



PLANET

ADVANCING LIBERTY FROM THE ECONOMY TO ECOLOGY

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PRESIDENT CONCEDES MORAL HIGH GROUND ON ENERGY

by Myron Ebell

“America is addicted to oil.”

With these five words in his State of the Union speech, President George W. Bush confounded steadfast allies on energy policy and emboldened his bitterest enemies. Political sages often counsel paying more attention to deeds than to words, but in this case, the President’s irresponsible rhetoric is likely to have far more damaging consequences than the minor policy changes to counter our collective “addiction” that he went on to recommend. And all for naught—for Bush, the political payoff has been nil.

The media pounced upon Bush’s speech. His “addiction” remark was the top headline in newspapers across the country and around the world and swamped coverage of the President’s extended defense of his policies on terrorism, Iraq, and electronic surveillance. *The New York Times*, in addition to its front page headline, featured a long editorial that found the President’s remarks “woefully insufficient.” Environmental pressure groups quickly jumped on Bush for admitting the obvious while still refusing



to do anything about it. For example, Sierra Club Executive Director Carl Pope wrote: “It was bizarre...this President seems clueless about addiction. You don’t follow up your first acknowledgement of your problem by saying that in 15 or 20 years

you will cut back or seek treatment.”

Fill Your Chevy

The Times and the environmentalists are correct in that the policies offered don’t amount to much. Bush proposed to

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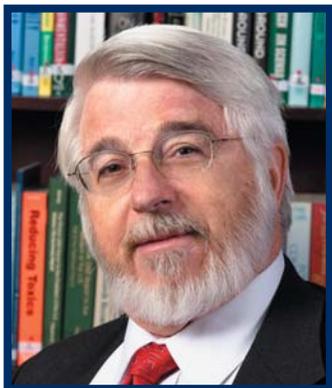
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>> FROM THE PRESIDENT



In Memoriam: R.W. Bradford

by Fred L. Smith, Jr.

Death closes so many books that are still being written. A book that was closed over the holidays was the Bill Bradford volume. Bill was the editor of the magazine *Liberty*. Bill was a friend and a tireless warrior for liberty itself. The magazine was Bill's creation (and will now continue under the leadership of Stephen Cox). David Friedman and others have called *Liberty* the conscience of libertarianism. It was. If you're not a subscriber, you should be.

(To subscribe, write to Liberty Dept. L, P.O. Box 1181, Port Townsend, WA 98368 or call 1-800-854-6991.)

My recollections of Bill deal mostly with his enthusiasm for challenging the conventional wisdom, for documenting the case for economic liberty, and for pushing all of us who knew him to put into writing some of our better thoughts. His ability to tease more out of us than we thought was there—to edit it into a manuscript that we wished we had written—was wonderful. I first floated my ideas on values-based communication as a *Liberty* editor (I was one of the many whom Bill persuaded to take on that role). My article, "Traitors to Our Class," allowed me to explore my thoughts on the problems that the intellectual class' love affair with collectivism has created for our cause. There I also began to discuss how we might still prevail. My view—then and now—is that we must reach out to those holding egalitarian ideas.

Every month, *Liberty* includes a section called "Reflections," which deals with short thoughts on whatever item might interest the movement. It is an exciting part of the magazine and includes thoughts that later blossom into full-fledged articles. The major articles include wonderful pieces by key thinkers in the libertarian movement. A lot of my raw ideas first appeared there.

Bill located the magazine in one of the most remote areas in America, Port Townsend, Washington. His belief—which those of us in Washington, D.C. understand all too well—was that a bit of distance from the short-time, pragmatic focus of politics was necessary for serious thought. He was probably right, but by creating a forum for those of us entrapped in the shallow world of Washington, he created a place for our hopes and our deeper thoughts.

Bill was a bit of an idealist. Unlike many of us, he never gave up on the Libertarian Party, although he was one of its harshest critics. He deplored party leaders' petty infighting, yet found solace in the slimmest statistical evidence that our ideas were beginning to influence elections. And he continuously pushed for a LP that would seriously seek to reach the millions of Americans who espouse libertarian values but vote for conventional candidates. He made the case for a Club for Growth well before that group's founding. And, like the renowned socialist Norman Thomas, his hopes have had far more success in the broader world.

Bill's faith, hope, and confidence that friends of liberty would put aside their quiriness, their egos, their zero-sum thinking, and combine into the force that he knew we could be was wonderful. On many occasions, he argued for a meeting of all friends of liberty. His belief was that, if we could ever create a movement rather than a balkanized band of fellow travelers, then the war for liberty would advance much more rapidly. I and others tried—and his summer meetings in Washington State and elsewhere did move us in that direction. Perhaps his dream of unity will some day be realized. As I joked with him, the trouble with libertarians working together is obvious: If two libertarians agree, each one knows the other has sold out!

