

Coyote Blog: The First Year

Volume 2: March 2005 to September 2005

By Warren Meyer

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## Forward

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This book and its companion volume are an archive of my blogging efforts at [www.CoyoteBlog.com](http://www.CoyoteBlog.com) for the first year of the blog's existence, a time period stretching from late September 2004 to September 2005.

A text record of a blog is by its nature very imperfect. The real advantage of blogging, beyond its immediacy and low-cost reach, is the ability to link other online sources to extend or provide backup for a particular article, called a "post". Throughout this print record, you will see phrases that are underlined like this. In the original electronic version, these were links where readers could click through to view related material on other web sites. I have chosen to leave this underlining in this text version, as an aid to understanding where richer content was available to the original online readership. Another important point of style is that blog posts typically quote heavily from other sources as part of the commentary:

*Rather than using quotation marks, most quotes are indented and printed in italics, like this.*

In compiling this archive, I have chosen to remove many of the original posts. Most of these removed posts were short posts whose main purpose was to point readers to other interesting content on the web, and as such are nearly meaningless in a printed version.

I have done some cleanup of spelling and grammar, but readers of this printed version should recognize that blogging is a real-time activity and readers generally do not expect publication quality prose. Along these same lines, you will encounter a number of Internet abbreviations, including LOL (laughing out Loud), OMG (Oh My God), and Fisk (to tear apart someone else's argument line by line). Readers online would have been very familiar with these shortcuts. You may also note that a number of the articles have sections at the end marked as "Update". This is additional information added to the text after it was originally posted, consistent with the dynamic and real-time nature of blogging.

Finally, given the sheer volume of material here and the near certainty that few people will be interested enough to plow through it all, I have highlighted some of my favorite posts in the Table of Contents on the previous page. The index at the back contains a full listing of all the articles included in this volume.

Warren Meyer  
"Coyote"  
October, 2005

March, 2005

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## Problems at Harvard

Steven Metcalf has an interesting article in Slate on the state of Harvard University. And, if you don't really care about what messes the twits from Harvard are making of the place (and I don't blame you) it is also a good look at problems in universities in general. My favorite passage is this one:

*From Bradley's descriptions—and from my own experience—academia has devolved into a series of now highly routinized acts of flattery, so carefully attended to that one out-of-place word is enough to fracture dozens of egos.*

One only has to observe the shrill and over-the-top reactions to some of Lawrence Summers recent remarks to have this ring true.

I actually have several connections to Harvard. As a high school senior, I was fortunate to have my choice of Ivy League schools, and I chose Princeton over Harvard, in large part because it was obvious even then that the Harvard's graduate schools and faculty egos took precedence over teaching undergraduates. At Princeton I got to know Neil Rudenstine, then provost of Princeton and later President of Harvard. Rudenstine was basically far too good a man to run Harvard, sort of like sending Mother Theresa in to run Haiti. The faculty devoured him, and drove him to a breakdown.

More recently, I attended the Harvard Business School (HBS). Many of you who are unfamiliar with Harvard would likely assume that the b-school was the snobbiest and most condescending arm of the university. In fact, the opposite was the case -- the B-school was both isolated from and looked down on by the rest of the university, its isolation reinforced and symbolized by the river that separates HBS from the rest of the campus. Many an outsider have commented on how approachable HBS students and faculty are as compared to the rest of the university, which is ironic since most of the rest of the university, busy polishing their egalitarian credentials, condescendingly denigrate HBS students for being, well, grubby capitalists rather than lofty intellectuals like themselves. As a result, HBS crew teams were routinely booed through the entire Head of the Charles regatta, and HBS graduates are booed by the rest of the university at every graduation ceremony.

As a result, Princeton gets much of my time and love and attention and, well, money, while Harvard gets nada.

**Update:** I am reminded that this last feeling about Harvard is not limited to the B-school. My good libertarian college roommate Brink Lindsey (I wish he would start blogging again) tells me that when he was at Harvard Law, a group of his friends formed N.O.P.E., which stood for Not One Penny Ever [to Harvard].

