

This is a pointless, tragic, negligent killing of an innocent animal. No photograph is worth the life of a vole, much less a moose, yet too many human beings are so addicted to recording the images of their oh so fascinating lives that they disconnect the ethics alarms and common sense alerts that should tell them instinctively that...

- Intruding on nature threatens and harms it.
- Reality is not best experienced through a camera lens.
- Nobody else can enjoy a natural scene when human beings insist on imposing on it.
- The welfare of the wildlife should be the first consideration, not an afterthought.

What is an appropriate practical punishment for tourists who do things like this? Fines are not enough, and I guess public flogging is excessive.

These people didn't intrude on nature. They were in their community. The moose was the intruder. That's not the moose's fault — moose will be moose — but Jack wants these people punished for not understanding the risk of a situation they stumbled into by accident.

On the other hand, when a trained police officer working for by the community deliberately inserts himself into a situation where he unnecessarily shoots someone, Jack is all "Eh...I don't know...it's complicated...there are mitigating circumstances..."

I doubt Jack literally thinks Moose Lives Matter more than black lives, but the juxtaposition of those posts is food for thought.

**On Thursday**, Jack wrote about the [an anonymous op-ed](#) in the *New York Times* by a member of the Trump administration who claims that Trump's staff are managing him like a toddler to keep him from screwing things up real bad.

If the op-ed is not a hoax, and if there are, as the writer says, highly placed members of the Trump Administration who are pretending to be loyal government employees but who are actually trying to undermine the President and his policies from within, then the assertions by conservatives and Trump supporters of the existence of a "deep state," much mocked by the news media and Democrats, have been accurate all along.

Not even close. The "deep state" refers to career bureaucrats who are so well entrenched that pretty much just keep doing what they're doing no matter who is president. The author of the op-ed, and everyone he refers to, are the "best people" that Trump picked to be in his administration. This is a problem he brought on himself.

**In his Friday morning round-up**, Jack took on Twentieth Century Fox for [removing actor Wilder Striegel's scenes](#) from the new version of *Predator* after actress Olivia Munn discovered he was a registered sex offender. He had served six months in jail on charges of risk of injury to a child and enticing a minor by computer in connection with a 14-year-old girl.

Jack's response is a thing of beauty:

This reminds me of the scene in *Ship of Fools* when a passenger is exiled from the captain's table on a German ship because a Nazi complains that he is Jewish.

I did *not* see that coming. I know Jack supports the War on Drugs, but he must have been smoking something to think it was appropriate to compare this situation to the Nazi persecution of the Jews.

I don't like the way we treat sex offenders in this country. The registration requirements and living restrictions are draconian, yet there is little evidence that sex offender registration reduces crime rates. But not wanting



a registered sex offender to appear in your big studio film does not make you Hitler.

I know some registered sex offenders. One of them is a good friend, and a terrific human being in all respects that I have observed. I would cast him in a play I was directing, and in fact have. If an actress objected, or anyone else, my response would be the same as it would to a performer who complained that he or she had discovered that my friend was part black, Muslim, or a transsexual.

On the other hand, if she discovered that one of the performers had been brought to American illegally by his parents when he was eight, Jack would probably want her to call ICE on him.

**On Saturday**, Jack [posted from his business trip](#) to Ft. Lauderdale, Florida, and the second item is 100% classic Jack. He's angry about an article listing [countries where you would probably enjoy retirement more than in the United States](#), based on something called the [2017 Global Retirement Index](#).

The entire attitude underlying this article, "16 countries where you can retire 'happier' than in the US." is selfish and irresponsible. You are an American citizen and this is a participatory democracy. I don't care if you're retired; you still have a lifetime obligation to contribute to society, your community, and the nation.

No. No you don't. Nobody *owns* you like a piece of fucking property. And you certainly aren't owned by the government. You're free people and you can do what you want.

I guess I shouldn't be surprised that a guy who gets so angry over people coming here from other countries would also get angry over people leaving. This is just Jack showing his ugly totalitarian streak. It's values like this that make me think it's a waste of time to leave comments on his posts.

**Jack also writes** about [some unexpected encounters he had with transgender people](#) on his trip. Don't worry, it's more amusing than horrifying.

At our hotel in Ft. Lauderdale, a convention of either transvestites, transgender individuals, or some combination of the two dominated the hotel. The organization was "Himmaher"...I think I'm spelling it right.

He's not spelling it right. The first entry Google finds for the word "'Himmaher" — and I had to force a literal search — is Jack's post.

I'm just guessing, but I think Jack must have been staying at the Riverside Hotel in Ft. Lauderdale, which from September 6 through 8 was hosting the [Southern Comfort Transgender Conference](#). The conference occupies four of the hotels's conference rooms: The New River room, Abeona room, Merritt room, and...the Himarshee room. I'm guessing Jack saw or heard that last room and thought it sounded like some kind of transgender reference. It's actually the Native American name for a nearby river. (Jack has sort of corrected this in his post since.)

I had several illuminating encounters. I don't know that this is true of all such people, but the members of this association or club all seemed to want to make any non-club member they saw as uncomfortable as possible. Yes, that's unethical.

Yes, that must be what they were up to. They're freaking the squares. It's the only possible explanation for a convention of hundreds of transgender people walking around looking like they are transgender people.

But what these people seemed to be seeking was imposed ethics zugswang. If you looked directly at them, the response was a chip-on-the-shoulder, "Go ahead and stare, honey: never seen a freak before?" If you appeared to be avoiding staring—I regard a six-foot ex-male standing in the middle of a hotel lobby in a wig, skimpy bathing suit, 6 inch heels and speaking loudly in a base voice as parading a psychological problem or ten, and deserving the same social courtesy I would offer to a Tourette's victim or a hebephrenic—then the individual decided to make it a project to get you to stare, as if your failure to provide the attention they craved was an insult.

So it's all a trap, you see. Transgender people are trying to make you feel guilty for not starting at them, but when you look at them, they snark at you. Don't say Jack hasn't warned you!

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\*Unless, of course, the deceased and/or close family and friends are actual clowns, in which case a sketch suitable for the somber occasion may be appropriate. *Windypundit* does not discriminate against clowns. We are less tolerant of fools.

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## Jack Marshall Watch 2018-09-03

September 3, 2018 by [Mark Draughn](#) — [Leave a Comment](#)

In [Monday's roundup](#), Jack quotes with approval Steven Mintz [complaining about incivility](#):

Civility is about more than just politeness. It is about disagreeing without disrespect, seeking common ground as a starting point for dialogue about differences, listening past one's preconceptions, and teaching others to do the same. Indeed, "civility represents a long tradition of moral virtues essential to democracy. Virtues like empathy, humility, integrity, honesty, and respect for others are ideals of democratic engagement." Without civility a society can morph into verbal, accusatory, offensive verbal attacks on one another which is the way things are headed in the U.S.

Jack contrasts this with a recent take on civility by Ann Althouse:

Calls for civility are always bullshit, because the real motivation is political advantage. Usually, the civility-demander is trying to get opponents tone it down and not take advantage of whatever hot passion and energy they've got on their side.

Sometimes though, the civility-demander wants a faction of his own side to rein it in, because it might scare the moderates and interfere with the message that we are the sane, reasonable, smart people. When that happens, you can get some in fighting,

with the supposedly uncivil people insisting that now is not the time to be civil. These people are calling bullshit.

For the record, I can certainly see the value of civility in communicating values and ideas, and when calls for civility arise from within a faction, as Althouse describes in her second quoted paragraph above, I think they are worth listening to. But when the call for you to be civil comes from an opponent, it's almost always a self-serving tactic. It's almost always bullshit.

Calls for civility are a cousin of calls for "unity," and they are bullshit for the same reasons. I don't think I've ever heard anyone say something like, "In these troubled times, we need to be unified...and therefore I am withdrawing my position and will be supporting the opposition's plan."

That *never* happens. Whenever someone calls for "unity," they are almost always trying to consolidate their power by calling for their opponents to surrender. Calls for civility directed against one's opponents are just a variation on that theme. They are a cheap trick to gain advantage in an argument.

In a piece responding to Chuck Todd's claim that [popular distrust of the press is due to conservative attacks](#), Jack responds as if Todd had completely denied the existence of media bias. It's a subtle difference, but one that serves Jack's purposes in making the media look stupid and drawing attention away from his own attacks on the media. But the real fun part is this Trump-like declaration of superiority:

*What?* My business and training include detecting bias, and there is no reasonable, factual argument that the news media *isn't* biased.

Heh.

**On Wednesday**, and not for the first time, [Jack expressed his distrust of Google](#). That's because Senator Chuck Schumer suggested renaming the Russell Senate Office Building after John McCain, and shortly thereafter it started showing up as the McCain Senate Office Building on Google Maps.

But it's not Google's role to lobby for the change, or worse, to make it unilaterally, as it did today on Google Maps. This was especially bad—but helpful!—timing for the giant tech company, as it is under fire for political bias by the President, who tweeted that the search engine was "rigged," and Congress, and Google's CEO just refused to be questioned on the Hill. These companies, like Facebook, Amazon and Twitter, are arrogant beyond all measure, drunk with their growing power, and ethically inert. You can regard this episode as just a funny glitch if you like.

I think it's an inadvertent warning.

Google explained what happened in [a piece that Jack actually links to](#):

By early afternoon, the error was fixed, and all queries for "McCain Senate Office Building" in Google maps were redirected to Russell. A Google spokesperson suggested the change was prompted by user suggestions.

"We empower people to contribute their local knowledge to the map, but we recognize that there may be occasional inaccuracies or premature changes suggested by users. When this happens, we work to address as quickly as possible," the spokesperson said in a statement to CNN.

Someone pointed this out in the comments, but Jack wasn't having any of it:

Sounds like lame excuse to me.

That's not an excuse. That's literally how Google works. A big part of Google's business model is sifting through information provided by other people to find useful information. When you do a Google search, just about everything in the non-sponsored results was written by people all over the internet and selected by Google's algorithms, based on other content from people all over the internet. It's automated crowd-sourcing of information. Yes, it can and has been gamed, but most of the time it does a pretty good job at teasing information out of the cacophony of the web.

So I can "suggest" that the Capitol be called "Das Kapital and the White House Be renamed The Fright House" and it will just fly right through? I doubt that.

Probably not. But if you pick a less famous building and get a few hundred other people to go along, then yeah, probably.

With great power comes great responsibility. The people who own and operate the big tech companies are not responsible enough, diligent enough, smart enough or ethical enough to control the power they have. This shows that we are foolish to trust them to the degree we do.

Speak for yourself, Jack. Some of us take the time to learn about the tools we use. Besides, what's the alternative that is actually better?

**By Friday**, Jack was also [mad at Wikipedia](#) because he felt the entry on Bruce Ohr was tainted by liberal anti-Trump bias, since it did not comport with Jack's deep suspicion of the FBI and the Mueller investigation. That post has been edited hundreds of times by dozens of people, with more of the same in the commentary on the Talk tab, and somehow Jack thinks there is something called "Wikipedia" that made it partisan.

**Jack also writes** about Stanford's policy of [forcing students with mental health issues to take a leave of absence](#):

Stanford's website says that a leave may be encouraged or required for a student whose psychiatric, psychological or medical condition "jeopardizes the life or safety of self or others, or whose actions significantly disrupt the activities of the university community." I don't see how anyone can argue with that.

The part about jeopardizing others or being disruptive to others seems entirely reasonable. But that's not what the suit is about, as Jack himself explains:

A lawsuit is challenging the practice of universities of sending students who admit suicidal tendencies home rather than trying to help them on campus. The class action suit accuses Stanford of accusing the university of discriminating against students with mental health issues by coercing them into taking leaves of absence, rather than trying to meet their needs on campus.

Somewhat surprisingly, Jack disagrees with the lawsuit:

Bad law suit, and bad theory. If there is one thing the past several years have made clear, colleges and universities perform horribly one they start trying to do anything other than teaching—and they don't even do that so well, in too many cases. Students with serious emotional and mental problems should be put into the hands of professionals, and such decisions should be the responsibility of the family, not educators.

This is so wrong, on so many levels.

First of all, when somebody in your community comes to you for help, you should try to help them if you can. That's just the compassionate thing to do. And even if you can't help them, what you *don't* do is kick them out of the community.

(There are exceptional situations, of course, such as when somebody's mental health problems could harm the community. These situations are rare, but they do happen. There are also "communities" that are not substantial enough or too special-purpose be able to offer the right kind of help.)