Liberty, the magazine, is a great creative force. It allows the raw concepts that are essential if we are to prevail, to gain attention, to reach the activist core. *Liberty* was, and I trust will remain, a testbed for the ideas of liberty. I never wrote as much on these topics as I wish I had or should, but I wrote much more because of Bill's requests and friendship. I understand he noted that he suggested an epitaph: Bradford Dies, *Liberty* Lives! It certainly sounds like him—that bequest should be honored.

Fred Lee Smith, Jr.

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President Concedes Moral High Ground

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reduce our oil imports from the Middle East by 75 percent by 2025 by increasing federal funding for research into new energy technologies by 22 percent. For automobiles, the President has decided that the fuel of the near future is going to be ethanol produced “not just from corn, but from wood chips and stalks or switchgrass.”

But Bush’s goal is meaningless. The United States imports nearly two thirds of the 21 million barrels of oil it uses daily, but only 20 percent of those imports come from the Middle East. And even if the Middle East’s share of our oil imports were zero, supply disruptions there—or anywhere—will raise the price of oil for *everybody, everywhere*, because oil prices are set in a world market.

Second, the policies proposed are ridiculous. Over the past 35 years, the Department of Energy has spent billions of taxpayer dollars on research into the not-so-new technologies referred to in the President’s speech without much to show for it. For example, ethanol—that is, ethyl alcohol, the stuff we drink—can be made from cellulosic materials such as wood chips, but decades of research have so far failed to make production commercially viable even with the huge federal subsidies that ethanol producers receive.

Even if you agree with the goal and the policies, calling our use of oil an “addiction” is still a huge mistake. No one is addicted to oil or gasoline. I don’t wake up in the middle of the night with a sudden urge to sneak out of the house and go top off my Chevy’s tank at the nearest pusher’s roadside stand. I do buy lots of gasoline because it’s the best value product that gives me the mobility to go where I need to go and do the things that I want to do.

The President has conceded the moral high ground to **statist environmental activists.**

Making us feel guilty about using energy is bad enough. Even worse is the implication that makers of petroleum products are doing something immoral by selling a product we would be better off without. Thus, President Bush has contributed significantly to the environmental Left’s goal of delegitimizing—and even demonizing—the oil industry, thereby helping to undermine the ability of one of our most vital industries to continue to produce all the energy we need.

Five Little Words

This is not just a theoretical possibility. The President’s rhetoric has emboldened radical greens in their quest to hamstring the nation’s energy industry. It also helps their efforts to put the world on an energy diet by keeping new sources inaccessible. And it gives the greens a mighty rhetorical bludgeon.

The day after the President’s State of the Union speech, environmental pressure groups began sending out lists of all the policies that they say would be necessary to get us off our oil habit. These include much-higher corporate average fuel efficiency standards for cars and trucks, much-higher gasoline taxes, and windfall-profits taxes on oil company profits. And Sen. Arlen Specter (R.-Pa.) immediately used the President’s speech to call for antitrust investigations of excessive oil company profits.

Although the White House also said the next day that the administration still fully supports the pro-energy policies on which Bush campaigned in the 2000 and 2004 elections, the President’s five little words had already worsened the prospects for Congress to open a small portion of the Arctic National Wildlife Refuge or offshore areas in the Outer Continental Shelf to oil and gas exploration.

The President has conceded the moral high ground to statist environmental activists who have been pushing the “oil addiction” talk for years. Now and for years to come, whenever anyone argues for policies that would help increase oil supplies and keep gasoline affordable, they will be able to reply, “Even President Bush agrees that we need to kick the oil habit.”

Myron Ebell (mebell@cei.org) is Director of Energy and Global Warming Policy at CEI. A version of this article appeared in Human Events.

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How Sarbanes-Oxley Hinders Technology Transfer

This article is based on a speech before the Technology Transfer Society's Conference on Advancing Innovation and Entrepreneurship at the Kauffman Foundation, Kansas City, September 29, 2005

by John Berlau

I grew up here in Kansas City, on the Kansas side, Johnson County. Ewing Kaufman left the Kaufman Foundation as his legacy, along with many other things, including Major League Baseball. Kauffman, of course, founded Marion Laboratories and turned it into a billion-dollar company that is now part of Sanofi-Aventis. He brought the Royals to Kansas City. I remember, I was in the long line of trick-or-treaters at his house, where they would have about 10 people at the gates giving away Royals memorabilia—baseball hats, and things like that. He really was a salesman to the end.

Ewing Kaufman's is a classic American story. I know from watching him on TV and from talking to the people who knew him that he could sell a ketchup popsicle to a woman in white gloves. He wasn't afraid to wear a loud suit. He started a pharmaceutical company out of his basement in 1950. He used the name Marion Laboratories, his middle name, so people wouldn't think it was a one-person operation. This is a story about American entrepreneurs, salesmen, and inventors of the kind you often hear about—Alexander Graham Bell, Thomas Edison, the Wright Brothers—tinkering around their homes. Usually nothing comes of this experimenting and tinkering, but

sometimes these entrepreneurs hit upon something really big and start their own companies. That's the way it's supposed to work.