## Conservatives and the Oscars

I really didn't want to go here again, but after some thought, I am really amazed at all the disdain for the Oscars coming out of the conservative blogs ([CO](#), [Powerline](#), [LaShawn Barber](#), [LGF](#)). As I [posted here](#), I thought Rock did an OK job, and for once all the awardees kept their speeches focused on movies rather than their own lame political views.

However, conservative blogs have pointed out that most conservatives probably got turned off during Rock's monologue, particularly his jabs at GWB, and tuned out. I am confused just what Rock said that was so horrible. First, it is expected that monologues like this take some shots at whoever is in the White House. And Rock certainly did so, but he also took shots at prominent liberals and Hollywood luminaries as well.

Second, just what did he make fun of? He made fun of going to war and not finding WMD. Now, I am certainly bright enough to know that the argument for war was more nuanced (heh heh) than just WMD's, but if I was a conservative, I would LOVE it if someone made fun of GWB every day for our WMD intelligence. If such jokes at his expense occur frequently enough, maybe he will get mad enough to do the real thorough house cleaning of the CIA which is desperately overdue.

The other thing Rock poked fun at Bush for was the growing deficit. Hey, conservatives out there, what's wrong with that? Again, I am smart enough to understand there are valid reasons for deficits - wars and recessions are two of them. Also, I understand that if you want to cut spending, you usually have to cut taxes first, drive the budget into deficit, and use that as a lever for getting spending cuts. However, Bush has done NOTHING in four years to try to reign in domestic spending, and has done several things (e.g. prescription drug benefit) that greatly increase spending. Reagan ended up with large deficits but only after putting up a valiant fight with a Democratic-controlled Congress to cut spending. GWB has a Republican Congress and hasn't even tried. So what's wrong, even for conservatives, with taking a poke at GWB on deficits?

Oh yes, the blogs have one other complaint - that he said "ass". You know, whenever I hear this kind of complaint, it just reminds me of Beavis and Butthead going "heh, heh heh, heh -- he said ass -- heh, heh"

Posted on March 1, 2005 at 10:59 PM

## Why Judge Nominations Are Suddenly So High Stakes

Over the last 10 years, it certainly appears that the stakes have been raised substantially in judicial nominations, to the point that the approval of federal judges seems to be the number one issue in front of the Senate, even ahead of matters like Social Security reform or tax policy. Sure, in the 80's we had some high-profile confirmation battles (e.g. Bork, Thomas), but those were for the Supreme Court and might be narrowly interpreted as revolving around issues of abortion and perhaps affirmative action. Certainly both sides of the abortion debate are gearing up to duke it out over Supreme Court nominations, but most of the current brouhaha in the Senate is over lower level appointments that can't reasonably be interpreted as having much influence on abortion. So something else must be going on.

To understand what this "something else" is, I want to digress a bit into the analogy of campaign finance (yes, its analogous). I won't conceal the fact that I think that the most recent round of campaign finance "reform" has been a disastrous infringement on first amendment rights, the implications of which are only just coming to the surface. However, my opinion of it is irrelevant to the analogy. While proponents of campaign spending restrictions point to the "corrupting influence" of large sums of money in the election process, what no one ever mentions, though, is why such large sums of money are being spent in the first place. It is this latter issue on which I want to focus.

The reason that politics have become so high-stakes, at least in dollar terms, is because the government controls so much more of the economy and our lives. A century ago, the federal government had the power to raise and lower tariffs, and some limited control of the money supply, and occasionally gave out land grants to new railroads, and that was about it. Today the government can tax an individual or corporation six or seven different ways, determines how much you must pay your employees, controls much of the health care system, holds product design or pricing approval authority for many industries, controls access to critical raw materials, etc etc. If the government decides it does not like a particular person or industry, it can charge it with billions in extra costs in taxes -- or if it finds an industry politically expedient, it can pump it up with billions in subsidies. Every year, the government takes literally trillions of dollars from one unfavored class of citizen and gives it to a more politically favored class.