Second, some of these students are depressed and anxious and reporting suicidal thoughts. Now I'm not a mental health professional, but I'm pretty sure that what you *don't do* when a suicidal person asks for help is *stress the living fuck out of them* by unnecessarily thwarting one of their major life goals.

Third, it's possible that the student's family situation is the cause of their problems, and forcing them back into that situation would exacerbate the problem.

Fourth, Jack says students with mental and emotional problems should be put into the hands of professionals. Well, Stanford's department of Counseling and Psychological Services has a [staff of three dozen people](#), including psychologists, psychiatrists, and social workers. Stanford has professionals.

Fifth, given that Stanford offers these services to students, they are obligated to provide them when students meet the requirements for receiving them.

Sixth, Jack takes the position that colleges and universities are too incompetent to do anything that's not teaching. But the course of action he defends, kicking the students out, is an example of exactly that kind of incompetence.

- **Jack:** Colleges and universities are too incompetent to help a student with mental health problems.
- **Also Jack:** Colleges and universities are totally competent to decide that a student's mental health problems would improve if they were forced to leave.

Seventh, Jack's position is disrespectful of the students' abilities to make their own choices. The students in question are not so mentally ill as to be incompetent. If they want to quit school and go home, they can. If the school's mental health *counseling* service really believes the students' mental health would benefit from a leave of absence, they can *counsel* the students to take one.

**Finally, on Sunday**, Jack takes one of his commenters to task for accusing him of writing more about politics than ethics. Jack refutes this with numerical statistics. I'm inclined to agree with Jack here, especially since I've begun writing these round-up pieces. I'm responding to a lot fewer of his posts than I thought I would, because most of his posts are about sports or showbiz, and many of the rest are not about heavily politicized issues.

Ross's comment also reminded me that I need to add the "so called ethicist" and "self-anointed ethicist" to the magic phrases that can get a commenter banned.

I'm probably guilty of that. I am generally suspicious of people who call themselves *ethicists* because it comes across as an attempt to put lipstick on busybodyism. (I'm a busybody on this blog, but I don't pretend otherwise.) Also, some ethicists have [truly stupid and sometimes horrifying views](#).

In addition, I don't think it's entirely fair for Jack to complain about being called a "self-anointed" ethicist, when [his bio page on his professional website](#) lists no specific training in ethics, no certifications in ethics, and no membership in professional ethics organizations (although he is a member to two bar organizations which presumably have ethics codes). Although perhaps Jack is just objecting the the connotations of "self-anointed" and would be okay with alternatives such as "self-described."

That's not to say that Jack is a fraud. People ask for his opinions on ethical issues, and they ask him to teach ethical issues to others, and they pay him enough to make a living, so he's definitely a *professional* ethicist.

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Filed Under: [Ethics](#)

## Jack Marshall Watch 2018-08-27

August 27, 2018 by Mark Draughn — [Leave a Comment](#)

Jack [begins the week](#) by replaying his pointless security clearance complaints:

Meanwhile, the many former intelligence officers that signed a letter of protest against the President's pulling of Brennan's security clearance have nicely made Trump's point. Leave the government, lose security clearance. Employ an expedited procedure to restore it if an individual is again needed to assist or advise in a specific matter.

That is, in fact, how security clearances already work. If a person who had a clearance takes a job where they need one, they can get it very quickly if their Personnel Security Investigation report has not expired. Trump is trying to prevent that for people who have pissed him off.

Prompted by pique or not (of course it was prompted by pique), the pulling of Brennan's clearance shines light on an anomaly and an anachronism. The assumption once was that a former government employee or official would never seek to used special status to undermine the government. That was never true, but now it is obviously fanciful.

The idea that these people are waving around their current security clearance to show how important they are is ludicrous. Whether a guy like Brennan has a clearance now is trivial compared to the fact that he *used to run the entire CIA*. Meanwhile, tons of ordinary national security workers will have their freedom of speech chilled by the possibility of losing their clearance for their political opinions.

**Jack also thinks** that Rudy Giuliani's "Truth isn't truth" gaffe is [fake news](#). Jack's argument is that he didn't mean it literally. But everybody knows that. Nobody really thinks Giuliani really meant to deny the validity of *logical identity*. But that *is* what he literally said:

GIULIANI: ...So, what I have to tell you is, look, I am not going to be rushed into having him testify so that he gets trapped into perjury. And when you tell me that, you know, he should testify because he is going to tell the truth and he shouldn't worry, that's silly because it's somebody's version of the truth, not the truth. He didn't have a conversation...

TODD: Truth is truth. I don't mean to go like...

GIULIANI: No, it isn't truth. Truth isn't truth. The President of the United States says I didn't...

What Giuliani is probably trying to say is that the level and type of truth telling required in these kinds of legal situations is very different from what we colloquially think of as "truth." (Ken White explains why [here](#).) The problem is that Rudy Giuliani has been a prosecutor and law-n-order Republican for so long that when he finds himself in the criminal defense roll, he has no idea how to make a good defense argument. As White puts it in [a hilarious series of tweets](#),

Giuliani really has a talent for putting defense arguments as unconvincingly, unappealingly, and suspiciously as possible.

If his son were a Manhattan gynecologist he'd go around saying "my boy spends his days fingering women near the park."

— HamberderHat (@Popehat) [August 19, 2018](#)

Jack is offended:

Rudy may have lost his edge, but he's no idiot, and he is not going to fall into an "alternate facts" gaffe like Kellyanne Conway. If you didn't know that with relative certainty, if you didn't assume that the biased news media was intentionally trying to make Giuliani, and hence the Trump Administration, and thus Trump himself, inherently dishonest and ridiculous, then you are gullible, dangerously ignorant of the complexity of language and the critical role of context, or stubbornly unwilling to accept what is *res ipsa loquitur* now, which is that journalism has become overwhelmingly partisan and cannot be trusted.

The news media may very well have it in for Trump, but when it comes to making "Giuliani, and hence the Trump Administration, and thus Trump himself, inherently dishonest and ridiculous," it's pretty clear that Giuliani and Trump have been doing all the heavy lifting on that.

**The next day**, Jack continued his weird pattern of being upset with comedians who make fun of Donald Trump. This time, it's [Kevin Hart](#) at the *Video Music Awards*:

Wild applause. You're so clever, Kevin! "Suck it!" How deft and witty, worthy of Oscar Wilde, Gore Vidal, Will Rogers, Dorothy Parker, Mark Twain or Oscar Levant! Where DO you come up with these *bon mots*?

My diagnosis: Hart was virtue-signaling. Yes, today telling the President to "suck it" is a demonstration of virtue to some Americans. It's also virtue-signaling to use anti-white, ageist rhetoric, and to demonstrate that you have the ethical instincts of 10-year-old. You see, Kevin, it isn't about what you can get away with, but rather what is the correct, fair, and civilized way to act.

That bit by Kevin Hart doesn't sound very funny to me either. But Jack actually pronounces it unethical, apparently because it's disrespectful and crude, and because Hart says "old white men." I think it's Jack who's doing the virtue signalling here.

**Up until this point**, things had been going kind of slow for Jack, and I wasn't even sure if I was going to do another post. But on Wednesday... Wednesday was golden.

Jack's first post took Nabisco to task for caving to complaints from People for the Ethical Treatment of Animals (PETA) that the animals on the box of Animal Crackers were [depicted as being in circus cages](#), because Jack is of the opinion that once silly people demand that you do something, you must never ever do that thing. Not even if your product is technically named "Barnum's Animal Crackers" after a circus that [went out of business over a year ago](#) and wouldn't be recognized anyway by children who have never seen a circus.

The best part, however, is that Jack mocked PETA with this graphic:





Yes, PETA really did protest the mistreatment of "Porgs" in "The Last Jedi." Of course it did.

Note the caption:

Yes, PETA really did protest the mistreatment of "Porgs" in "The Last Jedi." Of course it did.

No, PETA really didn't. Oh sure, that certainly *sounds* like something PETA would do, but as former *Ethics Alarms* commenter Chris has pointed out, the image Jack used is actually from a [parody site](#) called *Faking Star Wars*, where it is literally labeled "Fake News":

YOU ARE HERE : [HOME](#) > [FAKE NEWS](#) > PETA PROTESTING THE LAST JEDI DUE TO UNETHICAL CARE OF PORGS

Jack didn't really get his full rage on until his next post, about the news that Paul Manafort, former president of Trump election campaign, had been [convicted of financial fraud](#) on the same day that Michael Cohen, Trump's personal lawyer, plead guilty to breaking campaign finance laws. And not only did Cohen explicitly admit to breaking campaign finance laws, but he also claimed to have done so [at the request of Donald Trump](#).

This was pretty exciting news for everyone who dislikes Trump, and the happiness of Trump opponents *angers* Jack.

**1. Explain to me, somebody...**why Paul Manafort's conviction on ten charges that occurred before Donald Trump ran for President and that have nothing to do with Russia or the Trump campaign somehow endangers Trump's Presidency? Why is this significant news? Why is it on the front page?

Maybe because this convicted felon is the guy Trump chose to run his campaign? Or because it was important enough for the President of the United States to tweet about it:

A large number of counts, ten, could not even be decided in the Paul Manafort case. Witch Hunt!

— Donald J. Trump (@realDonaldTrump) [August 22, 2018](#)

I feel very badly for Paul Manafort and his wonderful family. “Justice” took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to “break” – make up stories in order to get a “deal.” Such respect for a brave man!

— Donald J. Trump (@realDonaldTrump) [August 22, 2018](#)

Now, I can see why his acquittal would be big news, and it would raise fascinating questions about the Mueller investigation’s focus and competence, but the convictions? Please explain. Somebody?

So this case was so important that an acquittal would have been big news, but it’s also so unimportant that a conviction is practically no news at all? I’m at a loss here.

Right-wing blogger Liz Shield’s [cynical explanation](#) of why Manafort was involved in the investigation at all is beginning to look good to me. Shouldn’t it? She writes,

He was put on trial because he worked for Trump so that the left can interfere with Trump’s presidency by clouding everything he does with the threat of looming criminal investigations. That way the hyenas on the cable news network have something to squeak about on their nightly clown shows and most importantly, so that no one wants to work for Trump because the cost is too high.

Yes, that must be it. Robert Mueller, the former director of the FBI, appointed by Deputy Attorney General Rod Rosenstein, a Republican, who was himself nominated by President Trump and confirmed by the Republican-controlled Senate, is doing the whole investigation as a media smear campaign to discourage people from working for Trump, even though, as I said earlier in this sentence, Deputy Attorney General Rod Rosenstein was basically hired by Trump... Boy, when you lay it all out like that, it Just Makes Sense!

**2. And speaking of “sleaze buckets” and “never-Trump maniacs danced around in glee”...**The [plea deal](#) by ex-Trump fixer Michael Cohen is also being hyped absurdly, though it does have something to do with the President, and definitely raises all sorts of ethics issues. The funniest one is whether anything Michel Cohen says has any credibility at all. Astoundingly, Times columnist Bret Stephens wrote that [Trump should resign or be impeached after Cohen guilty plea](#). This is an excellent example of how the resistance is so hungry for impeachment that it leaps at any theory, no matter how dubious. I seriously doubt that Jack the Ripper could be found guilty of a crime based on the testimony of Michael Cohen. Why does Stephens believe him? Because he *wants* to believe him, that’s all, even though there are few public figures alive with less integrity or trustworthiness.

Here Jack is moving the goalposts. Stephens is talking about *impeachment*, but Jack is asking whether Cohen is trustworthy enough that his testimony could be used to *convict someone of a crime*. The latter requires meeting a really high standard of proof. There’s no clear standard of proof for impeachment, but since impeachment is only an accusation — like an indictment — it’s not unreasonable to assume the same probably cause standard should apply. I think sworn testimony from an accomplice to the crime might well qualify.

Has Stephens read the Constitution? “High crimes and misdemeanors” is usually believed to mean “while in office.” A pre-election election law violation, even a serious one, would not, or should not, qualify.

Wait, what?

Many people argue — and it sounds reasonable to me — that you can’t indict a sitting President. It would be too confusing if any random United States Attorney, or even the Attorney General, could unseat the elected leader of the executive branch. You first have to impeach him in the House and convict him in the Senate. Only then can he be charged with a crime.

But if that’s the case, then Jack’s interpretation of the impeachment process leads to perverse consequences. It would mean that an elected President gets an irrevocable four-year hold on prosecution for *any crime* he commits before he takes office. A President-elect could strangle someone to death on the morning of his inauguration, and as long as the the body isn’t discovered until after he takes the oath of office, then for the next four years *no one* — not the Department of Justice, not the court, not Congress, and not the voters — would have the power to remove him from office so he could be punished for his crime.