One of the things the Competitive Enterprise Institute asks is, "Say, if Ewing Kaufman, Bill Gates, or Meg Whitman of eBay were starting out today, what barriers would they encounter? Could they do what they did?" Now, these are all extraordinary individuals, and you would like to think that no matter what, they could have achieved what they did. But laws and policies do matter, and even if they could have, it would have taken them longer—and we would have been poorer as a result. What would be the barriers to Ewing Kaufman or Bill Gates today? I believe that Sarbanes-Oxley is a significant barrier, particularly in the growing fields of biotech and nanotech.

Sarbanes-Oxley, and things associated with it, came about as an overkill regulatory reaction to the Enron debacle. Why is it important for technology transfer? Let's look at what is always essential for the inventor to go from tinkering in the small lab to getting new technology out to the public. One of the things that is essential is tapping into the public capital market. It is important to ask, especially with network industries: How

do you go? How do you get a computer on everyone's desk?

One of the best examples of a technology transfer developed by small entrepreneurs and entrepreneurial firms is the transistor, which, of course, changed everything by enabling the miniaturization of everything. I have here, courtesy of my father, a vacuum tube. This is what computers, televisions, and radios used to run on.

When mainframe computers took up entire rooms, they'd have these babies inside them, and they, like light bulbs, would break easily. The microscopic transistors developed by Bell Labs were, of course, a huge innovation. But it was mostly smaller entrepreneurs who took it from there and got it into the market.

Let's look back at one of these companies—Texas Instruments, which developed the silicon transistor, was a \$27 million business in 1950, and now its business is around \$9 billion. Wouldn't you have liked to have gotten in on the Texas Instruments IPO? I think everybody would, but the thing is, you couldn't have. Texas Instruments didn't launch an IPO. It didn't have the resources to list on the New York Stock Exchange. It wasn't a big enough company.

Instead, Texas Instruments did what many smaller companies do today, a process now known as a reverse merger. It found this rubber company, Intercontinental Rubber, that basically wasn't making anything, had come out of hard times, but had a listing on the New York Stock Exchange. Texas Instruments bought it, and because of that, was allowed to list on the New York Stock Exchange, then eventually changed its ticker symbol—and the rest is history.

attributable to Sarbanes-Oxley.

This law passed Congress in a crisis mode. A gentleman here mentioned 9/11 and how Congress rushed through the USA PATRIOT Act right after that. This was a similar situation. Because Enron went bankrupt, then WorldCom, there was the rush to “do something.” And there are some interesting political dynamics, because the Democrats then controlled the Senate. Sen. Paul Sarbanes (D-Md.) had a bill, which the Republicans basically

than the President of the United States.

The PCAOB interpreted internal controls as broadly as possible—essentially as anything that could be relevant to a financial statement—and also said that an “attestation” in the law had to be a full-blown audit. This means that accountants are auditing things like what kind of software a company uses. If the auditors think that the software is outdated, that might constitute a bad internal control. Also, in things like employee passwords,



You couldn't do that on the NYSE now; most of the reverse mergers have recently been done over the counter and on the Pink Sheets—special small venues for low-priced, thinly traded stocks, known at “penny stocks”—and the SEC frowns on this type of transaction. But the biggest barrier by far now is the Sarbanes-Oxley Act.

There have been many estimates of Sarbanes-Oxley's costs. It has rased the overall cost of operating as a public company by 130 percent, according to the law firm Foley and Lardner. It has added 30,700 man-hours for each firm, according to the trade group Financial Executives International. Additional time that you have to spend complying with accounting is time that you can't spend on developing your product. A Korn-Ferry survey found on average \$5 million in costs devoted to this for Fortune 1000 firms. But those surveys, which I wrote about in *National Review*, have all been superseded by an academic economic study by Ivy Zhang of the Graduate School of Business at the University of Rochester. She found that there has been a \$1.4 trillion market loss

adopted. There's plenty of blame to go around. There were only three brave Congressmen—whom I think should get a medal—who voted against this. Even after hearing a lot of complaints from their constituents, there's still a little reluctance to change this “let the SEC handle this” attitude, even though there are parts of the statute that the Securities and Exchange Commission really can't do anything about

The costliest part—which has received attention in the press—is Section 404, which deals with internal controls. Congress wrote that the CEO, in addition to certifying the financial statement, must sign a document certifying that the internal controls relating to the financial statement are accurate. This statement must be attested to by an auditor. Yet one of the main problems is that Congress did not define the term “internal control” in the bill. Instead, it created a quasi-private accounting regulatory agency to set auditing standards called the Public Company Accounting Oversight Board (PCAOB), which has issues of its own. This agency collects a compulsory fee from all public companies, and its chairman gets paid more

accountants are actually looking at things like that and saying, “This is a bad internal control.” It's driving some of the tech guys at public companies crazy.

