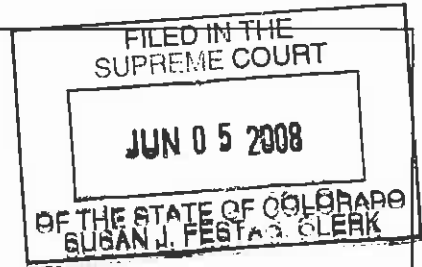


SUPREME COURT, STATE OF COLORADO

2 E. 14th Avenue
Denver, CO 80203

ORIGINAL PROCEEDINGS PURSUANT TO
§ 1-40-107(2), C.R.S. (2008)
Appeal from Ballot Title Setting Board



▲ COURT USE ONLY ▲

Case No. 08 SA 184

Petitioner,

PAGE PENK

V.

Respondent:

MIKE COFFMAN, Secretary of State,

and

Title Board

DAN DOMENICO, WILLIAM HOBBS,
DAN CARTIN, TITLE BOARD,

PETITIONER'S OPENING BRIEF

Introduction

"Like trees, exposed by fall, baby,
Time, reveals it all."¹

¹ 10,000 Maniacs. "You won't find me there." Love Among the Ruins. Geffen Records, 1997.

Findings of Fact

“There is no way to justify our present public monopoly of the post office. It may be argued that the carrying of mail is a technical monopoly and that a government monopoly is the least of evils. Along these lines, one could perhaps justify a government post office, but not the present law, which makes it illegal for anybody else to carry the mail. If the delivery of mail is a technical monopoly, no one else will be able to succeed in competition with the government. If it is not, there is no reason why the government should be engaged in it. The only way to find out is to leave other people free to enter.”²

Dr. Milton Friedman

An Argument

“You can run kid, but you can’t hide.”³

For a long time, I thought that Milton Friedman was wrong when he said that “markets seek equilibrium.” I understood the basic idea and even agreed with it to a certain extent. But I also remember the investor and chairman of Berkshire Hathaway (NYSE: BRK.A, NYSE: BRK.B) Warren Buffet once saying that he only invests in companies that have some kind of a monopoly or fortress in their fields which can’t be challenged. The example he gave was Coke which doesn’t have a monopoly on selling sugar water, but instead has a legal monopoly on the psychological brand name and image of Coca-cola. Dr. Friedman’s theory seemed to me to fail when tested against the real world power of a company which will do everything in its power to ensure it’s dominance in a field and will do anything to ensure that “others are [not] free to enter.”

But then I began to think about it further and took a long time in doing so. And I realized that Dr. Friedman was absolutely right, markets *do* seek equilibrium, even if corporations don’t.

² Milton Friedman, Friedman, Milton & Rose D. Capitalism and Freedom, University of Chicago Press, 1982, 29.

³ Top Gun. Dir. Tony Scott. Pref. Tom Cruise, Tom Skerritt. Paramount Pictures: 1986.

That's because it takes two to tango in the marketplace. That is, there must be a seller, a business, and there must be a buyer, the public for example. And although soulless and legally immortal, corporations are up against an unstoppable force, a force which was unknowingly unleashed by one of the most powerful but little known entities of the U.S. government, the Defense Advanced Research Projects Agency (DARPA), a division of the Department of Defense.

Now according to a website called Computer Engineering Inc.⁴ and my general historical knowledge, the internet began in the early 1960's as a project to create a Command and Control structure for the military that would allow communications between the Pentagon and field units which might be isolated and useless in the event of a nuclear attack on America.

It is ironical that just as the internet was in its most primitive infancy in the early '60's and the aim was to allow the spread of information (among the military only of course), at exactly the same historical moment:

“Public discussion of...[nuclear weapons]...in American strategic thinking virtually ceased in the early 1960's, partly because it was politically embarrassing”⁵.

Now had the military done any truly long-range thinking on the subject and brought in as many possible voices into the process of developing the internet, they never, and I mean *never* would have developed a web of communications systems. Not then. Not in the estimated 2 to 7 billions years of fuel our sun has left.⁶ Not *ever*. Why?

⁴ http://www.computerengineering.ca/about_Internet/Internet_history.php

⁵ Dwyer, Gwynne, *War*, Crown Publishers, New York, 1985: 207.

⁶ Land, Kenneth, *Cambridge Encyclopedia of Sun*, Cambridge University Press, 2001: 74.

The answer is simple- “markets seek equilibrium.” And although it wasn’t imagined at the time, the internet would grow to where anyone, not just the military, would be able to exchange information. And that’s a problem in trying to maintain a “fortress” of any kind in the 21st Century, be it market or military in nature.