That’s just stupid. Admittedly, there isn’t a lot of precedent here, since no President has ever been removed from office through the impeachment process. But I’m pretty sure there’s got to be some principle of Constitutional interpretation that says you should assume the founding fathers were not a bunch of morons who wanted the presidency to be a keep-out-of-jail card.

(In 2010, Judge Thomas Porteous was impeached and removed from office, and the [Articles of Impeachment](#) included the accusation that he “knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge.” Clearly, any crime a person commits to obtain an office must come before the person takes office. There were other charges, but it appears that impeachment for crimes prior to taking office is possible for at least some Constitutional offices.)

The third section of Wednesday’s post brings Jack back to one of his favorite things: Hating illegal immigrants.

**3. Right-wing media, left-wing media.** Police in Iowa [announced that](#) the body of missing college student [Mollie Tibbetts](#) was found, and that she was killed by an illegal immigrant who had been in the US for several years.

Jack then finds a connection between the political stories and this one, engaging in a bit of whataboutism in the guise of media criticism.

On Fox News, this story was broadcast over the Manafort and Cohen events; everywhere else, it was third, especially the illegal alien component.

He goes on,

On CNN's Headline News this morning, we learned that the alleged killer was an "undocumented immigrant." A better example of how dishonest and misleading that left-biased description is could hardly be imagined. "Undocumented" sound like the killer had lost his library card.

Everybody knows what it means.

How is the fact that he is "undocumented" relevant to the murder? "Illegal," however makes the relevance clear. He was already a law-breaker. He should not have been here, and thus had the law been properly and correctly enforced, Mollie Tibbetts would be alive today.

Zeke Miller, the AP's White House reporter, [re-tweeted a link](#) to the Washington Post's article about Tibbetts' body being found, and wrote, "Likely coming to a Trump rally near you.... Investigators: Suspect in Mollie Tibbetts death is in custody, subject to immigration detainer." Yup. And there is nothing wrong with the President calling attention to that *at all*. Every murder, every *crime* committed by an illegal immigrant is a political story, because one whole side of the political spectrum wants illegal immigration to be regarded as natural and fair.

So Jack says every crime committed by an illegal immigrant reflects badly on the political left because the left doesn't regard illegal immigration as a serious crime. On the other hand, Jack says crimes committed by close associates of President Trump have nothing to do with anything. Jack seems to be bending his ethical analysis to serve his politics.

On Thursday, [Jack took on](#) one of the criticisms of the anti-immigrant position. He quotes:

"Mollie Tibbetts was murdered b/c she told a man to leave her alone while she was jogging. Her murderer happens to be undocumented. This isn't about border security. This is about toxic masculinity. Mollie Tibbetts lost her life b/c a man couldn't take her saying no. Full stop...Her murderer actually might not even be undocumented. Regardless it is problematic for people to characterize an entire community based off the actions of one person. The majority of mass shootings in America are carried out by white men. So are we going to round them all up?..."

—Symone Sanders, former Bernie Sanders spokeswoman and current CNN contributor.

Jack's response contains this remarkably dimwitted paragraph:

Sanders says that "it is problematic for people to characterize an entire community based off the actions of one person" immediately after she used the actions of one person to impugn his entire gender! How arrogant and dim does someone have to be not to realize that she's contradicting herself in the same tweet series?

*That's her whole point!* She's attempting to criticize the mass blaming of illegal immigrants by offering a form of mass blame that she thinks is equally absurd. She's arguing that we shouldn't blame all illegal immigrants for this murder any more than we would blame all white men for mass shootings.

The argument that Sanders appears to be too slow to comprehend is not that all illegal immigrants (the terms is illegal, Symone, not “undocumented”) are killers, or even dangerous (unlike the assertion you made that being male makes us “toxic”), but that no crimes of any kind should be committed by people who are in the U.S. illegally, and if the laws were enforced as they should be, Tibbetts and other victims would be alive.

If we ignore Jack’s whinging about “undocumented” and let pass his misunderstanding of the phrase “toxic masculinity,” the core of his argument is this:

...if the laws were enforced as they should be, Tibbetts and other victims would be alive.

I can’t disagree with that statement as far as it goes. If the Department of Homeland Security had been 100% successful in its attempts to prevent people from immigrating without the proper paperwork, then this murder would not have occurred. But you can’t just magically wish for DHS to be 100% effective. It comes at a cost. It would require tens of thousands of additional employees hired away from other parts of the economy for billions of dollars per year. (Including about \$21 billion for the Trump wall, if we’re that stupid.)

DHS has an annual budget of [about \\$40 billion](#). If we take a conservative guess that this is just 20% short of what it would take for them to enforce the laws as Jack wants them to, that’s \$10 billion a year. Given that the violent crime rate among illegal immigrants is not obviously higher than it is for citizens, this is an absurdly indirect and wasteful way to protect American citizens from violence. If we want to spend an \$10 billion/year to save American lives, it would be far more effective to focus on measures that directly intervene in threats to their lives, such as funding more trauma centers in major cities. Heck, a \$1 billion/year ad campaign to encourage people to [wash their hands more often](#) would probably save a ton of lives.

Increased government expenditures are not the only harm that would come from extremely strict immigration enforcement. There’s also the harm to the immigrants, who would be prevented from joining family members in the United States, and who would be forced to stay in countries that are far poorer and which might involve serious threats to their lives. Jack’s plan to keep out illegal immigrants would kill some of them and immiserate millions more.

And it wouldn’t just be the immigrants who suffer. Illegal immigrants do a lot of jobs for us citizens. They farm our food, or catch it at sea. They plant forests, care for them, and cut them into timber. They build and maintain buildings, and care for the grounds around them. They make our clothes, prepare our food, and clean our houses. Some of them [save our lives as paramedics](#). They are our neighbors, they are fellow members of our churches, and they are members of our communities. They are our friends, our lovers, and our families.

This is an example of the recurring mistake Jack makes when tries to expand his ethics commentary to cover public policy: He takes something that is a

legitimate social harm — murder, fatal drug overdose — and supports draconian law enforcement to stop it, without acknowledging that draconian law enforcement is itself harmful to society. Jack seems to either not understand or not believe in the concept of *harm reduction*: The idea that social policies should be judged by their total effect on harm to society, including the harm from enacting the policy.

“The majority of mass shootings in America are carried out by white men. So are we going to round them all up?” Gee, what a deft, apt, persuasive analogy! You see, Symone, unlike being in this country illegally, being a white male is not a violation of the law. Being in the country illegally, in contrast, is. This is both an intellectually dishonest comparison and a jaw-droppingly stupid one.

Legal or illegal has nothing to do with it. Rounding up 12 million white men and removing them from the country would do an enormous amount of harm to them and their families. Nothing changes if we swap in “illegal immigrants” for “white men” in that sentence: Rounding up 12 million illegal immigrants and removing them from the country would do an enormous amount of harm to them and their families. Whether the people concerned are legal or not, the amount of harm done to them is the same either way, and far outweighs the meager benefits to society.

**Jack finished things off** on Saturday with by [bashing the news media](#). He has a point about the silly idea that Trump’s Supreme Court nomination is somehow improper because Trump is under suspicion, but Jack can’t resist attacking Trump’s opponents:

Nonetheless, the news media and the Democrats still somehow manage to out-misbehave the President.

Even granting that as true, there are over 40,000 people [employed as journalists](#), and hundreds of Democrats in major elected offices, thousands if we include all the local positions. That some of them manage to be worse than Donald Trump is not surprising, but Donald Trump is just one guy and he sure gives all of them a run for the money.

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Filed Under: [Ethics](#)

## Jack Marshall Watch 2018-08-20

August 20, 2018 by Mark Draughn — 1 Comment

Reading Jack Marshall’s *Ethics Alarms* is like picking at a scab: I know it’s going to hurt, but I can’t stop doing it. Jack’s blogging output is far greater than mine, so I don’t have time to post a response every time I disagree with something he says. I’ve been leaving comments on his blog, but getting into arguments there uses up time I should probably spend writing for my own blog. So I thought I’d try a scattershot post that responds to several points Jack has made over the past few days.

Don’t get the wrong idea. Jack gets a lot of things right, and much of Jack’s output is routine commentary on ethics in sports and law. But there are some topics where he drives me crazy, as in [last Monday’s comments](#) a few days

before the [coordinated editorials](#) about President Trump's attacks on the press:

Talk about bad timing! We just had the explosion of the fake racist rally story.

Jack is talking about the fizzled [Unite the Right rally](#) in DC, which in his view was an attempt by the media to scare people with imaginary racism that turned out not to exist.

We have the Manafort trial being featured on the front page of most newspapers like it's the O.J. trial, when the majority of public has no idea who the man is and the trial details have nothing to do with anything newsworthy.

Because Manafort is only the former chairman of President Trump's election campaign, on trial for federal financial crimes. Why would that be news?

We have the mainstream news media giving the claims of a reality show villain the kind of attention John Dean received for his Watergate testimony while it makes sure nobody knows that a Chinese spy infiltrated the staff of a powerful U.S. Senator for 20 years.

The "reality show villain" is Omarosa Manigault Newman, a reprehensible reality show performer...and also Director of African-American Outreach for Donald Trump's presidential campaign, after which she joined the Trump Administration as Assistant to the President and Director of Communications for the Office of Public Liaison. So it's not like the media just picked some *totally random* reality show jackass. This is someone President Trump hired to work in his administration. And Trump has further justified the public interest in Omarosa by tweeting about her (which Jack [rightly condemned](#)).

When you give a crazed, crying lowlife a break, and give her a job at the White House, I guess it just didn't work out. Good work by General Kelly for quickly firing that dog!

— Donald J. Trump (@realDonaldTrump) [August 14, 2018](#)

(The spy thing is not so crazy: A guy who drove for Pelosi for many years was found to have [contacts with known Chinese intelligence agents](#), who were likely running him to get political intelligence, which is not considered espionage under the law. That could explain why he was never arrested.)

Jack eventually lands this where he so often does, his hatred of the press:

...journalists are openly abusing their First Amendment privilege, and using it to harm the culture, the public, the political system, our institutions—including their own!—and the nation itself. I think it is obvious that those who are actively inflicting such harm on the nation qualify as enemies of the people.

Yeah. I'll just leave that there.

**On Thursday**, Jack attacked Dan Rather for this tweet:

When Trump criticizes "all types of racism" he's using false equivalence to wink at those who peddle in the distortions of white grievance. It makes a mockery of our history and our present. It's not calming and unifying. It's provocative and divisive. And it's intentional.

— Dan Rather (@DanRather) [August 12, 2018](#)

I have no love for Dan "Memogate" Rather, but Jack [misses the point](#):

Rather is saying it is "false equivalence" to call all forms of racism equally wrong. The level of ethical obtuseness required to make this statement is high and airless. For one thing, it is based on *consequentialism*, the fallacious but common misconception that the consequences of an unethical act make it more or less ethical. No one would seriously dispute that anti-black racism has more than lapped the field regarding the pain, harm and death that it has caused. That historical fact does not make anti-white racism any better, or an even-handed condemnation of both a "false equivalence."

I'm almost positive that Rather is not denying that all forms of racism are equally wrong. What he's likely saying — based on the fact that lots of other people say it — is that not all forms of racism are equally harmful to society.

Think of it this way: [Women raping men](#) is just as reprehensible as men raping women, but one of those things is a much larger problem for society than the other. So, except in certain careful contexts, when someone's response to complaints about sexual attacks against women is "Women raping men is also bad," it feels like they're trying to minimize the problem.

Something similar applies to racism. Anti-white racism isn't very pretty, but in all honesty, speaking as a white male, it just doesn't bother me. I can shrug it off. [Sarah Jeong](#) tweeting [#CancelWhitePeople](#) does nothing to prevent a white guy like me from enjoying life in my nice suburban home. And I honestly don't remember if anyone has ever used racial epithets against me, because they just wouldn't make an impression. I'm pretty sure most people of color in America can't say the same.

Discrimination against white people is not a historic, wide-spread, pervasive problem in America, and implying otherwise feels like an attempt to score points. It also doesn't help that *every* white supremacist organization *ever* claims that *they* are the true victims.

**On Friday**, Jack returned to the issue of Trump revoking people's security clearances out of spite:

In the history of the nation, no former national security figure has issued such sweeping and partisan personal attacks on a President of the United States while wielding his prior position and current security clearance as credentials. We discussed this in some detail [here](#).