This is hardest for a small firm, guys who start this in a garage, in a lab, and want a close-knit board to guide them. Many firms are voluntarily delisting from the stock market because of Sarbanes-Oxley, still trading with shares in venues such as the Pink Sheets, but in areas in which they are much less liquid and less information is available about them, which hurts shareholders as well. This is a crisis and is already affecting innovation.

Congress must revisit the mess it created when it acted in a panic. In the long term, we need to rethink the kind of risk we allow in society, and make sure our risk aversion doesn't stop the engine of technology transfer. Then we can ensure that creative entrepreneurs can flourish and make society better, just as Ewing Kauffman did. Thank you so much.

John Berlau (jberlau@cei.org) is Fellow in Economic Policy at CEI.



Q&A WITH **JASON TALLEY**

The Leader of the Bureaucrash Activist Network on Spreading the Ideas of Liberty to a New Generation

Jason Talley heads the Bureaucrash pro-freedom activist network—in Bureaucrash’s own parlance, he is the Crasher-in-Chief. He spoke recently with CEI Planet on his organization’s accomplishments and what he envisions for the future. In March, Bureaucrash and CEI formed a new strategic partnership to combine the strengths of each organization to help spread the ideas of liberty.

CEI Planet: *When, how, and why did Bureaucrash start, and how did you get involved with the organization and activism in general?*

Jason Talley: Bureaucrash started when various individuals had the same idea and were brought together by the now sadly defunct Henry Hazlitt Foundation (HHF). One group had the resources and the desire to reach young people with the gospel of freedom; the other had a plan on how to do it. HHF had the infrastructure to make it happen. All of the factors resulted in the birth of Bureaucrash in 2001.

I got involved in Bureaucrash-style activism in 2000. My hometown of Gainesville, Florida passed an ordinance that made bars close their

doors at 2:00 AM. Gainesville is a college town and as you may know college kids like to drink. My freedom-loving friends and I thought that this would be a great opportunity to show our fellow students that governments are all about denying them choices. We called ourselves the Liberty Project and raised a lot of hell.

When I moved to D.C. in 2001 I decided that I would either start a Liberty Project D.C. or find another group with an identical mission. That’s when I fell in with the Bureaucrash crowd. I started volunteering with them by building websites and participating in counterprotests. In 2002 they hired me to be the Crasher-In-Chief and I’ve been battling the bureaucracy ever since.

CEI Planet: *Have you found young people to be more, or less, interested in the ideas of liberty than you expected?*

Talley: I’ve always known that most young people distrust the government. The problem is that most people have their own pet issue that they want to get the government involved in. Historically, activism has been pro-state because people look to government to solve problems. Bureaucrash attempts to communicate that government is the problem and that “Real Rebels Don’t Support Centralized State Authority.”

CEI Planet: *What are some of the more interesting moments you’ve encountered in your activist travels?*

Talley: Crashers have a good ability to sniff out hypocrisy. For example we noticed a “solar powered” ark that was a publicity stunt at a climate change conference by Greenpeace to scare people into supporting state controls to stop global warming. We exposed that the solar panels in front were a prop and that it was actually powered by a fossil fuel-burning generator.

It was also fun to notice the shopping habits of hundreds of union workers who protested the Free Trade Area of the Americas negotiations in Miami because they feared losing their jobs to foreign competition. Earlier in the day we busted them buying tacky foreign-made merchandise at the local Hard Rock Cafe.

CEI Planet: *Where have you found people to be the most receptive, and the least receptive, to Bureacrash’s message?*

Talley: Well, the most receptive would be when we preach to the choir—self-identified classical liberals. Many of them have joined Bureacrash and have become “crashers.” They are our core, but in order to create the cultural change we want, we realize that we need to reach out to the 70 percent of people who don’t have a political ideology. I’m thrilled to report that we get a fantastic response from these people when we attend rock concerts and other events where our generation spends its free time.

CEI Planet: *Could you tell us about some of the more creative ways you have found to get out your message?*

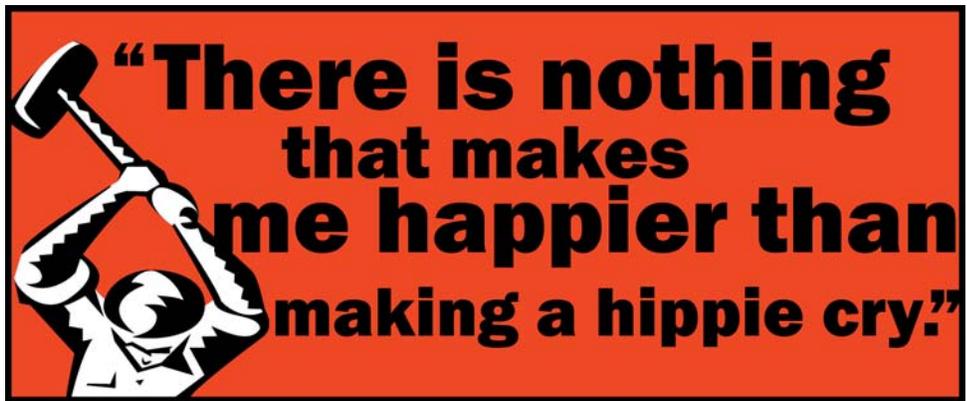
Talley: We sponsored a billboard that told people that “politics hurt.”