With stakes this high, it is no wonder that more and more people are willing to pay more and more money to let their voice be heard in the political process. Greater amounts of money flowing into politics is not a sign of a broken democracy, but just its opposite. More political spending means more money spent on speech, which in turn results from more people trying to add their voice to the political process more intensely. Rather than deal with the root cause, the growing power of government to arbitrarily transfer wealth, the country instead lurches from one half-assed attempt at political speech control to another.

So here is where I am going with this analogy. Today, it increasingly appears to people that the process for approving Presidential judge nominations in the Senate is broken. The opposition party, first with some tentative steps by Republicans under Clinton and then with wholesale defiance by Democrats under Bush, are increasingly making the appointment of judges tremendously contentious. I would argue though, as with campaign finance, that the problem is not with the process, but with the changing power of judges. Over the last 30 years, judges have increasingly gone beyond interpreting and applying law to creating new law on their own, a power that is as constitutionally unjustified as it is unchecked.

To understand this, lets first start with an example of what I would consider appropriately constitutional behavior by judges. This is an example from a case brought against the Bush Administration, demanding the release of terrorist suspects the administration has held indefinitely. The Bush administration argued that the war on terrorism was different from other crimes, and that it required an enhanced ability to indefinitely intern suspects. The US District judge in the case disagreed, and note particularly the language he uses (emphasis added):

*U.S. District Judge Henry F. Floyd ruled Monday that the president of the United States does not have the authority to order Jose Padilla to be held indefinitely without being charged.*



*"If the law in its current state is found by the president to be insufficient to protect this country from terrorist plots, such as the one alleged here, then the president should prevail upon Congress to remedy the problem," he wrote.*

I can find no more perfect example of a judge appropriately fulfilling his constitutional role. For him, the necessity or merit of being able to hold terrorist suspects without charges is IRRELEVANT to him. Judge Sweet might well consider holding suspects without charges in these cases to be the most necessary thing in the world, or alternately the most reprehensible. But his job is not to decide if such a power SHOULD exist, his job is to decide if such a power DOES exist. And he says it does not -- and to call the legislature if you want one, because it is their job to create new law.

Unfortunately, there is a growing theory of jurisprudence that creates an expanded role for judges. In this theory, judges are empowered to act sort-of as the institutional Dali lama, the wise person who descends from the mountain from time to time to correct moral lapses made by legislatures. If you are a Star Trek fan, think of this theory placing judges in the role of the Organians, parachuting into human affairs from time to time to correct moral problems. As Justice Scalia put it in a recent decision:

*The Court thus proclaims itself sole arbiter of our Nation's moral standards, and in the course of discharging that awesome responsibility purports to take guidance from the views of foreign courts and legislatures.*

The problem with this theory is two-fold. First, it calls for making judges the rulers in a benevolent dictatorship, for there really are no checks on judges elected for life who suddenly have the power to create new law. Sure, the notion of a benevolent dictatorship of people with strong moral compasses has been a compelling notion to some through the centuries, but it never works and always ends up getting abused. Which leads us to the second problem with the theory, which is that there is no constitutional basis for judges creating new law, nor would the power-paranoid writers of our Constitution ever have allowed it.

Now, you may be thinking me paranoid to think of judges as taking on the power to write law. I offer proof in two parts. First, doesn't the exponentially higher stakes and greater attention today in approving judge appointments point to the fact that judges somehow have more power than they had a few decades ago? Second, lets look at an example.

I covered this one in [this post on media privilege](#), and quoted from the [NY Time editorial](#):

*[Judge Robert Sweet] explained that the United States Court of Appeals for the Second Circuit in New York recognized a qualified First Amendment privilege that protects reporters from being compelled to disclose their confidential sources*

Judge Sweet defended the existence of this privilege by saying:

*he took note of the important role of confidential sources in news investigations of the Watergate, Iran-contra, Monica Lewinsky and Abu Ghraib scandals*

Do you see the difference from Judge Floyd's opinion above. In this case, the Judge does express his opinion, that confidential sourcing has played an "important role" in unwinding a number of political

scandals. He uses this as a justification to create a privilege for reporters to conceal evidence and ignore subpoenas from a federal investigation. Recognize, as background, that whatever shield law for reporters that may exist in your state, there is NO press shield law allowing concealment of sources at the Federal level. And, the First Amendment itself only says:

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

I don't see anything in that text that implies that the press can legally get away with obstructing justice while other citizens not in the press, like Martha Stewart, go to jail for obstructing justice. Now, you might think that the press should have such a privilege. Heck, I might in fact support some type of privilege. But the fact is that right now, it does not exist under the law and judge Sweet should have given judge Floyd's answer, which I can't resist paraphrasing:

*If the law in its current state is found to be insufficient to protect the media in doing valuable work, then the press should prevail upon Congress to remedy the problem*

Now I am sure that I am vulnerable here to Constitutional scholars saying that I am a neophyte to Constitutional Law and I don't understand the chain of court decisions that lead to, in the case above, the press privilege precedent. I have two responses to this. First, I am tired of Constitutional Law being made into this arcane specialty where only a few experts can participate in the discussion, like Jesuits arguing about some arcana of a papal encyclical. The Constitution is a very short and straight-forward document. Anyone can understand it, and should. I don't need 10 years of legal training and a piece of paper from the state bar to tell me that I see nothing about hiding information from police investigations in the First Amendment (heck, there are only 50 words there - where can it be hiding?)

My second response is specifically aimed at the chain-of-precedent reasoning for so many of the new rights and privileges that seem to be created nowadays. Of course, precedent is critical in making law work - Common Law is all precedent and even in our constitutional system, relying on precedent saves a lot of rework (e.g. the Supreme court already decided this case X way so until they revisit it, we will follow that precedent).

However, something else seems to happen in this chain. Have you ever taken an original document, and Xeroxed it, and then made a copy of the copy, and then a copy of the copy of the copy, etc. through 10-20 generations? What happens? Typically somewhere along the way, some small flaw or spot on the machine causes a spot to appear on the copy. As the copy is copied through successive generations, the spot grows and begins to stand out, until it is just as much a part of the document as the original text. The spot, however, is an artifact that is reinforced through generations, like kids repeating a mistake in the game telephone. That is what some of these court decisions feel like to me. How did the NY circuit court find a press privilege - well, someone found a very very limited privilege out of thin air years ago, and then another judge used that as a precedent for expanding the privilege, until it is set in concrete today. Just like the document experts in the CBS memo fraud want to get hold of originals of the documents to remove all the artifacts of copying to make the best decision on authenticity, so I in turn wish that courts would sometimes set aside all those intervening layers of other judges' decisions and just go back to the original damn document and work straight from the Constitution.

Liberals and some libertarians support have supported this theory of jurisprudence to date because to a large extent many of their causes have been net beneficiaries. And, if history teaches anything, trashing constitutional controls to achieve near-term policy goals nearly always comes back to haunt those who do it. I understand the temptation -- for example, I oppose the death penalty for minors, and left the recent Supreme Court decision on the death penalty out of this post because I thought it a reasonable role for the Court to reinterpret "cruel and unusual". But others, including [Professor Bainbridge whose work I like a lot](#), and [Justice Scalia whom he quotes](#), would argue that I am letting a favorable outcome blind me to the same problem of courts writing law.

**Postscript:** You may have noticed I did not mention *Roe v. Wade*. In fact, I tend to avoid abortion issues like the plague. In part this is because I have friends that are strongly, perhaps even radically pro-choice and friends who are strongly, perhaps even radically ant-abortion. Like a lot of Americans, I believe that a fetus is not a human life at conception plus one day and it is very definitely a human life to be protected at birth minus one day, and I worry a lot where the dividing line is in the middle between life and non-life. However, I will make two comments in the context of this post about *Roe v. Wade* that I think are fairly belief-neutral:

1. I have never understood how "privacy" drives legality of abortion. The clear question is "is the fetus a human life". If it is not, then since it must instead just be tissue in a woman's body, then I accept her right to do with it as she pleases. However, if the fetus is a human life, then it has rights of its own and the woman may not violate these except in special circumstances, no matter how much privacy she has. So the decision is really one of "is the fetus a life"? The Constitution does not give us much guidance on this question, but typically these types of uncertain decisions have been left to the states. It is only with *Roe v. Wade* that the Court began taking on a new role of exercising a moral override over legislatures in certain areas (see *Organian / Benevolent Dictatorship* example above)
2. I can't find a privacy right in the Constitution, though I will say I wish it was there, and would support a well-worded amendment in that area. However, if the Court in its greater wisdom feels like there is a privacy right buried in there somewhere that restricts government intervention into what we do of our own free will with our own bodies, then there are a HELL of a lot of laws out there that need to be declared unconstitutional beyond just anti-abortion law, including: narcotics laws, prostitution laws, the FDA, the tobacco settlement, alcohol prohibitions, helmet laws, seat belt laws, etc.