That "wielding his...security clearance as credentials" trope is pure misdirection, because (1) nobody is all that impressed by a security clearance and (2) criticizing the President is not a good reason to revoke a security clearance.



The link in the quote above goes to Jack's [previous post on this issue](#), where he asserted that people who lost their government job should lose their security clearance too. But as many people who've actually held a national security position tried to explain in the comments, a security clearance is like an aircraft pilot certification: Pilots don't lose their certificate just because they lost their job at an airline. They just aren't allowed to fly that airline's planes anymore. Similarly, when you leave a national security position, you no longer have access to that organization's classified data, but you retain your clearance until it expires, so you can use it if you get another job that requires access to classified data.

(Technically, that's not quite accurate. In order to be eligible to receive a security clearance, you have to pass a Personnel Security Investigation at the appropriate level — Confidential, Secret, or Top Secret — which allows you to receive a clearance at that level. If you leave the job that required the clearance, you technically will lose that clearance, but that doesn't change the result of your investigation: You're still qualified for the clearance until the investigation report expires, so you can get one immediately without another investigation if you take another job that requires one. Because of this, it's common in the national security community to refer to out-of-work people who have had recent investigations as having a clearance that is "current" but not "active," even though that is not quite how it shows up in the paperwork.)

Ongoing security clearance is a privilege, and indicates that the individual is still regarded as a trustworthy member of an elite group of trustworthy potential public servants. If they have demonstrated that they are not trustworthy, as not only Brennan but also Clapper, Comey, McCabe and others have beyond a reasonable doubt, then they are no longer worthy of that privilege.

A security clearance is not about being "trustworthy" in the vague sense that Jack is using the word here. The trust involved in a security clearance is not a synonym for *loyalty*, and it's certainly not about loyalty to a particular person. A security clearance is about whether you can be trusted not to reveal classified information to people who may harm the United States, and that doesn't necessarily have much to do with other aspects of job performance, or whether you issue "sweeping and partisan personal attacks" against the President.

Security clearances are normally revoked, or denied in the first place, when an investigation uncovers a reason to believe the subject cannot be trusted with secrets. Common reasons include recent use of illegal drugs, alcohol abuse, mental health problems, or a felony conviction. You can also lose a clearance if you have unreported contacts with people from suspect countries, or a habit of breaking rules (indicating you may be unwilling to follow security requirements), or if you commit adultery (making you vulnerable to blackmail by foreign agents), or if you have serious financial problems (which may give you an incentive to sell information). And of course, actually causing a security breach, even if not in an act of espionage, can get your clearance revoked.

Is personal animus also part of Trump's motivations. perhaps even the decisive part? Sure it is, but we just discussed this, too. Bad motives for doing the right thing do not

change the fact that an action is still right.

Look, folks like Brennan, Clapper, Comey, and McCabe may be various types of political scumbags, but where's the proof that they are actually likely to *reveal classified information*? Were any of these guys caught selling secrets? Having an affair? Burglarizing homes? Are any of them facing bankruptcy? Did one of them leave a classified document in a taxi? Was there even an investigation at all?

I doubt it. This is just Trump doing what he does best: Being mean to people he doesn't like. These people aren't being punished for breaking the rules concerning a security clearance. They're being punished because they angered Trump. This is yet another way that authoritarian-minded people like Trump try to control others. This is yet another erosion of the rule of law.

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Filed Under: [Ethics](#)

## Ye Olde Ethics Alarms

December 2, 2017 by [Mark Draughn](#) — 2 Comments

I just went through yet another [argument about illegal immigrants](#) in the comments at Jack Marshall's *Ethics Alarms* blog. Jack has been a frequent source of blogging ideas (at least when I used to blog more), but he's been kind of hard to take ever since Donald Trump was elected. It's not that he likes Trump, but he's clearly attracted to Trump's authoritarianism, especially when it comes to making life hard for people who are here illegally.

Jack is in the "What part of *illegal* don't you understand?" camp: He regards our immigration laws as axiomatically beyond reproach, so his analysis begins and ends with the fact that these people broke our immigration laws — an unforgivable sin. (For an example of Jack's style, he [regularly ridicules people for getting upset when illegal immigrants are torn from families, friends, jobs, and communities by DHS.](#))

One of my biggest complaints about U.S. immigration policies is that they impose the will of anti-immigrant restrictionists on all Americans, [even if we would benefit from the presence of immigrants](#), and [even if we explicitly welcome them](#). This reminds me of the Fugitive Slave Laws imposed on non-slave states before the American Civil War. These laws attempted to force Northerners to return escaped slaves to their masters, despite the harm that would come to slaves sent back, and despite the clear rejection of slavery by Americans in free states.

Every time I read one of Jack's posts about illegal immigration, I find myself trying to imagine what he would have written about those escaping slaves. So, without further ado...starting with Jack's attitude toward illegal immigration, and mixing in some of his rants against Black Live Matter and the media, I arrived at the following, which I imagine to be a pamphlet published shortly before the American Civil War by one of Jack's ancestors:

## *Ethics Alarm #28*

by Jackson "Cotton" Marshall

### Unethical Anti-Slavery Editorial of the Year:

#### Now THIS is Unprincipled Hooliganism!

The *Salem Times-Gazette* has published yet another crazy editorial that threatens to make my cranium shatter.

Last week, in Salem, Ohio, federal marshals were in the process of apprehending two slaves who had illegally absconded from a fine cotton plantation in Georgia, when they were set upon by a crowd of thugs, who identified themselves as members of the unprincipled, law-breaking Liberty Party. The marshals were injured, and the criminal slaves escaped, presumably to make their way to Canada instead of returning to their lawful owners.

The *Times-Gazette* actually applauds these criminals for "helping escaped slaves."

*This is Unethical.*

1. Newspapers should report the news accurately, not spout "abolitionist" propaganda.
2. The editorial refers to the fugitive slaves as "escaped," thus promoting the *false narrative* that plantations are harmful to slaves. The utterly nonsensical nature of this should be obvious to anyone who considers that slaves are an investment, and slave owners can't afford to mistreat them, not if their plantations are to succeed. Admittedly, there have been some abuses, but for the most part slaves are well cared-for — given food and a place to live — unlike factory workers in the so-called "free North" where this act of hooliganism took place.
3. The entire abolitionist movement is itself based on the lie that the Negro is equal to the white man. But if Negroes were really equal to white people of European extraction, they wouldn't be complaining so much about doing the same kind of farm work *that Europeans have been doing for thousands of years.*
4. Also, if Negroes are supposed to be equal to whites, how come none of them have helped their community by investing in cotton plantations? This is nothing more than an excuse for the unwillingness and inability of Negroes to perform the leadership roles that white plantation owners have been taking on for over a century.
5. White people did not enslave free African Negroes. The slaves brought to the Americas were all provided in legal sales by legitimate African traders.
6. The federal marshals were enforcing the Fugitive Slave laws. These laws were passed by the United States Congress, and they are entirely Constitutional. I know this because I've actually read the entire Constitution, including Article IV, Section 2, Clause 3 which specifically states that

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

No honest person could read that and conclude anything other than that fugitive slaves must be returned to their owners. The *Times-Gazette's* bias makes it stupid.

7. It's true that legally, according to the 1842 Supreme Court decision in *Prigg v. Pennsylvania*, no State can be forced to assist the Federal Government in enforcing the Fugitive Slave Act, but that's a mere rationalization. That it's not illegal does not justify supporting the flagrant violators of Fugitive Slave laws.

8. Canada continues its unethical subversion of our longstanding institution of slavery. Canadians are not bound by United States law, but that doesn't change the fact that they are unethically depriving Southern plantation owners of their property.

9. Abolitionists continue their Orwellian deception of conflating free Negroes with absconding slaves. Bounty hunters who capture free Negroes certainly are a real problem — they deserve censure, and the free Negroes should be released immediately — but the truth you won't hear in the media is that the vast majority of Negroes captured by federal marshals are slaves who are too lazy to do the important agricultural work that is their God-given duty. Yet abolitionists scream and yell every time a Negro is captured in the North, as if these lazy slaves were deserving of the same rights as hard-working free Negroes. What part of "fugitive slave" don't abolitionists understand?

10. It is reported that 157 illegally absent slaves were apprehended in the North so far this year. Nobody knows how many weren't apprehended, but it is probably more. No, they aren't all rapists and murderers or even criminals, but they all went north or tried to go north illegally. That makes them wrong and undesirable, and all the linguistic tricks being employed to make that simple statement difficult to express won't alter that central fact.

The *Gazette* goes on to complain that the slaves are being returned to the South, where they will be punished for what the *Gazette* calls their "attempt to gain the freedom of which every man is deserving."

**Good.**

What abolitionist rabble-rousers refuse to admit is that Southern slavery of the Negro is the law of the land. Enforcement of the law against slaves stealing themselves away had, under previous administrations, been flaccid. It's good to have strong leadership that sees the wisdom of bringing federal marshals to the fight. The refusal by some in the Northern States to enforce those laws is incompetent, it is irresponsible, and it is foolish.

Except for the rampant anachronisms, I think I nailed it.

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Filed Under: [Ethics](#)

## No Means No: The Medical Exception

December 23, 2013 by Mark Draughn — 5 Comments

Let's talk about rapist doctors.

I'm not talking about doctors who take advantage of anesthetized patients. That's a problem law enforcement can deal with. What I'm talking about is someone like Dr. Michael Parsa, who works at the University Medical Center of El Paso, and who essentially raped an unidentified woman for the police, according to a [lawsuit filed by the ACLU](#):

39. After the X-ray, Ms. Doe was again handcuffed to the examination table. CBP agents Portillo and Herrera and Medical Center personnel were present in the room. Defendants left the door to the examining room open, and Ms. Doe could see hospital personnel at the nurses' station in the hallway. She was angry that CBP had not released her and scared about what would happen next.

40. Defendant Parsa entered the examination room and barked an order that Ms. Doe spread her legs. She complied.

41. Ms. Doe was mortified. Defendants did not even have the decency to close the door to the examining room so that Ms. Doe would not also be subjected to being observed by passersby as she endured a forced gynecological exam.

42. Defendant Parsa then conducted a series of examinations. While agents Portillo and Herrera and other Medical Center staff watched, he inserted a speculum into Ms. Doe's vagina and observed the interior cavity. According to medical records, Defendant Parsa did not see any foreign objects or evidence of internal drug smuggling.

43. Defendant Parsa also stuck his fingers into Ms. Doe's vagina while palpating her abdomen. This bimanual cavity search was negative: According to medical records, Defendant Parsa did not feel any foreign objects or evidence of internal drug smuggling.

44. Defendant Parsa also conducted a rectal examination: he inserted his fingers into Ms. Doe's rectum and probed the orifice for foreign bodies. According to medical records, Defendant Parsa did not feel any or find evidence of internal drug smuggling.

45. While her rectum was being probed, agents Portillo and Herrera and Medical Center staff watched. Ms. Doe felt that she was being treated less than human, like an animal.

The police didn't even have a warrant, which means that if these allegations are true, then a bunch of people brought a woman into the University Medical Center of El Paso against her will, and just because they asked him to, Dr. Michael Parsa inserted his fingers and a foreign object into her vagina and rectum against her will. That sounds like rape to me.

When something similar happened to David Eckert at the Gila Regional Medical Center last January — [multiple medical explorations of his rectum](#) — the police had at least gone through the trouble of obtaining a search warrant. I'm not convinced that getting an okay from a judge for this kind of violation makes it any better, but in theory the warrant compelled David Eckert to comply with the probings.

It did not, however, compel the doctors to perform the probings. I'm not a lawyer, so don't use this as legal advice, but until the doctors performed their examinations, they were completely uninvolved with the investigation, and therefore beyond the judge's jurisdiction. Judges can compel people to

produce evidence and reveal knowledge that they already have, but they don't generally have the authority to order random third parties to obtain evidence and discover knowledge. They can't, for example, order random photographers to go take pictures of a crime scene for them. David Eckert may not have had a choice, but the doctors did, and I think they chose unethically.

As I pointed out a few years ago, when the subject of [forced catheterization](#) came up in connection with a DUI testing incident, the general ethical requirement is that medical procedures should only be done with the informed consent of the patient, and for the benefit of the patient. Consent has its exceptions — in cases where the patient is incompetent to consent, due to mental defect, unconsciousness, or minor status, certain family members can give consent, and there have been cases where a judge overrode a guardian's refusal to give consent (e.g. had religious objections) to a lifesaving medical procedure, but in each of these cases the treatments were still done for the patient's benefit.