We released hundreds of balloons at a climate change conference with free market environmental messages.

At the 2003 World Trade Organization meeting in Cancun, we sponsored a “fair trade” soda stand that sold cold beverages to sweaty anti-free trade protesters for either a free trade (cheaper) price or a fair trade (more expensive) price. I’ll let you guess which was more popular.

We attended the Green Party convention and had their delegates sign various phony petitions including one that called on the government to “ban corporate farming” to help solve the obesity problem in America.

I think that the best way to get our pro-



freedom message out there is to put our ideological adversaries in front of the camera. We attend a lot of protests and interview protesters to record them saying some very revealing things. My favorite subject is dumpster diving or “freeganism.” If this is “the other world that is possible,” then give me the status quo.

CEI Planet: *What do you think is currently the most important issue for young people interested in public policy?*

Talley: Taxes and Social Security. When you spend nearly half the day working to pay the government you are only half free. I should note that I’d rather that young people get interested in the ideas of individual liberty than in public policy.

CEI Planet: *What’s the most important thing young people can do to stand up for the ideals of liberty?*

Question authority.

CEI Planet: *What do you see as the biggest threat to liberty in the world today?*

Talley: Bad ideas—especially the idea that the state can solve all of your problems. This is why Bureacrash focuses on the culture. We don’t care about voting, getting people elected, or passing legislation. We want to spread the idea of liberty from one person to another like a virus until everyone is infected.

CEI Planet: *Tell us about some of Bureacrash’s successes—any moments you’re particularly proud of?*

Talley: There are tons. I’m proud when people defect from statism and actively work within the Bureacrash Activist Network to promote freedom. I’m proud when we take to the streets and provide a counterpoint to the louder, larger and smellier proponents of the state. On many occasions we steal their thunder despite

the fact that they have better funding and fewer ethical concerns. There is nothing that makes me happier than a making a hippie cry.

One particular moment speaks volumes about both Bureacrash and those whom we oppose. Thirty crashers promoted free market capitalism at an anti-World Bank/International Monetary Fund protest. We staged various forms of subversive activism while we all wore our bright red “Enjoy Capitalism” t-shirts. Throughout the protest anti-capitalists expressed interest in buying our shirts. Well, being good capitalists we sold out of them. So about 50 anti-capitalists paid us for the privilege to walk around in t-shirts that read “bureacrash.com” on the sleeve and “Enjoy Capitalism” on the front. On a side note why would you bring your wallet to an anti-capitalist protest?

CEI Planet: *What do you see in the future for Bureacrash?*

Talley: Our network is getting larger and more active as more and more people realize that they, and not some bureaucrat in a cubicle, are in control of their lives.

We want to continue our growth internationally and have more of a presence on college campuses, which are a target-rich environment to battle the notion of the supremacy of the state.

We also hope to create more web campaigns that focus on the hot issues of the day that our target audience cares about. The nice thing about Bureacrash is that we are a very agile organization. We will do whatever works to spread our ideas.

Look for us on the front lines of the culture war.



The Public Company Accounting Oversight Board

CEI Challenges an Unconstitutional Assault on Government Accountability

by Hans Bader and John Berlau

On February 9, the Competitive Enterprise Institute helped file a lawsuit challenging the constitutionality of the Public Company Accounting Oversight Board (PCAOB), a federal agency created by the Sarbanes-Oxley Act of 2002. The PCAOB enjoys broad power over the auditing and internal financial controls of America's public companies. Sen. Phil Gramm (R-TX), who voted for its creation, confessed that it would have "massive power, unchecked power, by design" and would "make decisions that affect all accountants and... indirectly every breathing person in the country." He was right. Now that the agency is operating, its red tape is costing the American economy over \$35 billion annually.

Despite its vast powers, the PCAOB is not accountable to our elected representatives. Its members are chosen collectively by the members of the Securities and Exchange Commission (SEC) and cannot be removed except for serious wrongdoing. In our lawsuit, we argue that this violates the Constitution's Appointments Clause, which requires that powerful officials be selected by the President and confirmed by the Senate.

The PCAOB—known not-so-affectionately in the business community as "peekaboo"—has broad authority to issue rules governing the auditing of all public companies. It supports itself with a tax it levies on all public companies. It also has the power to punish accountants for violating its rules. It can fine an accountant up to \$100,000 or an accounting firm up to \$2 million for a single inadvertent violation. PCAOB rules have given auditors the power—and duty—to micromanage corporations' internal financial controls, such as what software a company uses and who has access to employee passwords.

Not only do the five PCAOB members wield broad investigative and rule making powers, they effectively have the power to set their own salaries. The PCAOB's Chairman was paid a generous \$556,000 in 2003, while other members were paid a handsome \$452,000.