Now originally, there was the Web.0. This involved the creation of the physical computer systems, programming languages and phone lines needed to run everything. Then came the Web 1.0 in the early 90’s and that’s when the Information Explosion began in earnest. That coincides with the rise of Porn on the net. For in truth, it was Porn that drove the growth of the net back then because people used the basic tools fostered in the ‘60’s by D.A.R.P.A to make money off of sex. Jumping ahead slightly, on-line Porn had limited profitability because eventually, and this is exactly what happened, the net became flooded with images of sex and some people didn’t charge for it. That’s a problem for a business if the site next to yours just gives away what you want to charge for.

Regardless of the social merits of Porn, it drove the birth of the Web 2.0, a system in the late 1990’s that took the instant communication and tools of the Web 1.0 and built something approaching a singular, adaptive, global consciousness. That is to say that not only could people receive information regardless of their location on the Earth, they could send it as well, instantly and without (at first) apparent government interference. One example of the Web 2.0 is Wikipedia, where people post whatever information about whatever subject they want. Another example are blogs and Myspace where connections can instantaneously transmit ideas and information to anyone. Suddenly, those who had a say on a subject wasn’t just limited to those on T.V. Or in Washington. Or even in the military. Anyone could join. Imagine that.

That, of course, is a problem for those who do not want a large sample of people sticking their noses in, say, government business, to pick just one example.

But the Web 2.0 had its own limitations. Although it was great for on-line chat groups and the Web 1.0 still allowed you to buy any product you wanted right from your computer, the Web 2.0 could be defeated in two ways. First, governments, like China, have moved aggressively to control what its citizens see on the internet. So for example, say the government doesn't want you to get e-mail, then you don't get e-mail. And because the people who do the controlling behind the scenes never have to show their face and need not be physically present to edit the information you receive, it's impossible to prove your e-mail (phone, "snail mail", etc.) actually are being censored.

Second, and perhaps more importantly, the people who make government decisions figured out that despite all the chat rooms and connecting places on the web, they don't have to actually "alter" their conduct because of it. So let's take a moment and look more closely at the life of said employee:

Government employee-	YES	NO
- Regular paycheck	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Medical insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Unlimited taxpayer money to carry out their will	<input checked="" type="checkbox"/>	<input type="checkbox"/>

And that brings us back to the Title Board and the legal reasoning behind this case: Marine Corp Reserve Major Mike Coffman doesn't need my input (or this Court's) about Ballot Titles.

In fact, Major Mike and his outfit would prefer that there never be *any* input by anyone on his conduct. Not today. Not tomorrow. Not ever.

That's a problem for me specifically as Major Mike (in his secondary employment as Secretary of State) deliberately ignored my input on the Ballot Title. But in a larger sense, that's a problem for me and everyone else on the planet because in his allegiance to his first employer (the Pentagon) Major Mike, Gen. Peter Pace and Commissar Mullen don't need my input, or anyone else's apparently, on their conduct outside the United States. In fact, whatever rules there are that might limit the conduct of the U.S. military, well, those said stop at the water's edge of America.

But, fortunately, the rise of the Web 3.0 has given the citizens, including me, a way to seek "market equilibrium" and join in what Justice Holmes called a "free trade in ideas" in regards to U.S. military conduct. That's because the Web 3.0 allows anyone (barring government electronic censorship) to post pictures on the World Wide Web. In fact, the Web 3.0 is in truth, less than a year old. I pick that timeframe because it was only very recently that a soulless legal entity named Google (NASDAQ: GOOG) updated a popular website called Google Earth. Google Earth allows a user to fly anywhere on the planet and view high resolution photos of what's there. But the real breakthrough came when they started linking satellite images taken from space with pictures shot on the ground. Why just yesterday, my wife came here to C.U. Denver and we flew on Google Earth to Tashkent, Uzbekistan to look at her mother's house there. *I* was impressed. (It's interesting to note that in Russian, the language of one of Google's founder's, the word "google" means to look into private dealings of citizens by the government.)

The point here is that the Web 3.0 is going to “reveal it all.” Because if pictures on the ground are linked up with a world map, as Google has done, the end of geographic discrimination is in sight. That’s because it is no longer possible to leave one geographic space and do in another what never would be acceptable in say, Oklahoma City. That’s because eventually, thanks to the Web 3.0, people will start making the connections between what happens overseas and what happens here in America. Thanks to Google Earth, the military, all militaries, “can run”, but they can’t hide. For the eye of the Web is now on them.