That's not what happened here. The examinations performed in all of these cases were not done in any way to benefit the patient, but to benefit the government's war on drugs. I think the only ethical response to such requests is to refuse to do them.

There's plenty of precedent for physicians refusing for ethical reasons to do things which the government wants them to do, the most prominent example being the refusal by nearly all American physicians to perform court-ordered executions. And although I can't find any AMA ethics rules that specifically address forensic examinations conducted against the patient's will, the [AMA rules about participating in court-ordered medical treatments](#) seem sort-of relevant:

Physicians can ethically participate in court-initiated medical treatments only if the procedure being mandated is therapeutically efficacious and is therefore undoubtedly not a form of punishment or solely a mechanism of social control.

So, for example, doctors might use drugs to calm a prisoner with a mental disorder that causes extreme agitation and self-harm, but they shouldn't simply drug prisoners to make them more manageable for the benefit of the prison staff. Since the examinations conducted in these incidents have no clear medical purpose, they seem a lot more like the latter than the former.

I should note that I'm not saying that Dr. Parsa (or any of these other genital-handling doctors) is a *rapist* in the usual sense of the word: There's no indication they did any of these things for their own enjoyment, and they certainly weren't charged with the crime of rape. My guess is that they were all just having another busy day in the emergency department when someone in charge said "Go help those officers," and so they did their thing and moved on to the next patient without thinking it through. But here are a few things they should probably think about next time some cops come in wanting someone examined:

Dr. Parsa and the others may not have been charged with rape, but I'll bet that at least a few of them are *rapists* in the legal sense of the word. The key

to most rape laws is the consent of the victim, not the motivation of the rapist. I'm pretty sure prosecutors never have to prove that the rapist enjoyed it.

And while you might think a doctor would be immune from prosecution because they were working with the police or participating in a court-ordered exam, the thing is that many states' criminal statutes are notoriously poor at exempting law enforcement actions. For example, in states with the death penalty, the legal definition of murder might not include [an exemption for legal executions](#). My guess is that the rape statutes in many states are no more thoughtfully written and do not include exemptions for law enforcement cavity searches, because no prosecutor would ever charge that. This does mean, however, that any doctor who participates in such searches is probably at the mercy of the District Attorney — and any succeeding District Attorneys — until the statute of limitations runs out.

Or perhaps more to the point, do you really want to do anything to an unconsenting human being that might or might not be rape only because a judge or a cop told you it would be okay? Shouldn't you make that decision for yourself? And shouldn't the right answer be obvious?

The title of this post is a lie. No means no. There is no medical exception.

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## Lance Armstrong: Evil Or the Future of Sports?

November 2, 2012 by Mark Draughn — [Leave a Comment](#)

I've been staying away from the Lance Armstrong mess because I don't follow sports and I haven't been paying attention to what's been happening. However, a few days ago at *Ethics Alarms*, Jack Marshall tore into a *Washington Post* [op-ed](#) in which [Professor Braden Allenby](#) argued that the sporting world should allow performance enhancing drugs. Jack thinks he's badly wrong, and gives a [lengthy explanation](#) of why. I don't think I have to know too many details to explain why I think both of them aren't thinking clearly.

To start with, it doesn't help Allenby's case that he seems to be defending Armstrong:

In the past month, cyclist Lance Armstrong has been stripped of his seven Tour de France titles. His commercial sponsors, including Nike, have fled. He has resigned as chairman of Livestrong, the anti-cancer charity he founded. Why? Because the U.S. Anti-Doping Agency and the International Cycling Union say he artificially enhanced his performance in ways not approved by his sport and helped others on his team do the same.

This may seem like justice, but that's an illusion.

Allenby is conflating two arguments here. The first is his main argument that cycling and other sports should allow performance enhancing drugs. The second is that Lance Armstrong was right to use performance enhancing drugs even though they are not allowed. You can agree with the first argument and still find fault with the second. This may seem to contradict my arguments elsewhere that some rules and laws are so outrageously wrong that that it's ethical to disobey them, but I don't think that applies here because sports rules are different from other kinds of rules.

The key thing to remember when discussing ethical issues in sports (and games in general) is that most of the rules are, by definition, *arbitrary*. Basketball players have to dribble the ball when taking steps, football players can only throw a forward pass from certain positions on the field, and neither is allowed to use a bicycle to get around the playing area. These rules have no intrinsic moral or ethical basis. They're just the rules of the game.

(Safety rules are an exception. I'm assuming for purposes of argument that we're only talking about relatively safe performance enhancing drugs.)

This has a couple of consequences. If there's no ethical dimension to the rules, there's no ethical argument against changing the rules. Again, they're just the arbitrary rules of the game. You might think this cuts in Lance Armstrong's favor, but it doesn't, because if there's no ethical dimension to the rules, there's no ethical argument for breaking them.

As far as I'm concerned, Lance Armstrong is free to ride his bicycle on whatever (non-dangerous-to-others) drugs he wants. But when he enters competitions, he promises to obey the rules of the competition, and there is an ethical dimension to keeping your promises. It is precisely because the rules are arbitrary that there's no appeal to higher principles when disobeying them.

But that doesn't mean there isn't an argument for changing them, and this is where Jack goes wrong when he discusses the flaws he sees in Allenby's argument.

Allenby's argument would extend to allowing students to plagiarize material on the web and present it as their own as well. The theory that the "status quo" must be accepted as the ethical starting point is systemically suicidal as well as philosophically invalid.

Jack is comparing apples and oranges here. School is not a sporting competition: It has rules for reasons that matter. That's not the case with most sporting rules.

This is also the first appearance of Allenby's bias. His field is engineering and technology; naturally he believes that more is better. He and his colleagues are the people who develop the technologies athletes use to cheat. Of course he thinks they should be allowed to do it openly and legally, and the more the better.

Which doesn't mean he's wrong. And calling this a "bias" is as silly as saying that musicians are biased in favor of music.



Allenby really thinks that sports lovers care most about how well athletes can perform. Undoubtedly, some would be happy to watch freaks and robots compete, but the love of sports is fueled in most fans with admiration for human beings competing using their own abilities, perfected to the level that they can perfect them, without artificial, not to mention surreptitious, enhancements.

That's a fair argument, but it's a non-ethical consideration. It's an argument about the design of sporting competitions.

It's not even a very good argument about the design of sporting competitions. Seemingly outrageous changes to the rules of a sport usually just result in other sports. Allowing cyclists to put small gasoline engines on their bikes would be a perversion of the values of cycling, but it's the definition of motorcycle racing. Heck, if fans want to see athletes "competing using the own abilities," why are they allowed to ride bicycles? Wouldn't it be more natural if they were on foot?

Again, the rules are arbitrary. Fans may not want cycling to change in certain ways, but that doesn't make the changes unethical. Cycling with performance enhancing drugs may not be cycling as we know it — or want it to be — but that doesn't make it unethical. That just makes it a different sport.

*"Why not add drugs and other technologies to the list of legal enhancements, especially when most of us are enhancing our workplace concentration with a morning coffee or energy shot?"*

Yes, this educator, scholar and lawyer really makes this fatuous and hackneyed argument. To begin with, it's a *non sequitur*. How does the widespread use of coffee argue for the legalization of human growth hormone? At best, it is a poor excuse for allowing amphetamines in sports, so athletes can be alert too.

I don't know how Jack doesn't get this. It's an analogy. Both caffeine and human growth hormones enhance the performance of the people who take them. Why is one legal and the other not? Again, the rules are arbitrary.

The real foolishness of this argument is that most people's performance in the workplace isn't a competition in which fairness [and] the appearance of integrity is paramount.

And integrity wouldn't be an issue in the competition if everybody was *allowed* to use performance-enhancing drugs.

One of the things Jack accuses Allenby of (with some justification, I think) is using a "False definition of the opposing position." Unfortunately, Jack mischaracterizes Allenby's position in the next section:

*"My anecdotal class surveys show that students have significant skepticism about the reported side effects of such treatments and drugs, as well as perceptions of bias among regulators against enhancement. As a result of such attitudes, there's a tendency to play down the risks of some technologies. Call it the "Reefer Madness" response — ignoring real risks because you think the danger is exaggerated. This is ignorance born of prohibition."*

I give the professor kudos for a truly original crack-pot justification. Make something legal so you can prove that it's more dangerous than we already think it is.

Allenby is arguing here that sports regulatory bodies have fallen behind the times when it comes to performance enhancing drugs. Like it or not, athletes are using them, so the responsible thing to do is to make sure they have the information to use them responsibly. It's kind of like teaching children about safe sex: Would you rather they got advice from experts or tried to figure it out themselves?

I should emphasize that Jack Marshall's post does have some very good points. In particular, he hits hard on the importance of integrity in sports, a point that Allenby misses by defending Lance Armstrong. The rules of any given sport may be arbitrary, but they are also the definition of the sport. Armstrong may have been very fast on a bicycle, but if he was breaking the rules, he wasn't playing the sport he was supposed to be playing. It only makes sense that he shouldn't win awards for a sport that he's not even playing.

But as I said, the issue of Armstrong's obedience to the rules is a different matter from whether the rules are wise. I know very little about competitive cycling, but Jack paints a picture of sport that is riddled with cheating to the point where it's likely that anyone who wins is probably cheating, and anyone who plays with fairness and integrity is probably going to lose.

Those are terrible values. It's the worst possible situation. The people in charge have created an environment where only the lawless can thrive. As bad as Armstrong was for the sport, the people who created this situation are far worse, because they have created a situation that rewards and encourages cheaters like him.

It's the completely predictable result of creating a set of rules that you cannot or will not enforce, and there are only two ways out of that situation: You can do what Jack wants and enforce the rules, or you can do what Allenby wants and remove a rule that's hard to enforce. I don't know enough about cycling to have an opinion on which is better for the sport, but either is better than what they've been doing.

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Filed Under: [Ethics](#)

## Everybody Does It – Part 2: Relative Judgement

May 27, 2012 by Mark Draughn — [Leave a Comment](#)

In Jack Marshall's list of [24 unethical rationalizations](#) for bad behavior, the number one rationalization — the king of all rationalizations — is "Everybody Does It." Although I agree in principle, I find it interesting to explore the nuances and exceptions. In [Part 1](#) I discussed cultural norms, and how sometimes ethical behavior is *defined* by what everybody does.

This time around, I'd like to talk about a much broader exception to the rule which occurs when you're applying the ethical analysis not to yourself but to other people in a group.

Suppose it's right before an election, and you read a credible news story claiming that one of the candidates for office used his official position to do small favors for friends. That probably counts against him in terms of gaining your vote. But supposed that the next day you read another credible story claiming that all the other candidates for that office also did small favors for friends. That kind of negates the information you had about the first candidate.

It's not that "everybody does it" makes it better. It's that your knowledge of one particular person's bad behavior isn't helpful if you know all the other people are engaged in the same bad behavior. When you're making decisions about the relative merits of other people, the absolutism of rejecting "everybody does it" won't help you. It would be irrational to hold one person more responsible than others for the exact same bad behavior.

Marshall himself uses this form of "everybody does it" in [defending Mitt Romney](#) over stories about his bad behavior when is was a very young man:

The Washington Post's despicable exposition of ancient recollections of Mitt Romney's mean-spirited and boorish conduct while being enrolled in that well-known cauldron of mean-spirited and boorish conduct—prep school—has caused me serial episodes of shock. [...]

Guys in school assault each other, batter each other, punch each other, and do horrible things to each other that would get them arrested if they did it to a stranger on the street. That doesn't make them "criminal," and it doesn't make them sociopaths. It's called "growing up." [...] Why does Rick assume that Mitt Romney is different? Why doesn't he see that it is unfair to assume that he is?

Obviously, if there are nuances to bad behavior, you can (and should) make judgements on those nuances. If all of your candidates are 35-year-old men who had sex with 16-year-old girls, it probably makes a difference if the relationship was a drunken hookup at a party, a teacher and his student, a client and a prostitute, or a father and his daughter.

But if the situations are identical (or at least somewhat comparable), then it doesn't matter how reprehensible the conduct, nor how high the stakes, as long as you have to choose among a fixed group of people and there's no way to postpone the decision or add other candidates. If it comes to light on election eve that all our presidential candidates are child molesters, then you're going to have to hold your nose in the voting booth and choose which child molester you want to be President.