The Constitution's Appointments Clause provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" all "Officers of the United States, whose Appointments are not herein provided for...

but the Congress may, by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." (U.S. Const. Art. II, § 2, clause 2.) Thus, an officer of the United States must either be appointed by the President, or, if the officer is an "inferior officer," be appointed by either (1) the President, (2) a Court, or (3) a Head of Department.

PCAOB members are clearly "officers" under Supreme Court precedent, since their powers—such as the ability to impose \$2 million fines—more than meet the Court's criteria of "significant authority." While PCAOB actions are subject to SEC review, the Supreme Court has found that the ability to impose substantial sanctions makes bureaucrats federal officers even if "they lack authority to enter a final decision." And the PCAOB does have final authority in at least one area: Its decisions on whether or not to investigate an accountant are unreviewable.

Because the PCAOB's members are officers, regardless of whether they are considered to be "principal" or "inferior" officers, their manner of appointment

violates the Appointments Clause. The Constitution provides that inferior officers can be appointed any of three ways: by either the President, a court, or a Head of Department. Plainly, they are not appointed by the President or a court. Nor are they appointed by a “Head of Department,” since the SEC is not a “department” under Supreme Court precedent, and even if it were, only its Chairman, not its other Commissioners, as its “head,” would have the power to appoint.

The SEC does not meet the legal test for what constitutes a “department” with the power to appoint. As the Supreme Court observed in its 1991 *Freytag* decision, the “Court for more than a century has held the term ‘Department’ refers only to ‘a part or division of the executive government, as the Department of State, or of the Treasury’ expressly ‘creat[ed]’ and ‘given the name of a department’ by Congress.” Thus, the Court favored “confining the term ‘Heads of Department’ in the Appointments Clause to executive divisions like the Cabinet-level departments,” because “(t)heir heads are subject to the exercise of political oversight and share the President’s accountability to the people.”

Even if the SEC were somehow found to be a “department,” the PCAOB would still violate the Appointments Clause, because it vests the appointment power in the SEC Commissioners collectively, when only the Chairman is the SEC’s head. An entity can only have one head. Moreover, the SEC’s Chairman has administrative authority that other Commissioners lack, like appointing SEC staff.

Congress may have been attempting to evade the Appointments Clause by declaring in Sarbanes-Oxley that the PCAOB “shall not be an agency or establishment of the United States Government.” But as the Supreme Court observed in the *Mistretta* case, labels cannot change the fact that an entity is a federal agency subject to the Constitution. The fact that the PCAOB’s members are appointed by government officials and enforce federal law make it a federal agency no matter what Congress says.

In the 1995 *Lebron* case, Amtrak was held by the Supreme Court to be subject

to the Constitution even though Congress declared that it was not a government agency. Like Amtrak, the PCAOB was created by a federal law, has a government-appointed board, and carries out federal policies. That makes it a federal agency. But the PCAOB is an even clearer example of a federal agency because, unlike Amtrak, which earns revenue from fares, the PCAOB is *wholly* funded through federal exactions and enforces federal laws.

not been fully vetted.” The first PCAOB Chairman resigned shortly after he was appointed when his service on a company under investigation for accounting problems became public. The GAO found that no Commissioner, not even the SEC’s chairman, knew of this information before the vote, because no one was really in charge of selection.

The Constitution’s framers drafted the Appointments Clause as a check on



The purpose of the Appointments Clause is to promote effective management by preventing the lack of accountability typical in a multi-member body, such as the appointment of poorly vetted officers through behind-the-scenes string-pulling. Vesting appointments in the President or in a single agency head makes clear who is really behind a given appointment, and makes it possible for the executive to demand good performance from the appointee.

Sarbanes-Oxley’s requirement that SEC Commissioners as a group agree on appointments of PCAOB members undermines the goal of effective management. Initial appointments proved messy and divisive. For instance, according to the Government Accountability Office, in 2002, when a divided SEC selected the PCAOB’s membership, “The selection process broke down... when the Commission was unable to agree on a consensus candidate for chairman.” Different commissioners backed different candidates, and this “inability to choose a final slate of candidates until the eve of the Commission’s vote resulted in the appointment of PCAOB members who had

overweening bureaucracy. As colonists, they had seen offices created by the Crown spawn yet more offices, creating what the Declaration of Independence refers to as a “multitude of new offices” and “swarms of officers to harass our people.” In its 1991 *Freytag* decision, the Court observed that “the power of appointment to offices” was considered by the Framers to be “the most insidious and powerful weapon of eighteenth-century despotism.” Thus, “The Clause reflects our Framers’ conclusion that widely distributed appointment power subverts democratic government.”

To discourage such abuses, the Supreme Court, in its 1995 *Ryder* decision, overturned disciplinary action taken by improperly appointed officials. The courts should similarly overturn the rules and actions of the PCAOB, since it is an unaccountable entity that violates the Constitution’s Appointments Clause.