Eventually, and sooner rather than later I hope, it will be easy to stop wars, like those in Darfur in the Sudan, Africa. How? Well, say Google starts posting pictures of what the slaughter and organized rape on the ground there looks like. Those men doing the killing might not care, at first. But zoom out from Darfur to the sea ports that bring in the weapons and money that allow them to carry out their reign of terror. Zoom back in to take a close look at the ships carrying said supplies. Then track those ships back to their home ports and the answer is “China”. Again, at first, the Chinese might not care. But who buys Chinese goods? Wal-Mart. Who shops at Wal-Mart? We do. Eventually, and very soon, the Web 3.0 will be established between your pocketbook, Wal-Mart, China and then Darfur. Don’t like what’s going on in Darfur? Boycott Wal-Mart and soon, the Chinese will get the message and stop the war in Darfur. And if they do it because it turns out to be bad for business, the reason why the war stops is irrelevant.

But because the Web is not based or owned by any one company or country, it won’t be just the Chinese who have market forces controlling their military behavior. Eventually, market forces will stop Major Mike and his conduct as well, thanks to the Web 3.0. True story.

Statement of the Case

“Every great empire, from the British to the Greeks, has been founded on an ability to manipulate metal into ever more lethal forms. Plutonium, the metal that made the American Century possible, was manufactured by thousands of people, organized by a rich, centralized democratic state devoted to the advancement of military science.”⁷

There is a problem in achieving this higher state of grace of control of the military, though, and it has to do with the argument over evolution going on in our society today. For some, starting with Major Mike, evolution is over. It stopped basically stopped in the 13th Century when gunpowder was invented. That’s because in the mind of some, the gun is the ultimate technology and they can never imagine anything that could possibly replace the gun. That’s because the gun has become a fetish for some, a:

“Object...regarded with a feeling of awe, as having mysterious powers in it or as being the representative or habitation of a deity. Among savages, it is usual for each tribe to have a fetish in common.”

I say that because I’ve been taking samples for various law enforcement and military officials for about a year now and I ask them, respectfully, if they could ever imagine a time without their guns. And without exception, in a sample of about 15, the answer is “no”. Not just “no”, but “NO”. And when I talk about non-lethal weapons replacing their guns, I get this sly smirk back and a quick, uniform response: “Well, (Smirk, Smirk) as long as the bad guys have guns, we need them, too.” Of course that isn’t true, but this touches on a deeply emotional subject of powerlessness felt by the people who have the guns. For especially after 9/11, our society feels more powerless than ever. And those entrusted with protecting us, the government, cling ever more desperately to their guns because their old power symbols, guns, no longer protect us from harm. This is just as Major Mike clings desperately to his control over Ballot Titles, despite there

⁷ Samuels, David. “End of the Plutonium Age.” *Discovery*, November 2005: 42.

being better alternatives to his proposed wording. For although this case is about the small issue of wording, dark marks cast down among the light, in a larger sense it is about alternatives for the future, of growing to become the kind and wise and tolerant people I know we dream ourselves to be at night. Now in truth, non-lethal weapons are very close to being ready to replace primitive gunpowder tools in defense. In fact, the June 2nd, 2008 New Yorker Magazine ran a cover article called “Phaser on stun, Crime fighting of the future.” by Alec Wilkinson. It talked directly on page 28 about the Active Denial System, as did the Jan. 25th, 2007 Denver Post:

WORLD | ★★ THE DENVER POST 11A

New military firepower disarming

The nonlethal ray gun gets enemies, overcome with a fiery sensation, to drop their weapons.

By Elliott Minor
The Associated Press

Moody Air Force Base, Ga. — The military calls its new weapon an “active denial system,” but that’s an understatement.

It’s a ray gun that shoots a beam that makes people feel as if they are about to catch fire.

Apart from causing that terrifying sensation, the technology is supposed to be harmless — a nonlethal way to get enemies to drop their weapons.

Military officials say the gun, which is not expected to go into production until at least 2010, could save the lives of innocent civilians and service members.

During the first media demonstration of the weapon Wednesday, airmen fired beams from a large dish antenna mounted atop a Humvee at people pretending to be rioters.

The device’s two-man crew located their targets through powerful lenses and fired beams from more than 500 yards away. That is nearly 17 times the range of existing nonlethal weapons,

Elliott Minor / The Associated Press



An unidentified airman looks over the military’s “active denial system” at Moody Air Force Base, Ga. The ray gun, not expected to go into production until at least 2010, shoots a beam that makes people feel as if they are about to catch fire.

such as rubber bullets.