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Filed Under: [Ethics](#)

## Everybody Does It – Part 1: Cultural Norms

May 12, 2012 by [Mark Draughn](#) — 3 Comments

A few weeks ago at the *Ethics Alarms* blog, Jack Marshall published his list of [24 ways people justify unethical behavior](#). He starts the list with an old rationalization that is the basis for several others:

1. The Golden Rationalization, or "Everybody does it"

This rationalization has been used to excuse ethical misconduct since the beginning of civilization. It is based on the flawed assumption that the ethical nature of an act is somehow improved by the number of people who do it, and if “everybody does it,” then it is implicitly all right for you to do it as well: cheat on tests, commit adultery, lie under oath, use illegal drugs, persecute Jews, lynch blacks. Of course, people who use this “reasoning” usually don’t believe that what they are doing is right because “everybody does it.” They usually are arguing that they shouldn’t be singled out for condemnation if “everybody else” isn’t.

Since most people will admit that principles of right and wrong are not determined by polls, those who try to use this fallacy are really admitting misconduct. The simple answer to them is that even assuming they are correct, when more people engage in an action that is admittedly unethical, more harm results. An individual is still responsible for his or her part of the harm.

If someone really is making the argument that an action is no longer unethical because so many people do it, then that person is either in dire need of ethical instruction, or an idiot.

Despite Jack’s warning in the last paragraph, I’d like to write a few posts about situations where “everybody does it” is a actually a pretty good argument. I’ll let you decide whether I’m in need of ethical instruction or if I’m just an idiot.

I’ll start with the most obvious example: I don’t think anyone in this country doubts that driving on the left-hand side of a two-way road is unethical. First and foremost, it creates an immediate and potentially deadly hazard to oncoming traffic. Second, even if there’s no traffic, driving on the left side increases the possibility that a pedestrian will get hit because he or she was looking the other way. It’s so dangerous that I think we can safely say that only drunks and maniacs drive on the left-hand side of the road.

Or Englishmen. At least while they are in England, because everyone there drives on the left-hand side of the road.

I’m not sure how people ended up driving on different sides of the road in different countries — the best explanations I’ve heard have something to do with differences in the types of wagons pulled by horse-drawn teams — but whatever the reason, once one side began to dominate common practice, it would have been a huge gain in safety and efficiency to require everybody to drive on that side.

In other words, it’s the right thing to do because everybody does it.

(Arguably, the ethical rule is not “drive on the left side of the road” but rather “drive on the agreed-upon side of the road.” Driving on the other side is unethical not because there’s something bad about that side, but because it violates our common agreement about how to drive safely. That common agreement is exactly the sort of consensus ethical rule I’m talking about when I say that “everybody does it” can be a good justification.)

For another example, in the condo building where I live, except for the occasional party, I never hear the sounds of my neighbors’ lives. It would be

rude for any of us to play loud music or crank up the television. If was a persistent problem, it would be cause for a complaint to the board.

This is very different from when I lived in a college dormitory, and everyone played loud music all day and late into the night. It's not that my college dorm mates were any less ethical than my condo neighbors. They were just younger and in college. Tolerating their neighbor's loud music was a small price to pay for being able to play their own loud music. If anyone had complained, he would have been the one behaving rudely.

It was a case of *different cultures, different rules*. When the rules are defined in terms of cultural norms, then "everybody does it" isn't just an excuse, it's the way the rules are made.

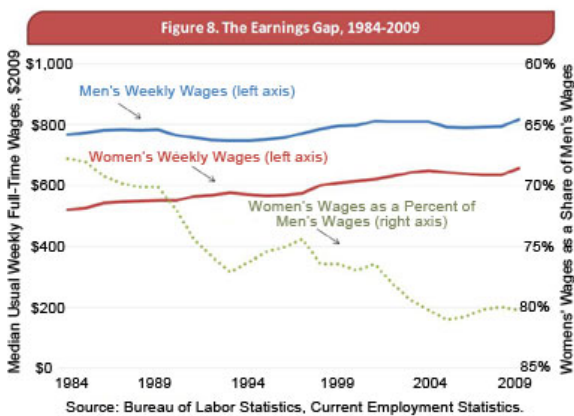
It's important to note that cultural norms variation of "everybody does it" only works when everybody involved is a willing participant in the culture. It's no excuse for cultural practices such as gay bashing, slavery, or burning the heretics.

Filed Under: [Ethics](#)

## More About That Graphic Sin

October 7, 2010 by Mark Draughn — 2 Comments

A couple of days ago, I [posted](#) about this silly graph, which shows the wage gap between men and women:



The dotted gray line on the graph at first seems to show that "Women's Wages as a Percentage of Men's Wages" are dropping, but that turns out to be because the dotted gray line is plotted against the right-hand scale, which is printed upside down, with the larger numbers at the bottom. I called this a sin against graph design.

My co-blogger Ken suggested in a [comment](#) that this might not be such a terrible sin:

I often run into a graph like that where the right-hand scale is reversed when reading scientific papers. It's often used to emphasize a reduction such as this one. The graph clearly shows an overall reduction in the gap between wages and demonstrates the variations by time.

It's actually a good graph, but fails to make the point James Park was trying to make. The question is if James Park created the graph with the intention of deceiving, or just copied the graph from an analysis done that Park failed to understand.

A little research indicates it was the second option. The graph appears to be [Figure 8](#) from the report "[Women and the Economy 2010: 25 Years of Progress But Challenges Remain](#)" dated August 2010, which appears on the "[Women and the Economy 2010 Series](#)" website. The report is credited to "the Majority Staff of the Joint Economic Committee" of the United States Congress.

So, it's your tax dollars at work. I imagine James Park probably just took the graph from that report without worrying too much about the details. After all, it's from Congress, right?

In any case, it's still a bad way to show data. I realize that data sometimes has to be massaged to show results—such as plotting data against a reciprocal or logarithmic scale—but inverting the scale like this just seems wrong, especially since you could just as easily plot the size of the gap itself, which really would slant downward on a normally-oriented scale.

I suppose one possibility is that for some historical reason wage differential graphs are always presented in this format. That sort of thing sometimes happens. For example, the traditional way to draw supply and demand curves in economics is to put price on the vertical scale and demand on the horizontal scale, which swaps the dependent and independent variables from the usual scientific practice. However, since it was [an economist's blog](#) that first brought this to my attention, this seems unlikely.

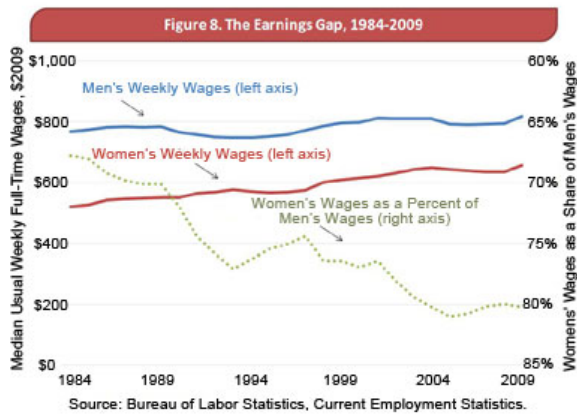
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Filed Under: [Ethics](#)

## Graphic Sin From the AFL-CIO

October 5, 2010 by [Mark Draughn](#) — 1 Comment

If you know anything about graphic presentation of data, especially if you've read Edward Tufte's [Visual Display of Quantitative Information](#), you know that there are lots of ways to cheat to make the data appear to support your argument more than it really does. But James Parks at the [AFL-CIO Now Blog](#) has [a post about the need to close the wage gap between men and women](#) which goes beyond mere graphic cheating. This graph is a sin:



A quick glance shows that men's and women's wages are graphed against the left-hand scale. As you can see, both show a slight rising trend in constant dollars. The gray dashed line shows women's wages as a percentage of men's wages, and it's declining, which seems to show a loss of parity for women. This is odd, because the colored wage lines above are visibly getting closer together. Also, we may not be living in a paradise of equality, but does anyone who's been paying attention for the last 25 years really think things have gotten worse for women?

The explanation for this mystery becomes apparent when you realize that the gray line showing women's wages is plotted against the right-hand scale, which is *printed upside down*. Women's wages are in fact rising slightly faster than men's wages, so if the scale was printed correctly, the graph would be slanting up. Unless you resort to outright fabrication, data presentation doesn't get more deceptive than this.

[**Update:** More [here](#), including James Park's apparent source for that misleading graph.]

(Note: Such a broad-based comparison between men and women is nearly useless anyway, even if printed correctly, unless you control for things like age, education, the type of job, and years of experience.)

(Hat tip: [Steve Landsburg](#))

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## What's Wrong With Selling Internships?

June 7, 2010 by [Mark Draughn](#) — 5 Comments

Some of the lawyers on my blogroll have been poking fun at a guy named Jack Marshall. He calls himself an "ethicist," runs a consulting firm called [ProEthics](#), and has a blog called [Ethics Alarms](#). I don't really know anything about him, but I thought his blog might make a good source of stuff for me to write about.

For the most part, his blog turns out to be about ethical situations I don't find interesting — baseball, politics, frivolous lawsuits — but then I found [one from a few days ago that I can work with](#):

**Ethics Pop Quiz: "What's Unethical About Auctioning Intern Positions?"**

*Are you ready to exercise those ethics brain cells?*

The News Alert blog is reporting that the Huffington Post auctioned off an intern position for \$9000, and another internship—three weeks of it with Richard Branson, founder of Virgin Atlantic Airways, and three weeks with hip-hop entrepreneur Russell Simmons — was auctioned off for \$85,000, to benefit Simmons's charity, Rush Philanthropic.

Question: Is there anything unethical about this, and if so, what?

My answer will not surprise my regular readers: No, there is nothing unethical about this. Neither the organizations providing the internships nor the people bidding for them are being coerced. The transaction would not have gone through unless all parties found it acceptable. Since everyone involved likes the outcome, there's no ethical objection.

Marshall, however, sees a problem:

Answer: It is unethical to have interns do substantive work without paying them, and it is more unethical to make them pay for the privilege of being exploited.

How did HuffPo or Virgin *make* people pay? It's hard to imagine a more voluntary market activity than casting bids in an auction.

When a for-profit organization allows an intern to work without compensation, it is 1) taking advantage of workers desperate for experience, 2) skirting the minimum wage laws, and frequently 3) using unpaid interns to take a job that an unemployed worker could fill.

Wow. That single sentence has an amazing amount of muddled thinking. Start with the qualifier "for-profit." None of the issues he mentions in the rest of the sentence depend on the for-profit or non-profit status of the organization. Marshall is saying these interns are being exploited, but by singling out for-profit organizations, he's implying that it's okay for non-profit organizations to exploit people. I suspect he thinks there's nothing wrong with non-profit organizations accepting volunteers, and he's trying to hand-wave the distinction.

The first issue he raises, "taking advantage of workers desperate for experience," is probably the strongest one, in the sense that not paying people for productive work seems exploitive to a lot of people. However, the fact that people have volunteered for these positions, and even paid for them, implies that they must believe they are getting something valuable in return. I think "taking advantage of workers desperate for experience" is probably better read as "providing experience to people desperate to acquire it."

The second issue, "skirting the minimum wage laws," is a mind-boggling muddle all by itself. First of all, correct me if I'm wrong, but if you're skirting the laws, aren't you obeying them? Second, the minimum wage laws have the same logical form as the ethical issue itself, so appealing to them is



a form of begging the question. Third, it implicitly assumes that anything illegal is also unethical, which seems to make it impossible to ever change the law.

The third issue, "using unpaid interns to take a job that an unemployed worker could fill," is the silliest of them all. What possible change could we make to the intern's terms of employment that would *not* take a job that an unemployed worker could fill? Even if the company paid their interns 10 million dollars per hour, the other guy would still be out of a job. And if we give the intern's job to the other guy, doesn't that leave the intern unemployed?

If the internship has no real educational value and consists of menial tasks, it's unfair to the intern for that reason too.

If the internship has no real educational value and consists of menial tasks, don't you think the intern would quit? I'm sure people wanted these internships because they expected to get something out of them.

The fact that someone agrees to be mistreated doesn't relieve a person or an organization from the ethical obligation not to mistreat them. Just because you know you can get someone to work for unfair compensation doesn't make the compensation fair.

I'm not sure why you need a concept of "fair" beyond the fact that people are willing to work for it. To put it another way, if the people who accept the compensation think it's fair enough for them, who are we to question their judgement?