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the GOOD, the BAD & the UGLY

THE GOOD

WTO Strikes Down EU Biotech Ban

The World Trade Organization (WTO) struck down a six-year European Union ban on bioengineered crops, and insisted that the EU open up the European market for biotech crops. Siding with the United States, Canada, and Argentina, the WTO panel report found that the ban unfairly discriminated against bioengineered crops despite the fact that the EU's own internal scientific reviews showed that the crops in question were safe.

Despite countless studies showing bioengineered foods to be as safe as or safer than their conventional counterparts, EU politicians refused even to consider approving such crops, driving up prices and reducing selection for European shoppers.

If the EU complies, the WTO's decision should create new options for European shoppers and open up opportunities for countries in Africa, Asia and South America to grow biotech crops for export to the European market. CEI Senior Fellow Gregory Conko said that the decision is in many ways symbolic, but its global impact "could be huge. The European restrictions have hindered the ability of poorer countries to take a part in the biotechnology revolution."

THE BAD

Evangelical Leaders Put Faith in Global Warming Alarmism

Ignoring protests from many of their colleagues, 86 evangelical leaders have called for action to reduce global warming, ignoring the real costs that such action could have on the world's poor.

The Christian leaders, including Rick Warren, author of the Christian best-seller *The Purpose-Driven Life*, in February signed an open letter calling for federal legislation mandating reductions in carbon dioxide emissions. Despite public warnings from other evangelical leaders such as Charles Colson and James Dobson that "global warming is not a consensus issue," the group has called for an Evangelical Climate Initiative, which would include television spots and other messaging efforts.

Senior Fellow Iain Murray warns that this effort will be counterproductive, explaining that the opportunity costs of drastic action to reduce climate change "would likely weigh heavier on the world's poor than the effects of global warming itself. By adopting a green agenda, the evangelicals may have thrown the poor to the wolves."

THE UGLY

Activists Push Raw Deal for Meat Industry

Health nanny activists are calling for banning the treatment of beef with carbon monoxide, despite the Food and Drug Administration's (FDA) recognition that the practice is safe. Treating "case ready" meats—commonly found prepackaged in grocery store meat cases—with carbon monoxide helps them retain their color. Thanks to this process, retailers are less likely to discard fresh, safe meat just because it doesn't look as good after losing some of its original pink coloring. Activist groups like Safe Tables Our Priority claim the process needs stricter FDA review—if not an outright ban—saying it could mislead consumers about meat's freshness. But as Washington lawyer Ann Boeckman, who represents Precept Foods LLC, points out, "When a product reaches the point of spoilage, there will be other signs," including odor and other visual clues.

In fact, one of the leading advocates of banning the process, Dan Berdahl, a vice president and lab director natural food extract maker Kalsec Foods, admits to having a vested economic interest in seeing the additive banned. His company sells natural essences that help meat avoid browning, putting his company's products in direct competition with the carbon monoxide treatment.

MediaMENTIONS

Compiled by **Richard Morrison**



Senior Fellow **Iain Murray** reports on the unhappy first birthday of the Kyoto Protocol:

This week marks the first anniversary of the Kyoto Protocol's coming into force. It's an unhappy birthday. The one-year-old has been badly treated by its parents, its hopes for reductions in greenhouse gas emissions seem unlikely to be fulfilled, and its prospects for survival beyond 2012 look bleak....Jacques Chirac's "first component of an authentic global governance" has been all but abandoned by the global community.

We must first remember that, while its supporters regularly claim that it has the support of the 161 countries that have ratified it, only 34 of those countries have actually promised to do anything as a result. And of those 34 countries, the former Communist countries of the Eastern bloc have already achieved their targeted emissions reductions only by virtue of the collapse of their old, uneconomic smokestack industries. That means that the only countries that have actually undertaken to take real, active measures to rein in their greenhouse-gas emissions are the EU-15, Canada, Japan, and New Zealand.

- *National Review Online*, February 17

Adjunct Analyst **Steven Milloy** takes on the claim that low-fat diets reduce cancer and heart disease risks:

The widely believed notion that low-fat diets are good for your health went "poof" this week—although the busting of that myth shouldn't be news to regular readers of this column.

Low-fat diets didn't reduce the risk of cardiovascular disease, colorectal cancer, or invasive breast cancer, according to three large studies published this week

in the *Journal of the American Medical Association*.

The researchers divided 48,835 women into two groups based on diet—one group with 19,541 women consumed a low-fat diet and the other group with 29,294 women consumed their usual diets—and followed the women for 8.1 years.

The most significant result of the \$415 million study is that low-fat diets don't reduce heart disease risk. As the researchers put it, "Over [an average] of 8.1 years, a dietary intervention that reduced total fat intake and increased intake of vegetables, fruits and grains did not significantly reduce the risk of coronary heart disease, stroke or cardiovascular disease in postmenopausal women and achieved only modest effects on cardiovascular risk factors."