Posted on March 6, 2005 at 09:13 AM

## Distributed Stupidity and the Anti-Lottery

[This is a great post from Brian Micklethwait of Samizdata describing government as "distributed stupidity"](#) and demonstrating how we all face an anti-lottery every day as more arbitrary laws are piled on top of us:

*I do not think it is an exaggeration to say that there is now a crisis of excessive lawmaking in the West generally, and in the Anglo-Saxon world in particular. It is not that our political class is hell bent on tyranny, impure and simple. It is more that they have become legislative entrepreneurs, so to speak. And just as a businessman who is delighted to make a fast buck selling mobile phones does not bother*

*himself about the grief inflicted by railway travelers with mobiles on other railway travelers, so too, lawmakers who are "aiming" at one particular group of alleged wrongdoers have a tendency to neglect what you might call legislative collateral damage. The laws pile up, and the other legislators, the ones who you would hope would be sitting there solemnly trying to limit that collateral damage, neglect that duty, because they are too busy hustling through other little laws of their own, aimed at other preferred clutches of alleged wrongdoers. Laws go straight from legislative entrepreneurs to government regulators, without no intervening process of scrutiny that is worthy of that adjective.*

*Which means that government regulators are then tempted to mutate into what you might call regulatory entrepreneurs. They cannot possibly enforce all their laws, rules and regulations. There are not enough hours in the history of universe for that to happen. So, just like the legislative entrepreneurs, they also lose sight of the big picture (it having become too big to bother with) and decide for themselves which regulations to take seriously. How? Any way they please. In accordance with what rules? Whichever ones they decide to go with.*

*Add a dash of right wing fervor (a point which Go Directly to Jail apparently brings out very strongly) about crime being very, very bad and having to be fought with implacable ferocity, and to hell with those silly old legal safeguards, and you end up with a kind of anti-lottery instead of a government. Any person, at any moment, is liable to be picked on and turned into a criminal. At any moment, in the words of those British National Lottery adverts, it could be you-ou!!! And everyone is obliged to enter this one.*

Theres more, and its all good.

Posted on March 7, 2005 at 12:02 PM

## **The Loyalty Program Revolt Starts Today**

I *HATE* most new loyalty programs at stores. When loyalty programs really came in vogue with airlines, they made sense. Airlines gave their best customers bonuses for spending lots of money with them. Today, though, every store I go into has a loyalty program. I have a Fry's card, an Albertson's card, and a Safeway card (grocery stores); I have a Borders and a Barnes and Noble card; I have an Ace Hardware card and a Best Buy card; For god sakes, I have a TGI Friday's card. Not to mention the cards from American, America West, Southwest, Hilton, Hyatt, Marriott, National, Hertz and probably 20 others I can't remember off-hand. I carry a stack of the travel related ones in a big rubber band in the bottom of my briefcase. The rest bulge my wallet up to about an inch thick, even when it is (all too often) devoid of cash.

Did I mention I hate all these programs? Most of them have no real reward for purchase volume, you just have to have their card in your pocket to qualify for the best deal. What is the point of this --its not like they are rewarding purchase volume (in fact, grocery stores do just the opposite, by rewarding the people who buy the least with better service via the express lane). Why do I need to fatten up my wallet to unmanageable proportions just to get a store's best price?