Anyone hit by the beam immediately jumped out of its path because of the sudden blast of heat throughout the body. While the 130-degree heat was not painful, it was intense enough to make the participants think their clothes were about to ignite.

⁸ Minor, Elliott, “New military firepower is disarming.” Denver Post 25 Jan. 2007: 11A.

Only in truth, the more humane a weapon system is, the less likely the military wants to use it. Retired Delta Force member Paul Howe said this in the debate about U.S. Army bullet size "If I'm going into a room against somebody that's determined to kill me, I want to put him down as fast as possible." Well, why that may have been acceptable to in the Second Millennium, it sure isn't acceptable in the Third, now that we have options in defending ourselves that don't involve lethal measures.

In fact, D.A.R.P.A. already came up with a replacement for uncontrollable bullets called Nano Air Vehicles (N.A.V.), which according to the Defense Advanced Research Project Agency and program manager Dr. Todd Hylton, are less than 7.5 cm and under 10 grams in weight.⁹ They are remotely controllable and can be tipped with an instant poison that will not be used until target verification is assured. And thanks to the Web 3.0 and light speed, global satellite communications, it is now possible to mount a camera on the tip of an N.A.V., beam the picture to the net and let whoever is watching vote on if a death sentence is warranted. Or not.

That of course, is completely unacceptable to the men in the military, all men in all armies. The whole point of joining the "tribe" of the military is to operate outside the civil laws and geographic location of the nation you come from. Any attempt to replace guns with either non-lethal's or N.A.V.'s will never succeed because the men using them have a fetish for guns and believe that in having the instant and un-reviewable power of life and death in their hands, they themselves are gods.

⁹ <http://www.darpa.mil/dso/thrusts/materials/multfunmat/nav/index.htm>

There is, however, one more set of D.A.R.P.A. programs that should be noted before reaching a Conclusion. These programs are designed to “improve”, and I use that term loosely, human war fighting performance. Starting with “B”:




”Biology encompasses a vast array of interconnected phenomena spanning many decades in spatiotemporal scale. Every biological system, whether as complicated as the human body or as simple as a virus, exists within and interacts in a complex way with a complex environment. This implies that characterization of even simple biological systems can only be accomplished through acquisition of enormous data sets, built through observations within a coordinate space of very high dimensionality.

The Fundamental Laws of Biology (FunBio) Program has assembled a well-balanced team of biologists, mathematicians, and physicists to develop a synergistic community and common language to—

- Bring new mathematical perspectives to biology.
- Use the stimulus of those challenges to create new mathematics that will reveal unanticipated structures in large complex systems.
- Explain biological organization at multiple scales.
- Discover the the fundamental laws of biology that span all biological scales.”¹⁰

“Bio-Magnetic Interfacing Concepts

Researchers funded under the Bio-Magnetic Interfacing Concepts (BioMagnetICs) Program  have been successful in demonstrating the utility of nanoscale magnetics as a portable, robust, and highly sensitive transduction mechanism for monitoring and controlling biological activity at the cellular and, ultimately, single molecule.”¹¹

“Control of Protein Conformations

The Control of Protein Conformations (CPC) Program will develop tools that enable real-time control and manipulation of single protein conformations so that the

¹⁰ <http://www.darpa.mil/dso/thrusts/math/funmath/fundamental/index.htm>

¹¹ <http://www.darpa.mil/dso/thrusts/physci/newphys/biomag/index.htm>

functional characteristics of the protein can be tuned or optimized. Real-time control of protein conformation will enable the development of biosensors with tunable detection characteristics, and improved countermeasures for defense against chemical and biological attack.”¹²

Preventing Sleep Deprivation



“Sleep deprivation is a fact of modern combat. Current operations depend upon the warfighter’s ability to function for extended periods of time without adequate sleep. The widespread operational demand for optimal performance in sleep-depriving conditions demonstrates the necessity for development of methods to safely combat sleep deprivation and to prevent the associated degradation of performance.”¹³

Now without belaboring the point about how D.A.R.P.A. is building man/machine interface systems at the molecular and genetic levels, only so as to increase national security of course, I suggest this Court go to the D.A.R.P.A. web site to learn more. Unfortunately, the link about the program for Mathematical Time Reversal¹⁴ is not active. I am curious none-the-less about that program, but I digress. The point of this Argument is that there are no limits to military conduct. Not at the nano-level. Not at the molecular level. Not at the geographic level. And certainly not at the Title Board level. And this is a problem for everyone because unless the military is restrained in some fashion, we are done as a Republic. We are done as a civilization. And we are done as a species, too.

