PAAC E-News

Public Affairs: Your Online Newsletter

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President's message

Welcome to a new year and new directions

by Joe MacDonald
PAAC President

It's a new year at PAAC, with new goals, new directions and many new developments on the way. I'm happy to welcome members back to the work, and it's good to be 'back in the saddle' as president of this organization.

Please join me in thanking **Elaine Flis** for her hard work and capable leadership in these last two years. She accomplished much for the organization. Elaine established PAAC as the voice of public affairs professionals in Canada, and set the stage for building our new relationship with the Government Relations Institute of Canada, which promises to

continue to develop, for the good of our entire profession.

In one of her best moments, Elaine represented us with dignity and power before the Parliamentary Committee on the Federal Accountability Act. I'm very glad to be able to count on her continued support in the coming year in her new capacity as immediate Past President.

These are going to be interesting times for this organization. The coming months will be eventful and we will evolve further as the voice of public affairs professionals in 2008.

This year we welcome **Paul Burns** to his new responsibilities as our Vice President, and we welcome **Atul Sharma** back to the Board, now as our Secretary-Treasurer. And of course a very hearty welcome to the newest face on the Board, Director **Jodi Shanoff.**

I would also like to welcome the newest members to join the PAAC fold:

- Paul de Zara, Director Public Affairs & Marketing, Ontario Dental Association, Toronto
- Linda Oliver, Vice President, ITAC, Ottawa
- Sheila MacNaughton, Collingwood, ON
- Rachel Dao, Coordinator, Public Affairs, The Institute of Chartered Accountants of Ontario, Toronto
- Rudy Ticzon, Community & Policy Advisor, The Law Society of Upper Canada, Toronto
- Jennifer Mowbray, Student, Ottawa
- Stuart Johnston, Vice President Policy & Government Relations, Ontario Chamber of Commerce, Toronto
- Forrest Parlee, Associate, Burrard Communications Inc., Vancouver
- Daniel Demers, Director of Public Issues, Canadian Cancer Society, Ottawa
- Ian Faris, President & CEO, Brewers Association of Canada, Ottawa
- Elise Maheu, Director Government Relations, 3M Canada, Ottawa

New and established members should feel free to contact me with ideas and input.

Political science

'Till human voices shake us

by Chanchal Bhattacharya, Ph.D.

It doesn't take a rocket (or political) scientist to figure out that the Democratic campaigns are driven by the narrative constructions of Barack Obama and John Edwards, while Hillary Clinton has faltered because of the almost clinically "paint-by-numbers" approach that dominates her campaign. This seems to be a peculiar curse of Democratic front-

runners, because this problem affected John Kerry, Al Gore, Paul Tsongas and Michael Dukakis. There is something about being the establishment candidate that renders them virtually robotic.

Iowa focused attention even more upon Obama. But it is worth noting that Edwards's second place finish, in the face of the enormous amounts spent by both Obama and Clinton, is nothing short of a stunning achievement. During the 2004 primaries, Edwards outshone all the other candidates in terms of eloquence and substance. The only reason why he does not do so this time is because of Obama's presence. Even so, Edwards has demonstrated an enormous ability communicate ideas with passion. In terms of his ability to combine substance with eloquence, he consistently outperforms even Obama. What he can't do is communicate the kind of aspirational sense that Obama does.

On the Republican side, both Mike Huckabee and John McCain have essentially built their campaigns around stories as well. Neither have garnered as much attention as Mitt Romney and Rudolph Giuliani, largely because of the media's expectation that their campaigns were forlorn. As it turns out, the opposite is true. In particular, listen to Mike Huckabee. His speeches and speaking style have been almost ritualistically dismissed by the media as "folksy charm." But he excels at using his speeches to create a powerful sense of mutual identification between himself and his audience, as individuals. He has a remarkable ability get listeners to see themselves, and their hopes, in him. The consistent media emphasis on Huckabee as an evangelical pastor misses the fact that Huckabee is utterly different from anyone else seen among the Republicans in modern times. Not even Ronald Reagan possessed Huckabee's ability to create a sense of personal warmth and identification. The only other recent politician comparable to Huckabee, in terms of this, is Bill Clinton.