This analogy will date me, but its kind of like all those women who used to carry eggs and live chickens in their purses on Let's Make a Deal in the hopes that Monty Hall will ask for that item to qualify for some

prize. When I check out in the grocery store, they even put little asterisks by certain items to remind me that I am not getting their best price because I have not shown them their plastic card. Come to think of it, my Monty Hall analogy may be flawed. It is more like the pagan gods refusing to provide rain until their hapless subjects had sacrificed the right kind of goat. Now how would that be for a loyalty program -- "I am sorry Mr. Meyer, but you sacrificed a goat, and Best Buy requires that you sacrifice an ox to get 10% off that DVD player".

Well, the revolt (or, if you accept the pagan religion analogy, the reformation) begins today. I chucked everything in a drawer except the travel cards. The book store cards are easy - its Amazon all the way now. I used to drop in and buy some impulse items at my local Borders, but with free 2-day shipping for the rest of the year at Amazon (I signed up for the offer) there is no reason to buy anywhere else. Amazon always gives me their best price without a piece of plastic in my pocket or an animal sacrifice and I don't have to deal with that irritating reminder from the cashier at Borders that without their card, I'm not going to get their best price.

Time will tell whether I can live with the increased grocery prices that will come from not having their card, but I am going to give it a shot on principle. The revolt begins -- anyone want to join me?

PS - should I name this effort my loyalty pogrom?

**UPDATE:** Thanks David, I fixed "principle".

**UPDATE #2:** Per the comments, I do indeed understand that one of the major goals of well-structured loyalty programs is to gather data about the customer. However, I would argue that out of 100 companies gathering customer purchase data, maybe 3 know what they are doing with it - meaning that they do more than just make nice powerpoint slides for the bosses with the data.

Take an example of my grocery store, Fry's. Fry's has a loyalty card you must present at the register to get the best pricing. Once you present the card, the checkout person will tell you at the end of the transaction how much you saved by using the card. But half the time the people around me forget their cards, and the checkout person asks other people in line to lend their card, so the hapless customer who forgot theirs can still get the better pricing. In other words, if the data is really being used, it is corrupted.

But how do they use the data? Certainly bricks and mortar stores have limited options - they can't do like Amazon does and present me with a custom selection of goods when I first walk into the store. They might send me a customized coupon package, but I have found no evidence that any loyalty program I have used has ever done this. My guess is that most of the data just feeds the voracious appetite of the bosses to see data. At best, the data might be used in vendor negotiations, but I doubt this too.

By the way, [here is a bricks and mortar business that is actually using the data](#) to provide a customized customer experience

**UPDATE #3:** One of my friends who used to work with me in the pricing practice at McKinsey & Co. suggested that the cards may be a way of maintaining multiple pricing levels for different customers, much like airlines have done for years with business and leisure travelers. The theory goes that the most price sensitive will get and use such a card, while the busier, perhaps wealthier and less price-sensitive shoppers

won't bother. This is certainly possible, but if this is the strategy, they certainly need to train their register people not to shout all over the store to find a card for shoppers that don't have one. Since I put my Fry's card in the drawer last week, I have visited the store three times and every time the register clerk, without my asking, has borrowed a card from someone else so I could get the discount.

Posted on March 7, 2005 at 06:07 PM

## Follow-up on Diversity

Last week I wrote that I was confused on this diversity thing:

*For years, women at Harvard argued there needed to be more women on the faculty to support "diversity". I have always thought that diversity meant that you had a lot of difference - in this case different kinds of people with different skills. Now, Larry Summers is getting attacked by the female faculty for implying that women are, uhh, perhaps different from men. Women are insisting that there is no justification for even studying the question of whether women are different than men. They maintain that women are the same, no argument allowed. **But if they are the same, how is hiring more women contributing to diversity?***

Fortunately, hat tip to James Taranto, the diversity term is clarified on the web site of an Oregon lodge. The page begins:

WE WELCOME DIVERSITY  
*Respecting the interdependence & diversity of all life.*

Helpfully, they clarify what they mean by diversity a bit down the page:

*No Smokers...No Pets...No Visitors...No Hummers, No RVs, No Bush Voters (due to his environmental destructive policies.)*

Oh, and in the spirit of good customer service: no refunds for cancellations.

It can't be long before this same text appears on the Harvard web site.