In fact, there is another Proposition that *is* going to be on the Colorado ballot this fall, the one about “life” beginning at the “moment of fertilization”, which I believe but can’t prove, is sponsored by 454 Life Science in conjuncture with the Pentagon, so as to create “soldiers” that were not fertilized and hence, have no rights. What a perfect Trojan Horse. But there is hope.

¹² <http://www.darpa.mil/dso/thrusts/bwd/pad/cpc/index.htm>

¹³ <http://www.darpa.mil/dso/thrusts/bio/mainhuman/psd/index.htm>

¹⁴ <http://www.darpa.mil/dso/programs.htm#c>

Conclusion

Having thought about this problem, even if I was unable to articulate it in the past, I can only see one solution to the fetish of guns among men. And that involves using religion as a weapon:



The Golden Calf

The solution is to eventually, not now, not this year, but soon, to start claiming that the men who believe that evolution stopped with the invention of the gun eight centuries ago (or the revelations of the Koran justifying killing), are Idolaters. That is, they have come to worship at the alter not of the Golden Calf, but of technology.

I would write that story this way:

“When G-d cast Adam and Eve out of the Garden of Eden, it is commonly believed that they were directly cast into the desert, one moment milk and honey, the next, sand. But G-d is far too subtle and powerful for such a crude display of strength. Instead, G-d had Adam begin to destroy the Garden one acre at a time, chopping it down in exchange for gold, covering over Mother Nature with concrete and asphalt. Eventually, unless we stop worshipping the false Idol of profits and lethal power, man will pave over the entire Garden of Eden and we shall perish from the Earth. Eventually, Eve must show Adam the error of his ways and start to teach men that the

Web.Life connects all. That what happens outside our geography affects everyone. Eventually, when we see the pictures of what we are doing overseas and understand that the power of the gold in our pockets will allow ‘people to enter’...’the free market of ideas’ Justice Holmes and the Founding Fathers hoped we would enter, we will move closer to a higher state of grace.”

So I am of two minds at this point about writing this brief. On the one hand, I’m hopeful that this Court is finding a face-saving way to solve the urgent problems we face and that’s why I’ve been asked for this brief. On the other hand, it is possible that I was asked for this brief so as to slow me down and waste my time in a fruitless search for not the Apple of Knowledge, but the Waters of Justice, in U.S. courts.

Now in submitting these papers, this is exactly what happens: I go to the Colorado Supreme Court building, hand over money to a clerk, hand over some papers too, and then leave. A short time later, I get a letter in the mail, usually telling me that I got everything in my legal papers completely wrong and that I should not come back tomorrow with a “witch’s broom”, but never. And then I’m left wondering if the justices of this Court ever saw the paper’s I sent. I have no way of verifying that they did of course, because they never have to show themselves to me or explain anything or even ask me a single question. Just like Major Mike.

And frankly I’m tired of it. I think I’ve used up just about all my faith in the U.S. justice system and am deciding if I should “vote with my feet” and see if I can find a justice system somewhere else that will offer me the respect of if not agreement with my position, then at least the respect of telling me to my face that I got everything wrong.

Now seeing as my new daughter Madina is leaving the U.S. on Saturday to fly into the “free-fire” zone Major Mike and his tribe have set up outside America, it’s not a moot point.

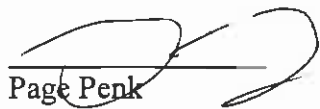
12 years. 12 years I’ve been trying to warn of the encroaching danger of men like Major Mike and their control fetish. 12 years and not one human being, not one single human being has said a single word of encouragement to me. Not one word. Now I don’t expect to get that encouragement in my lifetime, at least not here the U.S.A. But I will never stop asking for that respect. And it starts with the respect of Oral Arguments, as a first step to allow us to “go home” again, back to the federal Constitution and the ideas of democracy we set out to seek from that distant shore now so long ago.

So should the honorable justices of the Colorado Supreme Court ever see these papers and then are deciding on what to do, I would simply state, closing out Act II of my paper filings before writing Act III, “Petitioner’s Traverse Response”:

“Trust more in the people, and less in the government, if forced to choose.”

It’s the best chance we have in defeating those who have targeted America, and the women, for extermination. So if this Court has better plan, or another one, for stopping our enemies, both “foreign and domestic”, go with it.

Respectfully submitted June 5th, 2008.


Page Penk
father/citizen

This brief was hand delivered about 3 P.M. to the Colorado Attorney General.