What Obama, Edwards, and Huckabee do is tell stories that redefine how people see themselves, their hopes, and their possible futures. This is the power of narrative in politics, and it is crushing the conventional "political marketing" approach to political campaigns. In no election in recent memory has the power of public speaking and story-telling been as influential as it has already been in this one. A large part of this is because of "retail" character of politics in Iowa and New Hampshire. But I also suspect that YouTube will play an increasingly influential role because it radically increases the audience and impact of speeches. If the 2006 US elections highlighted the danger of bad speeches, it may well be that 2008 restores an appreciation of the positive effect of good ones.

Dr. Bhattacharya is a political scientist and researcher with special interest in modern communication technologies. He can be reached at chanchal.bhattacharya@gmail.com

The Book Man

Bank on Alan Greenspan for a good read

Book Review by Stewart Kiff

The Age of Turbulence: Adventures in a New World by Alan Greenspan

Before reading it, I didn't much like the looks of this book. First of all, it is 531 pages huge. Second, it is written by a banker. Even worse, it really truly is about banking. High level bank governance over the world's largest economy, mind you, but banking nonetheless. In spite of these undeniable negatives, I cracked it open and I was thankful I did. It undeniably merits the buzz it has generated.

Alan Greenspan is the former Chairman of the United States' Federal Reserve Board; the independent body that governs the money supply of the United States and indirectly the value of the American dollar, the world's reserve currency. He held that crucial position from 1987, when he was appointed by President Reagan, until last year, when he retired. In that position, he oversaw the American financial system as it completed one of the longest and most successful economic expansions in recent memory.

So successful was his service as Chairman and so significant was his gravitas, that there grew an entire mini-industry of Greenspan-watching. This was carried to the extreme where CNBC regularly broadcast live feed of Greenspan and his briefcase as he arrived at meetings of the Federal Reserve Board. The premise was that a full briefcase meant a rate hike. Greenspan responds in this book that it usually meant he packed his lunch.

It is difficult for those of us who have come of age in our era of balanced budgets and low interest rates to understand that the current situation is the exception, not the rule. Much of the financial history of the 20th Century is the story of how central bankers and governments struggled with inflation and deficits since abandoning the gold standard in the 1930s. For Greenspan, however, this struggle was the story of his career. Indeed, Greenspan spends significant portions of the book decrying the "populism" and Keynesianism that led to stagflation in the 1970s and 20 percent interest rates in the early 1980s.

While the memoir of Greenspan's time as Chairman constitute the meat of the book, it is also the best known and the least remarkable part of the book. Since Greenspan has

been Chairman for most of my adult life, his early life story as a young economist, libertarian activist and acolyte of Ayn Rand was perhaps the most surprising to me. Rand actually nicknamed the young Greenspan "The Undertaker" for his dour demeanor during their weekly gatherings of like-minded intellectuals in New York City of the 1950s.

While Greenspan made a career of astute economic analysis, he was also a political activist with Conservatives in the Republican Party and served under President Richard Nixon. He was an important member of the Gerald Ford administration, where he served as the Chair of the Council of Economic Advisors. It was his Republican credentials and his time in the Ford Administration that earned him the confidence of the Reagan administration which appointed him to the powerful and fully independent position of Chairman of the Federal Reserve Board.

The most compelling and surprising part of the book, however, is in the final chapters where Greenspan, freed from the constraints and restrictions of having the markets hinge on his every word as Chairman of the Fed, prognosticates about current economic trends he sees developing in the American and world economy. Greenspan made his early career developing economic forecasts, and his skill clearly shows in this section. Of particular interest are the sections where he identifies one of the constraints on future growth as the inadequate education system in the United States and its skilled labour shortage. Clearly there is a lot here that applies directly to Canada as well.

Highly Recommended.

Books with buzz:

King John of Canada, a fictional political satire by *Maclean's* and *Toronto Life* writer Scott Gardiner, has an edge to it that many of you politicos will find intriguing. This story hits very close to home, telling the story of how Canada, plagued by a series of dysfunctional minority governments and torn apart by regional tensions, was on the verge of break-up.

-S.K.

PAAC member Stewart Kiff is the President of Solstice Public Affairs. He welcomes your feedback and suggestions, and can be reached at stewart@solsticecanada.ca.