PS- I would be curious to see a quality, thoughtful listing of GWB's war-crimes on the environment. Not his "lack of commitment", but actual changes in regulation. While I know environmentalists hate his rhetoric, in reality, he has not actually changed much, other than the Clear Skies Initiative, which I discussed here as actually reducing emissions. Heck, he's actually a disappointment for those of us who would like to see a roll-back of some of the sillier environmental rules (e.g. ANWR drilling).

Presumably environmentalists dislike GWB's going along with the Senate's 98-0 rejection of Kyoto, but does this reaction really make sense for minimize-man's-impact-on-nature people like those quoted above? Global warming hasn't been shown to hurt plants or animals or such - I am not sure many would notice. Global warming primarily impacts man, and in particular, technological high-population-density coast-living man. I would think that rising oceans swamping out civilization would be a positive outcome for these folks. (**update: more on Clear Skies here at Volokh**)

Posted on March 8, 2005 at 12:11 AM

## Do US Soldiers Need Better Weapons Training?

Italian communist Giuliana Sgrena claimed to have been specifically targeted by US troops, and had hundreds, perhaps thousands of rounds shot at her oncoming vehicle from a US checkpoint. She even claims to have been shot at by a tank. We mourn the loss of and the needless death of her translator, but must observe that, based on her story, US soldiers don't seem to be able to hit the broadside of a barn. Courtesy of LGE, here's her car:



Note that the front end, which should have taken the brunt, looks almost pristine. One hit in the windshield, one in the left-front tire, and one or more in the drivers side window. [More pictures here.](#) More too at [Captains Quarters.](#)

Further, Ms Sgrena

*said her car was hit by 300 to 400 bullets from an armored vehicle. She said she was picking up handfuls of spent rounds from the seats.*

OK, maybe I was wrong. If hundreds of rounds went into the car, they must have all gone through that same single hole on the windshield. That's GREAT shooting. So I guess what is really needed is better weapons penetration. Its a pretty pathetic bullet from an armored vehicle that would enter a car and have so little energy left that it would just land on the seats in piles.

Look, here is some advice. Take it from the CBS memo forgers. If you are going to make something up, know your subject. If you are going to forge a memo from a typewriter, make sure you know how

typewriters worked. And if you are going to exaggerate a story about military weapons, make sure you understand weapons. Rounds entering the car would not build up in a pile on the seat so that she could scoop them up - they would have embedded in things. And, if enough rounds were fired that they started building up on the seats, then no one would be alive to scoop them up.

I have no doubt that this was a harrowing experience for all concerned, especially in the midst of their exhilaration at being released. It was a tragedy that neither the drivers nor the Italian government knew enough about the rules of engagement on that road to recognize that speeding toward a checkpoint might be dangerous. But it is also clear that Ms. Sgreni is exploiting the death of her comrade for personal and political gain, just as the Italian government is exploiting the incident to take attention away from the fact that they basically just established a bounty for kidnapping westerners.

Posted on March 8, 2005 at 05:39 PM

## Licensing eBay Sellers

I wrote before of the cost that licensing imposes on the economy. I love Milton Friedman's take on licensing and certification:

*The justification offered is always the same: to protect the consumer. However, the reason is demonstrated by observing who lobbies at the state legislature for the imposition or strengthening of licensure. The lobbyists are invariably representatives of the occupation in question rather than of the customers. True enough, plumbers presumably know better than anyone else what their customers need to be protected against. However, it is hard to regard altruistic concern for their customers as the primary motive behind their determined efforts to get legal power to decide who may be a plumber.*

Now, from Ohio (and [via Cafe Hayek](#)) comes this attempt to regulate auctioneers:

*Besides costing \$200 and posting a \$50,000 bond, the license requires a one-year apprenticeship to a licensed auctioneer, acting as a bid-caller in 12 auctions, attending an approved auction school, passing a written and oral exam. Failure to get a license could result in the seller being fined up to \$1,000 and jailed for a maximum of 90 days.*

Keep Friedman's quote in mind. Note that under this system, auctioneers have an automatic veto over new competition, since all potential competitors must find an existing auctioneer to take them on as an apprentice. Imagine the consumer electronics business - "I'm sorry, you can't make or sell any DVD players until Sony or Toshiba have agreed to take you on as an intern for a year". Yeah, I bet we'd see a lot of new electronics firms in that system - not.