Auctioning off the exploitive internship to the highest bidder just compounds the unfairness. The interns are now being chosen according to financial means rather than merit. Whether or not the money goes to charity, this is ethically indistinguishable from a bribe or a kickback. "Okay: we have ten good candidates for this internship. Who's willing to pay the most for it? Cash only!" This method of choosing interns would be unethical for paid internships.

What makes bribes unethical is that the person receiving the bribe is dishonoring a duty. A facilities manager who picks a roofing contractor because he got a kickback is betraying the interests of his employer in finding a good roofer, and a building inspector who overlooks faulty wiring because of a bribe is betraying the city that pays him to keep buildings safe. In the case of the auctioned internships, no one is being betrayed. A professional ethicist should be able to spot a distinction like this.

I imagine that spending time at a major media organization or hanging out with captains of industry is a pretty educational experience. I'm sure plenty of people are willing to pay for those experiences. If there's an ethics issue here, it's not that people paid for internships, it's whether or not they got good value for their money...which is the same question we have about any purchase.

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Filed Under: [Ethics](#)

## Eliot Spitzer's Madam Has a Few Questions

November 12, 2009 by Mark Draughn — [Leave a Comment](#)

This is priceless:

Dear Professor Lessig:

I have been informed that you are having former New York Governor Eliot Spitzer speak on ethics this Thursday November 12, 2009. This sounds fascinating and I would love to attend but the restrictions of my probation won't allow me to travel outside New York City.

For nearly 5 years, I supplied Mr. Spitzer with high priced escorts while he was both Attorney General and Governor. For this crime, I served four months on Rikers Island, had all of my assets confiscated and am now considered a sex offender on 5 years probation. Mr. Spitzer broke both state and federal laws and walked away free.

I am greatly intrigued as to what Mr. Spitzer could contribute to an ethical discussion when as Chief Executive Law Enforcement Officer of NY he broke numerous laws for which he has yet to be punished. As Attorney General he went around arresting and making examples out of the same escort agencies he was frequenting.

That's Manhattan madam Kristin Davis, who has a few [questions](#) for the former Governor, such as:

3. Is it ethical for you to tip off your favorite escort service days before a bust so that they may disappear?
4. Is it ethical to try to book an assignation with a escort under a fake name after you were banned by my agency for being abusive to women?

I'm guessing he won't have a lot of answers.

(Hat tip: [Hit & Run](#))

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Filed Under: [Ethics](#)

## I'm not really an expert; I just play one in real life. Maybe.

September 16, 2009 by Joel Rosenberg — [Leave a Comment](#)

There's been an interesting discussion of manufactured apparent expertise over at [SJ](#), which appears to have inspired Bennett to weigh in [here](#).

The spark for the discussion was one of the many blogs that not-quite-promises to generate huge wads of cash for lawyers by gaming social media and them what loves it:

The thought of becoming an "expert" in 6 months may seem impossible to you. But I did it and I'm going to show you how.  
But first let me share my story with you a bit because I think it's instructive.

Well, yeah, it was instructive: I learned that somebody can, with some study and careful choice, become acknowledged by Google as an expert in some subject he may or may not give a damn about in less time than it takes to make a baby.

I mean, seriously — this guy spent only six months studying this stuff, and then he's an expert? Sheesh.

So, there I was, last weekend, giving a speech, billed as "[Second Amendment Expert Joel Rosenberg](#)". (The speech is [here](#); you can watch it, if you don't mind downloading a quarter gig — one of the many things I'm *not* an expert in is turning a long .MOV video into a shorter one in some other format.) I think it was a decent speech, and was well-received, by and large, by the crowd. (And it was actually a lot of good, clean fun quoting Hillary Clinton and Hubert Humphrey to a crowd of conservatives, and then telling them an Eleanor Roosevelt story. When it comes to issues around rights, there are folks who get it — and who, alas, don't — all along the political spectra, which was one of the points that I was trying to make. Successfully? I'm the last person to be an expert on that.)

I don't fault the organizers of the event for billing me that way, and that's not just a reluctance to bite the hand that helped me up on to the stage. I was invited there to talk about the Second Amendment, and it's a matter that I do have some knowledge of, and a fair amount of passion about. And when it comes to gun laws, Lorman thinks I know enough about them to do a CLE class for cops and lawyers on the subject, so maybe that's not unreasonable.

Until I put it into context. I know real experts on the subject, and have read their writings voraciously, for, well, years. Professor Joseph Olson, who founded Academics for the Second Amendment — now, *there's* an expert. Eugene Volokh? Ditto. Glenn Reynolds? Yup. Clayton Cramer, an amateur who has written the definitive study on the racist roots of gun control? You betcha. (It's called, perhaps unsurprisingly, "[The Racist Roots of Gun Control](#)," and it's worth a read. In my expert/inexpert/whatever opinion.)

Me? In that context, well, not so much. Yeah, I started studying the [Heller opinion](#) about three minutes after it was posted to the Internet — but it wasn't me who picked up [the implications of the problematic paragraph in it](#), but Scott (it's the last sentence on p. 54):

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

I studied it; Joe Olson, having been one of the midwives of the modern 2A academic movement, helped write one of the amicus briefs, and helped Gura prep for oral argument. That's an expert. In that context, if I held myself out as a "Second Amendment Expert," I'm not sure I could do it with a straight face.

But . . . there is that other thing, and I think — and hope — it differentiates me in a useful way from the Six Months to Google Expert types: I know a fair amount about my subject, and can — at times — explain stuff\* about the issues around the Second Amendment to folks who want to have stuff\* about the issues around it explained to them.

Does that make me an “expert”? I dunno.

Does remind me of an old joke:

A very successful young bowling ball salesman brings his parents to the marina, one bright Saturday morning, and takes them aboard his new yacht. The only time he’s been to sea was on a Carnival Cruise, but he’s bought himself a boat: it’s fifty feet long, and tricked out with all the nautical gear necessary to sail across the Atlantic, and back. He excuses himself for a moment, and ducks down the companionway, coming back with dressed out with a neat blue blazer, and ascot, and a



nifty captain’s cap, complete with gold braid and such, on his head.

“Look, Mom and Dad — I’m a captain!”

The father shakes his head. “By me, sure, you’re a captain. By your mother, okay, you’re a captain, but by a real captain, you’re no captain.”

I don’t mind if others want to call me an expert, not really. But I’m pretty sure I’m *not* going to be getting business cards that say, “Joel Rosenberg, Second Amendment Expert.”

Or, for that matter, a captain’s cap.

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\* Technical term.

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Filed Under: [Ethics](#)

## What Does the AMA Say About Forced Catheterization?

September 11, 2009 by Mark Draughn — 1 Comment

A few days ago, when I wrote about [a guy who was forcibly catheterized to test if he was driving drunk](#) (he wasn't) it seemed to me that this violated the requirements of medical ethics that medical procedures should only be done with the consent of the patient and for the benefit of the patient.

At the time, I thought that the [AMA Code of Medical Ethics](#) might address this in opinion [2.065](#), but I wasn't sure if I was reading it right, so I emailed the AMA press office:

I write about legal issues and civil rights. I'd like to know if the AMA has a policy addressing issues raised by a recent news story.

(See <http://www.wlwt.com/health/20703731/detail.html>)

It appears that Lawrenceburg, Indiana, police arrested Jamie Lockard, 53, for drunk driving, and got a judge to sign a warrant for a blood and urine test. At Dearborn County Hospital, someone inserted a urinary catheter against his will. (All this according to a lawsuit he has filed.)

Some questions I have:

Has the AMA issued a statement about this incident or the lawsuit?

What is AMA policy with regard to medical testing (and associated procedures) conducted solely to satisfy a police investigation—i.e. there is no medical benefit to the patient?

Shouldn't medical professionals refuse to perform the test if the patient does not consent?

If a medical professional is faced with a patient who has been ordered by a court to undergo a medically unnecessary procedure against his will, does the court order override the usual concerns about consent and medical efficacy? As long as the medical professional himself is not a subject of the court order, isn't his primary duty still to the patient rather than the legal system?

The response from the AMA was minimal, which is what I expected given that I'm just a humble blogger. They sent me to these two sections of the code of ethics:

### E-8.08 Informed Consent

The patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice. The patient should make his or her own determination about treatment. The physician's obligation is to present the medical facts accurately to the patient or to the individual responsible for

the patient's care and to make recommendations for management in accordance with good medical practice. The physician has an ethical obligation to help the patient make choices from among the therapeutic alternatives consistent with good medical practice. Informed consent is a basic policy in both ethics and law that physicians must honor, unless the patient is unconscious or otherwise incapable of consenting and harm from failure to treat is imminent. In special circumstances, it may be appropriate to postpone disclosure of information, (see Opinion E-8.122, "Withholding Information from Patients").

Physicians should sensitively and respectfully disclose all relevant medical information to patients. The quantity and specificity of this information should be tailored to meet the preferences and needs of individual patients. Physicians need not communicate all information at one time, but should assess the amount of information that patients are capable of receiving at a given time and present the remainder when appropriate. (I, II, V, VIII) Issued March 1981. Updated June 2006, based on the Report "Withholding Information from Patients (Therapeutic Privilege)."

#### E-2.065 Court-Initiated Medical Treatments in Criminal Cases

Physicians can ethically participate in court-initiated medical treatments only if the procedure being mandated is therapeutically efficacious and is therefore undoubtedly not a form of punishment or solely a mechanism of social control. While a court has the authority to identify criminal behavior, a court does not have the ability to make a medical diagnosis or to determine the type of treatment that will be administered. In accordance with ethical practice, physicians should treat patients based on sound medical diagnoses, not court-defined behaviors. This is particularly important where the treatment involves in-patient therapy, surgical intervention, or pharmacological treatment. In these cases, diagnosis can be made initially by the physician who will do the treatment, but must then be confirmed by an independent physician or a panel of physicians not responsible to the state. A second opinion is not necessary in cases of court-ordered counseling or referrals for psychiatric evaluations.

A recognized, authoritative medical body, such as a national specialty society, should pre-establish scientifically valid treatments for medically determined diagnoses. Such pre-established acceptable treatments should then be applied on a case-by-case basis.

The physician who will perform the treatment must be able to conclude, in good conscience and to the best of his or her professional judgment, that the informed consent was given voluntarily to the extent possible, recognizing the element of coercion that is inevitably present. In cases involving in-patient therapy, surgical intervention, or pharmacological treatment, an independent physician or a panel of physicians not responsible to the state should confirm that the informed consent was given in accordance with these guidelines. (I, III) Issued December 1998 based on the report "Court-Initiated Medical Treatment in Criminal Cases," adopted June 1998.

That second section is the one I thought might apply.

Technically, the AMA spokesperson didn't even go so far as to say these sections apply to the incident under discussion, so this is hardly definitive, but I think I'm on the right track. Something went wrong here.

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Filed Under: [Ethics](#)

## What Are the Medical Ethics of Forced Catheterization?

September 5, 2009 by Mark Draughn — 5 Comments

I don't understand how stuff like [this](#) happens:

According to the suit, police arrested Jamie Lockard, 53, on suspicion of drunken driving in March.

A Breathalyzer test showed he was under the legal limit, but Officer Brian Miller doubted the findings.

Lockard and his attorney claim in the suit that police took him to Dearborn County Hospital and forced him to submit to a urine and blood test.

Police said they obtained a warrant, but Lockard's attorney said his client was shackled to a gurney and had a catheter inserted against his will.

Scott Greenfield discusses some of the legal issues in his post "[Places No One Should Ever Go](#)", but I'm wondering about the medical ethics. I've been dealing with a lot of doctors lately, and they all seem to follow the ethical requirements that medical procedures should only be done (A) with the consent of the patient, and (B) for the benefit of the patient.

Sticking a tube up some guy's penis to see if there's evidence to convict him of a crime meets neither of these requirements, so I'm a bit surprised that medical personnel are willing to participate.

**Knowing as little** as I do about medical ethics, I decided to see what the [AMA Code of Medical Ethics](#) has to say. It's huge, and not written for questions like this, but opinion [2.065](#) sounds like it might apply:

Physicians can ethically participate in court-initiated medical treatments only if the procedure being mandated is therapeutically efficacious and is therefore undoubtedly not a form of punishment or solely a mechanism of social control.

The forced catheterization was a test, not a treatment, but I wouldn't think that would change the ethical question significantly.

I don't think the warrant changes the situation much either. A judge may be able to force a suspect to submit to an investigative medical procedure, but I'm pretty sure there's case law that a judge can't force an uninvolved third party to perform the procedure.