Issues

Franz Kafka was an optimist

Early in January the *National Post* chose to place its front-page story about the funeral of murdered teen Stefanie Rengel right beside an analysis feature headlined, *Justice behind closed doors,* which was all about the rise of comprehensive publication bans in Canadian criminal courts. Perhaps the *Post* anticipated how the courts will protect this trial from public knowledge in ways Franz Kafka never imagined - the Canadian way, by allowing the press to attend but only under judicial orders to remain silent - or perhaps the layout editor's decision was the purest happenstance.

Either way, nobody who pays attention to Canadian courts has much reason to expect an open trial, in which justice is not merely done but publicly seen to be done. Rengel was stabbed to death on New Year's Day, and since the accused are minors, the case is fully covered by the Youth Criminal Justice Act. It was only through the actions of Rengel's parents that we are even permitted to know who was murdered. The names of the accused will remain secret. (At least, they will to those who limit their information to media reports. Thanks to the Internet, everyone who is not a reporter can find out who's who in the case.) Yet even if the accused were adults, their lawyers could easily keep their identities from the media, simply by asking for a publication ban.

Journalists know that publication bans are imposed more and more routinely, but nobody seems to be compiling the embarrassing statistics that would help the media shout this fact from the proverbial rooftops. The truth is, as a matter of public affairs, our criminal courts are an affair increasingly kept from the public. This is apparently being done for a variety of reasons, the full range of which seems about as open to the public as are the trials themselves - i.e., you get to see some of it, sometimes, if that's OK with the judge.

The Official Line on why the courts are so dedicated to the principle of the publication ban is that it's to ensure a fair trial. A particularly memorable report on a Canadian news web site waxed poetic about publication bans, saying they exist "to ensure the transparency of proceedings so Canadians know that crimes are prosecuted, and punished if proven." How court secrecy can accomplish those laudable goals was something the article didn't get around to explaining. But journalists who feel somewhat less beholden to the Official Line have, over the years, struggled against the bans - not against the 'fair trial' rationale, when it's valid, but against the over-use of publication bans for reasons that may have less to do with fairness than with judicial antipathy to the media.

Another use for duct tape

In 1995, Canadian news media became outraged over sweeping secrecy in the Paul Bernardo trial, and some outlets went to considerable effort to try to oppose it. In a genuinely bizarre situation, Canadians could readily get news of the trial through American news outlets, while Canadian journalists sat in court as a sop to public

openness but effectively had their mouths taped shut. Today, with the Internet so pervasive, a judge's secrecy order would be even more difficult to enforce, which in turn may mean our courts will try to stamp out access with ever-more intrusive orders. Watch for more court orders against social networking web sites.

In the meantime it's fair to wonder: Can the media successfully oppose this ongoing judicial trend? Well...they can try, if they can afford to. They can hire lawyers to argue against a ban in front of the very judge who ordered it in the first place. Due to cost considerations, many media outlets choose not to do this - a fact which those who favour excluding the public from trials know they can count on.

Courts can also count on the fact that they have no obligation to inform the media when they impose a publication ban. If media outlets find out about a ban they can object to it. If they don't find out until the case has been tried, or is well underway, then their freedom to argue against it remains entirely theoretical. After all, if testimony is no longer news, what media outlet would spend money to win the right to report it? There is certainly no accessible registry of publication bans.

Canadian courts, police and governments take an inconsistent view of registries. You say you demand a national registry of guns? Can do, and cost be damned. Want to register all the sex offenders? Well, of course we will. You say you'd like an Internet-based, open-to-the-public shaming site aimed at deadbeat daddies? The only complaint about that one is that it isn't being updated fully enough to actually catch any of those alimony-jumpers. No politician would deny the public such a registry; it's just a problem to run the thing with competence. But how about a registry of court orders that restrict basic democratic freedoms, such as freedom of speech and the public's right to know about a criminal trial? The answer to that one is no. The courts prefer it that way.

The perp walk lives

The legal trend in Canada is toward more publication bans for an ever-expanding range of reasons. In 1999, the proclamation into law of Bill C-79 expanded the use of publication bans so that victims of crime, in the words of media reports published at the time, "suffer the least amount of inconvenience necessary as a result of their involvement in the criminal justice system." Which was interesting to read, given that the same criminal justice system doesn't balk at putting an accused through media coverage of his arrest and incarceration - the infamous 'perp walk' whereby media are duly informed of the proper time and place to film the luckless arrestee being marched, head bowed and hands cuffed, into a police station. Perp walks are routinely arranged for the media when someone is merely charged, not yet tried, and certainly not yet convicted in court. Yet when asked to justify more restrictions on what the media can report once court is in session, Canadian lawgivers speak of sparing people inconvenience. A cynical member of the news-reading public might feel free to think they start with a commitment to closed courts, then work backward from there to develop a justification where possible.