It gets better, though. The law is written in a way that it applies to Ohio residents trying to sell on eBay:

*Here's the response offered by state Senator Larry Mumper, author of the legislation: "It certainly will not apply to the casual seller on eBay, but might apply to anyone who sells a lot," he said. "If someone buys and sells on eBay on a regular basis as a type of business, then there is a need for regulation."*



This is the kind of regulation mentality that is killing us. eBay has a great rating system, and while the system sometimes trips for small sellers (since they can just start a new account) but big volume competitors ruthlessly protect their reputation on eBay because it is so visible.

Posted on March 8, 2005 at 11:35 PM

## Financing Small Business Growth

A while back I wrote a series of posts [here](#), [here](#), and [here](#) on buying a small business. One of the things I said in that post was:

*Then, there are the banks. From my experience, it is very, very difficult to get a bank to make an collateralized loan - i.e. a loan that is secured only by the cash flow of a company rather than by assets. In fact, I have never been successful at that. About the only way that I have found that banks will make a loan is if it is an SBA loan, where the SBA basically guarantees the loan for the bank. The SBA goes through cycles of being very open to lending to being very tight. I have not dealt with them for over two years, so I don't know what their stance is today. Remember, though, that the SBA is not going to approve any loan where the buyer has no experience in the industry or where the buyer is not putting down his own money as well. The SBA has a lot of information [here](#).*

This statement is still mostly true but I have learned a lot over the last couple of months. The following is an update.

One of the things they tell you all the time in business school, but frankly I always found impossible to really internalize, was how much cash growth takes. I guess I always thought of businesses with cash flow problems as being unsuccessful, slowly sliding down the drain and trying to make ends meet. Wrong. Growth is tremendously expensive. And stressful.

My business is based on concession contracts. Each winter, we are usually presented with the opportunity to bid on many contracts. We narrow the field down to 4-6 we bid on, hoping to win about 2. One of the things I did last year was greatly improve our standard bid materials, hoping that would help us win good projects. Did it ever. We bid on 6 last year and we won 6 (including [Burney Falls](#), [Pyramid Lake](#), and [Lake Havasu](#)). Yea! But then I began adding up all the investments in new inventory, new equipment, salary (you always have to hire people before the first revenues come in), licenses, building improvements, etc.

Eeek!

After a lot of work with bankers, I stand by most of my statement above. Most bankers will not lend to businesses on cash flow, and always want some type of collateral (like my home equity). Over time, though, I have found a few bankers who are willing to lend on cash flow and really understand business growth and why maybe I don't want to have my business's growth rate limited by how much equity I have in my personal home. There are bankers who will put together packages of long-term loans backed by the SBA plus short term working capital loans that will now let me grow faster. The folks at [Silver State Bank](#), for example, have been great.

One of the reasons I felt the need to post this update is that I have been told that my difficulty finding a good business banker was due in part to my location here in Phoenix. The Phoenix banking market is very real estate driven, so bankers usually come from that background rather than a business background. I am told that those of you on the east coast or in the Midwest may have an easier time finding good business bankers.

**Postscript:** By the way, you might ask how I feel as a small government libertarian about accepting the government subsidy implicit in an SBA loan. The answer is "conflicted". Some libertarians are fine accepting government services, on the theory that they certainly have paid for them with all their taxes. Some try to avoid government services, but that is almost impossible in today's world (such as using government roads). I generally try to be pragmatic, operating somewhere in the middle.

As far as SBA loans go - I don't know what the commercial banking world would look like without SBA loans. I think that the banking world would have found an alternative way to mitigate the risk (e.g. via securitization) without the government guarantee, but we can't know. The fact is that SBA guarantees exist and banks would be crazy not to use the guarantees in making business loans. So, the reality is, if I want a cash flow based loan for a company my size, it will likely carry the SBA guarantee. My apologies to all those whose taxes support my loan guarantee.

Posted on March 9, 2005 at 08:40 AM