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## Playing Catch Up

July 24, 2009 by Joel Rosenberg — [Leave a Comment](#)

"A lie gets halfway around the world before the truth has a chance to get its pants on." — Winston Churchill

For those of you who didn't follow it, an amendment to a bill in the US Senate was defeated this week, on a 58-aye, 39 nay vote. (Yeah, I know that

sound strange; another time, okay?) You'll find a remarkably typical MSM take on it [here](#), and, honest, I'd love to discuss all the issues involved, but let's save that for another time; that's not this story.

Part of the fight against passing this was the notoriously anti-gun advocacy group, the "Violence Policy Center," headed by Josh "Sugar Daddy" Sugarman\*, and, as you'd expect, they were slaughtering trees, right and left, to turn out their agitprop, foremost among it, a "study" (actually, a collection of unreliable anecdotes, including at least one just plain lie) that ~~purports to show that~~ shouts that "**Concealed Handgun Permit Holders Kill 7 Police, 44 Private Citizens Over Two-Year Period**", which is, presumably, a bad thing and, putatively, some sort of reason that a law-abiding citizen who has been issued a carry permit in Minnesota can't be trusted to, say, carry a handgun in New York.

(Pinky swear, since right about now I know that a bunch of you are reaching for your keyboards: yes, there's a whole lot of other issues, around Federalism, states rights, carry permit laws, full faith and credit and all that stuff. Not now, okay?)

Enter [John Lott](#). Dr. Lott first came to public attention with the Lott/Mustard study that shows — pretty clearly, I think; others disagree — that among the effects of modern, mainstream, "shall issue" permit laws are to drive violent crime down slightly (when controlling for other factors), drive property crime up, also slightly. By profession an economist, he's kind of been dragged, kicking and screaming only a little, into the national gun debate, and like anybody else who has been around for awhile, noticed that the antigun folks need to spend a whole lot of money on Nomex undies, what with their pants bursting into flame from lying a lot.

He noticed an unlikely anecdote on page 17:

Minnesota

# Concealed Handgun Permit Holder: Michael C. Iheme

Date: July 24, 2008

People Killed: 1

Circumstances: On July 24, 2008, Michael C. Iheme shot and killed his wife after she left

her job at an assisted living center. Court records show that she had an active harassment

restraining order against him and suggest a history of domestic abuse, including threats to kill her. After the shooting, Iheme called 911 and said, "I have killed the woman that mess my life up..." Iheme, who had a concealed handgun permit, was found guilty of second degree murder.

Source: "911 call: 'I have killed the woman that mess my life up,'" Minneapolis Star-Tribune, July 26, 2008;

"Man found guilty of killing estranged wife in St. Louis Park," Minneapolis Star-Tribune, February 6, 2009.

Yeah. That does look strange, and unlikely, if you know anything about the subject. The subject of a domestic OFP having a carry permit? Unlikely. Somebody with a history of domestic abuse being issued one? It's not impossible, but it's not the way to bet. Know a bit more, and it gets more



unlikely — Sheriff Stanek’s office screwing up by issuing a permit to a domestic abuser with an OFP out on him? Nah.

But “nah” isn’t a debunking.

Lott dropped an email to Andrew Rothman, a local Minnesota activist — he’s a friend of mine, and also the Executive Director of [MADFI](#) — asking him to check it out, and Andrew got busy, sending one flunky off to see if there was some wisdom on the subject (check, but the flunky knew that) and interest in helping out on the part of David Gross (one of the few essential people in Minnesota Second Amendment activism, David’s also an attorney, who knows the laws around this stuff backwards and forwards, having been involved in the writing of some and the practice of a lot of them for decades), and dispatching another — John Pierce, second year law student at Hamline — to the courthouse to look for the documentation that would have existed if Iheme had been a carry permit holder arrested on suspicion of murder.

Gross struck paydirt — Hennepin County Sheriff Rich Stanek, who would have been the issuing sheriff, took a quick look at both the relevant laws, regulations, and facts, and went on the record that Iheme not only had *not* had a carry permit, but *had never even applied for one*.

Yup. Stanek didn’t say it — I am — but the VPC was lying. What they said just ain’t so.

And Pierce, looking for the nonexistent orders around the carry permit, stumbled across the smoking gun: the police report that showed that what had been seized was Iheme’s *purchase* permit. Iheme had a permit to purchase a firearm, *not* one to carry. But that fact had been carefully left out of the Star Tribune’s reporting with the Strib’s reckless disregard for the truth, and picked up and repeated by the folks at the VPC, who — having endlessly picked at all of the states’ carry laws — had every reason to believe that the Strib had gotten it wrong, but just passed off the lie to their easily-gulled audience.

How easy? Well, the next morning, on the Senate floor, Robert Menendez of New Jersey quoted the VPC “study”, as though it proved something — only to be shot down (metaphorically, honest) by the sponsor of the amendment, John Thune, who had been informed that there were provable lies in it, this among them.

What can we learn from this?

Well, we can’t learn, alas, that 58 yes votes is enough to get something through the Senate; it wasn’t, the other day. We can’t learn that the Star Tribune, in knowing and reckless disregard for the truth, will carefully leave out the word “purchase”, when talking about a “gun purchase permit” held by a murderer — we already knew that. That’s just how they roll.

We can’t learn that the anti-gun folks like the VPC simply don’t care about truth — we already knew that, too.

We can learn, though, that networked grassroots activism can do things that the highly-paid lobbyists — from the VPC or anywhere else — just plain can't do.

That's worth learning, again.

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\* Okay, okay: I don't have the slightest idea if Josh Sugarman has a nickname, and, if so, what it is.

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Filed Under: [Ethics](#)

## Restitution of Famous Murderers

January 22, 2007 by Mark Draughn — [Leave a Comment](#)

Is it ethical to sell-off a criminal's possessions to pay restitution to his victims? You'd certainly think so. After all, he took something from the victims, so he should have to give them back enough money to make up for what they lost. It's a basic case of making good for the damage done.

When the crime is murder, of course, the victim isn't around any more, and money can't really make up for the loss of a life, but as a practical matter, the courts usually award a large sum to families of the victims. All the criminal's money can be taken, and his assets can be seized and sold at auction to raise money for the families of the dead.

But what if the murderer is a famous murderer, and his only assets are worthless junk that is nevertheless valuable for being the property of a famous murderer? Is it ethical to pay restitution to the families of the victims from the sale of property that is only valuable because its owner murdered those same victims?

In the case of Unabomber Ted Kaczynski, [Norm Pattis doesn't think so](#).

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Filed Under: [Ethics](#)

## Moral Posturing About Richard Paey

December 15, 2006 by Mark Draughn — [1 Comment](#)

My paying job has kept me too busy to blog much, but I've been thinking about a particular application of something Fernando Tesón wrote on Tuesday about [how to distinguish between moral posturing and genuine moral principles](#):

We propose The Display Test: a position is genuinely moral when the speaker can accept, without embarrassment, its bad consequences. For example, I am prepared to publicly accept, without embarrassment, that criminal defendants should have a number of rights, even if someone shows me that implementing those rights increases crime. If the speaker cannot concede without embarrassment the bad consequences of her proposal, then she is perpetrating discourse failure.

This made me think of something that bothers me about the case of [Richard Paey](#), who was sentenced to 25-years in prison for improper use of medically necessary painkillers.

First, consider this statement in [another context](#) by Virginia prosecutor Tom McKenna:

...we do have important cases to try, like the murder sentencing I finished today, an emotionally exhausting ordeal of shepherding the victim's family through the process of seeing punishment meted out (42 years for 1st degree murder).

Now here's a quote from a *Reason* [article](#) about Paey's long sentence:

"It's unfortunate that anyone has to go to prison, but he's got no one to blame but Richard Paey," Assistant State Attorney Mike Halkitis told the St. Petersburg Times. "All we wanted to do was get him help."

Locking a man in a cage for many years is a terrible thing. That he's a criminal who has done something terrible doesn't change the terrible nature of his punishment. It just means his punishment is justified. He deserves terrible treatment for what he's done.

Tom McKenna knows this and acts on it as a moral principle. He rightly takes pride in putting a murderer in a cage for a very long time.

Halkitis, on the other hand, is trying to dodge responsibility for the consequences of his actions. He doesn't take pride in Paey's sentence. He doesn't believe Paey received justice. He isn't standing on a moral principle. He's just posturing.

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Filed Under: [Ethics](#)

## Guns of Brixton

April 5, 2006 by Mark Draughn — 6 Comments

When they kick at your front door  
How you gonna come?  
With your hands on your head  
Or on the trigger of your gun

I recently ran across the above lyric somewhere on the web that I can no longer remember. You might think, as I did, that it sounds like a piece of gangsta rap about some gangbanger deciding between surrendering to the police or trying to shoot it out. In other words, trying to decide between being smart and being hard.

If you know more about music than I do, however, you recognized it right away as "The Guns of Brixton" by *The Clash* off of their landmark 1979 album *London Calling*. It's about police violence against blacks in Brixton (a part of London). Apparently, police were assaulting and sometimes killing blacks at an alarming rate. This eventually led to riots and then to reform of the Brixton police.

Now consider this part of the same song:

When the law break in  
How you gonna go?  
Shot down on the pavement  
Or waiting on death row

These lines appear at first glance to present a similar choice between acquiescence and resistance. But the situations are radically different. In the first situation, there is uncertainty about the outcome. If the police kicking down the door are not killers, it makes sense to give in peacefully instead of starting a violent confrontation that can't be won. Many members of inner-city drug gangs are aware of this, and once the police catch them, they come along peacefully. That's because they know the police are going to take them in but do nothing worse to them, so why get themselves injured in the process?

In the second case, there is no uncertainty. The pounding on the door is a death squad, coming to shoot you down. The only choices they offer are certain death or a chance to die fighting...or maybe, just maybe, to escape.

(I have no idea what was going on in real life Brixton. I'm just responding to the lyrics here.)

It's an important distinction. Throughout history, people have often found themselves in the uncertainty of the first situation without knowing that they were really in the second situation.

**When the Nazis** started to clear all the Jews out of the Warsaw ghetto in the late summer of 1942, most Jews believed that the Germans were sending them to work camps, and that resistance would only result in their needless deaths. Better to stay alive, even if it meant working as a slave.

In reality, the Germans were sending the Jews to the death camp at Treblinka, and they only stopped when they ran out of Jews. The Jewish population was reduced in 52 days from about 380,000 people to perhaps 60,000. Most of those remaining were either working for the German war effort or hiding.

In January 1943, the Nazis set out to exterminate the remaining Jews. This time the Jews knew what was going on and resisted, attacking and killing the German soldiers. The peak of the resistance was from mid-April to mid-May, 1943 and is known as the *Warsaw Ghetto Uprising*. Ultimately, however, the Nazis prevailed, and the Jews who had survived the fighting were sent to the death camps. This was the first uprising against Nazi rule in Europe, but it wasn't the last. The bravery and determination of the Warsaw resistance fighters was an example to others and remains so to this day.

**We have a more recent example** as well. When hijackers took over four airplanes on September 11th, 2001, the passengers and crew of three of the planes did not resist (as far as we know). Faced with uncertainty about the outcome, they did what appeared safe and cooperated with the hijackers, believing that to resist would be to provoke their own deaths.

We shouldn't be critical of them, however, because they didn't know what we now know. In any previous hijacking they would have been right, for the simple reason that once the plane landed somewhere, the hijackers would lose their advantage and eventually be forced off or, more likely, persuaded to surrender. That didn't work this time because the hijackers had no intention of landing. Not knowing the true intent of the hijackers, the passengers didn't see that cooperation wouldn't work. They knew they were in the first situation, but didn't realize they were in the second. They didn't see that resistance would cost them nothing.

On the fourth plane, however, the passengers got word of what had happened to the other planes. They knew the full price of acquiescence. So they chose to act, to resist. To do otherwise would be to accept death. So they fought.

Although they probably saved the lives of a lot of people on the ground, at whatever the plane's target was, they lost their personal struggle. As with the Jewish resistance in the Warsaw ghetto, their fight remains as an inspiration for others.

**Addendum:** I can't find the Clash's version of "Guns of Brixton" online, but you can hear a nice cover of it at [Nouvelle Vague's MySpace page](#). (You'll have to click the link to the song. I can't figure out how to link direct.)

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Filed Under: [Ethics](#)

## A Question of Scruples

May 13, 2005 by Mark Draughn — [Leave a Comment](#)

*Blonde Justice* needs you to take this [important poll about an ethical dilemma](#).

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