Not all democracies take such an attitude. As reported in that recent *National Post* article, publication bans are rare in U.S. criminal trials, and documents in criminal cases are

often posted online for the use of the media. The U.S. attitude is that the news media inform the public, and an informed public is what makes democracy democratic. In Canada, judges fret that potential jurors will learn too much about a case before they join a jury, where their information can be controlled by the court. In addition, once an American trial is complete the jurors are free to talk to the press about their deliberations. In Canada the jurors remain bound by orders of secrecy. Clearly, our judges worry that knowledge of jury deliberation would bring the administration of justice into disrepute.

Some judges, such as Ontario Superior Court Justice Brian Trafford, have more faith in jurors and don't worry about tainting their minds; not even before they join a jury. His writings are quoted on the *Holly's Fight for Justice* web site in the full text of that Post article. "Jurors in our society are intelligent persons who are capable of ignoring irrelevant information," Judge Trafford wrote in a 1997 decision relating to the infamous Just Desserts murder, in which armed robbers killed a young woman named Georgina Lemonis for no particular reason they could name. Lawyers tried to get some pre-trial information declared secret, to keep it from potential jurors. Trafford didn't think jurors were so shallow as to need protection. "They are presumed to act in accordance with the oath administered to them," he wrote. The *Post* also quoted media lawyer Fred Kozak warning that some standard media blackouts, such as the one covering bail hearings, create a public affairs backlash. "It creates speculation," Kozak said, "and distrust of the legal system."

Indeed, historically, some media bans in Canada have been so Orwellian as to prohibit publicly acknowledging that a ban existed. Yet our highest court actually endorses public trials and open justice. The Supreme Court of Canada has ruled on more than one occasion that lower courts need justification, based on evidence, to support publication bans. Without such reasons, bans should not be imposed, says the Supreme Court. But lower courts wanting to exclude the public have as many ways around that as their legal skills and imaginations can provide them. The *Post* quoted lawyer Michael Skene saying, "The law has changed," but adding, "unfortunately many judges have not changed with it." This is a tactful way of saying that lower court judges feel free to ignore the spirit of those higher court rulings, and stick with the secrecy they instinctively prefer.

The not-so-supreme court

As recently as 2005, a *Canadian Press* think-piece on publication bans quoted media lawyer Dan Burnett discussing the Supreme Court's 1994 Dagenais decision, in which Chief Justice Antonio Lamer wrote that when publication bans are imposed as a matter of routine they conflict with the Canadian Charter of Rights and Freedoms. On behalf of the court's majority, Lamer wrote, "The traditional common law rule governing publication bans - that there be a real and substantial risk of interference with the right to a fair trial - emphasized the right to a fair trial over the free expression interests of those affected by the ban and, in the context of post-Charter Canadian society, does not provide sufficient protection for freedom of expression. When two protected rights come into conflict, Charter principles require a balance to be achieved that fully respects the importance of both rights. A hierarchical approach to rights must be avoided..."

So, what the Supreme Court did in 1994 was strike down the *routine* imposition of publication bans, not a judge's right to apply a ban based on a valid reason. It elevated media freedom to *equal* status with the accused's right to a fair trial, not above it. Yet Burnett pointed out, in that *Canadian Press* interview, that the spirit of the Dagenais ruling is consistently ignored by judges who belong to a legal culture which continues to impose publication bans as a matter of reflex, Supreme Court or no Supreme Court. Bans may be rescinded once media lawyers find out about them and mount a challenge, but since there is no obligation to inform media of the bans so that they can do that, the bans have the desired effect - by the time the issue becomes open to argument it's no longer news, so the media go away.

How can judges ignore the spirit of the Supreme Court? Because nobody can tell them to do otherwise, least of all the public. In an earlier article on this site, we explored issues of judicial accountability. In some U.S. states, judges must survive elections, and that has a salutary effect on their attitude toward public access to their courtrooms. In states which eschew judicial elections in favour of some form of vetted appointment system, the American culture of accountability nevertheless persists, which is why publication bans remain rare in the U.S. But in Canada, the stringent standard outlined by Chief Justice Lamer remains light years beyond the rationales still offered 14 years later by lower court judges to justify increasingly commonplace court orders imposed just in case public knowledge of a case might conceivably cause trouble for them.