- FoxNews.com, February 9

Warren Brookes Journalism Fellow **Timothy P. Carney** enumerates a few reasons why Congress should cut corporate welfare out of the President's proposed budget:

7. Improve the Economy: Ending corporate welfare will aid the economy. The beauty of the free market is that it responds to consumer demands. The horror of the state-managed market is that it responds to government's demands—and so resources get directed to things people don't want, like bridges to nowhere and lobbyists. This is a waste of money, which makes us poorer as a nation.

3. Reduce Corruption: Is it any wonder that companies spend as much on lobbyists as they do when there are billions in handouts on the Hill every year? Eliminating corporate welfare, both entitlements and earmarks, will drive some of these hired beggars away.

2. We Pay too Much in Taxes: Taxes are too high. Anything we can do to reduce taxes or forestall future tax hikes is all to the good. Cutting spending everywhere possible is necessary. And, if people get to keep more of their own money, they are more likely to buy my book, *The Big Ripoff: How Big Business and Big Government Steal Your Money*, coming out from John J. Wiley and Sons this summer.

- *AFF Brainwash*, February 13

Senior Fellow **Christopher C. Horner** explains the truth behind the U.N.'s latest "historic" global warming agreement:

The worldwide press hailed the December negotiations in Montreal over the Kyoto Protocol for producing an "historic climate agreement." As the London *Independent* put it, "The fight against catastrophic global warming scored its greatest success to date yesterday, when negotiators from more than 180 nations unexpectedly agreed to develop far-reaching measures."

The agreement truly was historic as the greatest modification of Kyoto's terms since its inception in 1997—although not for the reasons *The Independent* and other hailers proclaimed. The agreement effectively guts Kyoto's claim to being "legally binding" and its potentially onerous provisions.

- *National Post*, January 30

Policy Analyst **Isaac Post** identifies the key to the recent electoral victory by Canada's Conservative party:

The businessman puts the cash in an envelope. He leaves it on the agreed upon restaurant table. Another man, a government bureaucrat, walks over and takes the money. Now it's his turn to deliver the goods: government contracts to the businessman's advertising firm.

No, this is not the Jack Abramoff scandal. Nor is it a Hollywood depiction of Washington, D.C. corruption. In fact, this is the Canadian scandal colloquially dubbed "Adscam." And it was the key issue responsible for toppling the government of Paul Martin and his Liberal Party in yesterday's election, bringing the opposition Conservative Party to power for the first time in over 12 years.

- *TCS Daily*, January 24

A Backlash to Cheer About

The U.S. Supreme Court's June 2005 *Kelo v. New London* decision—allowing municipalities to seize private property under eminent domain to turn it over to private developers to generate greater tax revenue—has unleashed a backlash that is slowly giving property owners greater protections. Currently, at least 30 state legislatures have enacted or are considering laws limiting local governments' power to seize private property for commercial uses. In November, the U.S. House of Representatives passed, by a 376-38 vote, a bill barring state and local governments from receiving federal funds if they seize private property through eminent domain for commercial uses (the bill awaits action in the Senate). And on January 25, Winston-Salem, North Carolina-based BB&T, the nation's ninth largest bank, announced that it "will not lend to commercial developers that plan to build condominiums, shopping malls, and other private projects on land taken from private citizens by government entities using eminent domain."

Those Who Would Give up Drink for Security...

Contrary to the warnings of health nanny scolds, Great Britain has seen a *decrease* in violent crime—including alcohol-related assaults—since the country liberalized its drinking laws last November. The Home Office reported that violent crime was 21 percent lower during the last three months of 2005 compared to the same period in 2004. Licensing Minister James Purnell said, "It was always our argument that by getting rid of the firm 11 pm closing time you would also get rid of a number of flashpoints,"

...END NOTES



mainly at closing time. A spokesman for the British Beer and Pub Association noted, "The doom and gloom merchants who predicted instant mayhem have been proved to be about as accurate as the worst astrologers."

Teacher Union Dues at Work

Former Washington Teachers Union office manager Gwendolyn Hemphill, who was convicted last September of embezzling nearly \$5 million in union dues, is asking the court for leniency because she believes that she is being stalked by "a small, dark-skinned person with a thin Roman nose, small lips, and a spear, who is dressed like a native African." Union dues paid for such

essentials as designer clothes, fur coats, and plasma televisions. There has been no word on whether any of the embezzled funds were used to pay protection money to the diminutive spear-wielding stalker.

PETA: The Gift that Keeps on Giving...

...laughs at its own stupidity, that is. In December, Chris Garnett, a 19-year-old People for the Ethical Treatment of Animals (PETA) employee, legally changed his name to KentuckyFriedCruelty.com, to protest fast food chain KFC's treatment of chickens. Actress Pamela Anderson expressed her support. "I'm sure Chris can't wait until KFC stops torturing chickens so he can change his name back," she said. And in February, outdoor advertisers in Ottawa declined to carry a PETA billboard featuring a machine-gun wielding chicken with the caption, "Payback Time. Bird Flu Kills. Go Vegetarian."

— Ivan Osorio



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