In a country where judges are a group accountable only to themselves, they can hardly feel pressure to conform their decisions to a Supreme Court rendering which they don't happen to like. That makes our Supreme Court something rather less than supreme, and makes articles like this one, written for newspapers, Internet sites or broadcast, harmless background noise to judges who go their own way. It's also the reason Canadians speculate about why courts are so shy of the very public whose democratic rights those courts exist to protect.

Judges don't like to hear such opinions, of course, but without direct public accountability they have little reason to consider them. Not here in Canada, where the public should be forgiven for suspecting that judges are happiest when the law is a mystery, and justice is a secret.

-D.S.

The Web Editor

Death by bureaucracy

by David Silburt
PAAC Web Editor

One of the reasons people come to Canada is because it's the perfect blend of beautiful

country and modern cities. Our blue skies and bright cityscapes are reflected in the mirrored windows of modern buildings rising high into the sky. Every morning, the custodial staff of those buildings come out early to sweep up the dead birds. Ever ask an architect why he designs buildings to kill birds? If you do, the answer will be amused dismissal. Sure, birds fly into the windows because they think it's clear sky. So what? The janitors sweep them up.

People like the late Robert Dziekanski, who died late last year in Vancouver after an altercation with the RCMP at the airport, head to Canada because they think it's clear sky here. They don't know what anyone who was born here knows; that the clear sky is only a reflection of something far behind you. They fly straight into the land of the bureaucrat, where everything is done for the ease of authorities and the biggest crime is to cause a disturbance.

Thus, it was OK with Canada that Mr. Dziekanski arrive here as an immigrant without being able to speak English. It was OK that he ricochet around the Vancouver airport, trapped like the Tom Hanks character in the movie, *The Terminal*. People he harangued in Polish dismissed him as a jabbering guy with some kind of malfunction. They moved on, vaguely disquieted, like someone in that tenth floor meeting room who hears the soft thumps against the window. *Did you hear something...? What..? I thought I heard something...Forget it, it's just birds.*

Then Dziekanski, after eight or ten hours of this, started acting out, causing a disturbance. That did it. This is Canada, and we don't stand for that kind of stinking behaviour. Gang murders and multiple repeat offenders on bail are one thing, but throwing stuff around in the airport? Mounties appeared at once, couldn't talk to the guy, things went sour and out came the Tasers. Despite editorializing among those whose main goal is to pillory the cops whenever possible, there was probably no malice. Just security bureaucrats doing their jobs: *What's wrong with him? Oh, hell, he's got something in his hand now...fire fire I'm firing who fired did you fire I think we both fired hold him down now he's fighting...*

After the death of Robert Dziekanski, everyone wanted to dissect the details, second guess the RCMP, call an inquest, and especially, for some people with an agenda, ban the use of Tasers. That's an odd goal, even for the usual anti-police forces, since it leaves police with fewer choices when sweet reason fails - one of which is their real guns, which always hurt people worse than a Taser. But those arguments are beside the point. The real point is that Dziekanski died of bureaucracy. He was a casualty of the essential Canada, the one we all learn about when we have to deal with the bureaucrats who run the country.

Creating a different Canada is too much trouble, just like designing a building with an honestly solid look for the sake of those birds. Why bother? Why bother figuring out what language that tall guy speaks and then using your cell phone to find someone to talk to him? The noise he made was just a soft, muffled thump, thump at first, so why bother?

That essential Canada will still be the same when the inquests and accusations and

editorials subside. The architects of this nation and its buildings will still do their jobs the same way. We'll still have a beautiful country with shiny buildings beckoning high into the sky. The janitors will still come out in the morning to sweep up the dead birds. And the next morning they'll have to do it again.

Have your say

We welcome member input, whether it's a letter to the editor, a story suggestion or a proposal for a guest column. Feel free to email your input or suggestions to us. All submissions for publication on this site are subject to approval by the Editorial Board.

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18 Eastern Avenue
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Tel: 416-364-0050 x306 • Fax: 416-364-0606