

COMMERCIALIZING CAMPAIGN ADS: CALIFORNIA ROLL FOR MAYOR

We
have
an
inter-
esting
phenom-
enon
underw-
ay



here in Phoenix – the outright commercialization of political campaign ads. It is the handiwork of a Scottsdale sushi restaurant, Stingray Sushi. In short, a corporation is using a political race as a straight up advertising vehicle for their product, without officially supporting or donating to either candidate. The play started off just riffing on hot button political issues such as:

“Bill Clinton Likes My Sushi”
“Larry Craig Likes Our Bathrooms”
“Blagojevich is the Best Tipper”

Stingray then morphed into playing off of a local initiative drive on the ballot. But now they have stepped square into a heated political race between competing candidates.



The
curren-
t, and
heavie-
st
manife-
station
of

this novel activity by Stingray to date, is the current Phoenix Mayor’s race, which will be

decided on November 8. The race itself is supposedly non-partisan, however it pits longtime uber-Republican operative Wes Gullett, who was the chief of staff for disgraced (and convicted) Governor Fife Symington and has served in several administrative and campaign capacities for John McCain over the years, against a moderate, but fairly clear Democrat, former City Councilman Greg Stanton.

If the question is "is this legal"? Yes, it appears to be quite legal under both state and federal campaign law, although Stingray has had to put stickers on their signs advising that it is "Not authorized by any candidate or candidate's campaign committee."

The ad campaign is the brainchild of a local ad and political consultant by the name of Jason Rose. I will have to give Jason credit here, it is pretty inventive and has certainly captured the imagination of Phoenix residents. Everybody has seen them, even my high school daughter talks about them. My wife thinks they are hilarious catch phrases now. Anytime I mention politics, she blurts out "Mayors Are Yum Yum!".

Now, here is the better question – where does this go from here? Stingray is playing both sides of the electoral race fence in this campaign, but it is hard to believe others necessarily will do the same. Will bigger corporations exercise their right to free political speech decreed in *Citizens United* by branding themselves to a particular candidate? Is it a good thing to have electoral races clouded by raw corporate advertising pitches as opposed to actually taking a side?

I honestly do not know the answers to the questions raised, not the plethora of others that arise from this ad campaign. But I doubt it is a one off deal, you can expect to see other similar ad campaigns attached to elections in the future. What do you think??

STEALING BABIES, IN FRANCO'S SPAIN AND THE JUNTA'S ARGENTINA

The stories exposing how Franco's government and the Catholic Church sold babies has gotten a lot of well-deserved attention.

The scale of the baby trafficking was unknown until this year, when two men – Antonio Barroso and Juan Luis Moreno, childhood friends from a seaside town near Barcelona – discovered that they had been bought from a nun. Their parents weren't their real parents, and their life had been built on a lie.

Juan Luis Moreno discovered the truth when the man he had been brought to call "father" was on his deathbed.

[snip]

After months of requests from the BBC, the Spanish government finally put forward Angel Nunez from the justice ministry to talk to me about Spain's stolen children.

Asked if babies were stolen, Mr Nunez replied: "Without a doubt".

"How many?" I asked.

"I don't dare to come up with figures," he answered carefully. "But from the volume of official investigations I dare to say there were many."

Lawyers believe that up to 300,000 babies were taken.

But this story—detailing how the Argentine Victoria Montenegro was raised by a Colonel who

boasted of his heroism torturing and killing subversives, only to find out the man who raised her had tortured and killed her own parents—is equally shocking. But has gotten little attention.

In 1992, when she was 15, Colonel Tetzlaff was detained briefly on suspicion of baby stealing. Five years later, a court informed Ms. Montenegro that she was not the biological child of Colonel Tetzlaff and his wife, she said.

“I was still convinced it was all a lie,” she said.

By 2000, Ms. Montenegro still believed her mission was to keep Colonel Tetzlaff out of prison. But she relented and gave a DNA sample. A judge then delivered jarring news: the test confirmed that she was the biological child of Hilda and Roque Montenegro, who had been active in the resistance. She learned that she and the Montenegros had been kidnapped when she was 13 days old.

At a restaurant over dinner, Colonel Tetzlaff confessed to Ms. Montenegro and her husband: He had headed the operation in which the Montenegros were tortured and killed, and had taken her in May 1976, when she was 4 months old.

The stories, by themselves, are stunning. But they both share the complicit role of the Catholic Church, aiding dictators with a perverse notion of family to fight “subversives.”

Good thing we don’t live in a country where churches try to align with the government to combat “subversives” within the country, huh?

SCALIA, SCOTUS & TROY DAVIS' LAST GASP

Late yesterday afternoon, the Supreme Court of the United States stayed the execution, set for Tuesday night, of Cleve Foster in Texas. The words of the order were simple:

11-6427 FOSTER, CLEVE V. TEXAS
(11A302)

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is granted pending the disposition of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

But there is way more than meets the eye here, because this is not Foster's first time to the Supreme Court stay rodeo. From a CBS News report earlier in the day before the stay was issued:

Cleve Foster, a Texas inmate sentenced to die for the rape-slaying of a Fort Worth woman nearly a decade ago, is scheduled to be executed tonight – he has been spared from the death chamber twice this year amid appeals. Foster, 47, is set to die Tuesday evening for fatally shooting 30-year-old Nyaneur Pal, whose body was found in a ditch by pipeline workers on Valentine's Day 2002. Foster's execution would be the 11th this year in Texas.

That is what is unusual here. Foster has been up to the Supremes twice and was bounced back the last time without even reaching the merits. Yet here he is again – with a stay – a stay in which

the process was initiated by Antonin Scalia. Now the truth of the matter is Scalia is the designated on call judge, what we in the criminal defense bar colloquially term the "hot judge", for the 5th Circuit, so it would go through Nino. But, still, it is fascinating to see two death cases in five days stayed out of Texas, the death penalty capital of the world, with Scalia's name on the order.

Foster won his first pardon in January from the U.S. Supreme Court, which halted his execution again in April when it agreed to reconsider an appeal that raised claims of innocence and poor legal assistance early on in his case.

His execution was rescheduled for Tuesday after the high court turned down that appeal.

I was half convinced the Court might even lift the new Foster stay Tuesday night, but I am on the after hours contact list, and have received no such notice as of the time of the instant posting and it is now into Wednesday morning.

Remember, I said this was the second such instance in the last five days? The other one was Duane Buck late last Thursday, which was also somewhat unexpected, although, perhaps, less so than Foster.

Still, that is two surprising instances of death stays by the Supremes in a very short time. Which brings us back to the most talked about execution case in recent memory, Troy Davis in Georgia. Is it a sign or signal from the Supreme Court to Troy Davis' attorneys and/or the Georgia Clemency Board? Well, probably not literally, no; it would be pretty hard to make that case.

But, figuratively, maybe the case could be made. If a man in the two time strike out posture of Cleve Foster can obtain a stay on application as he did yesterday, the day of his putative execution, why cannot Troy Davis still approach

the Supreme Court?

This is the man we are talking about:

Troy has refused to have a "last meal."
He has faith his life will be spared.

In the past, his tremendous faith has been rewarded. The last time Troy faced execution, in 2008, the warden brought in what was to be his last meal. But Troy refused to eat. Looking the prison staff in their eyes, he explained this meal would not be his last. He was vindicated when he received a last minute stay. Guards still remember this as a haunting moment, one rooted in Troy's deep faith.

Still, there is every sign the state of Georgia intends to execute Troy this time—despite calls for them to stop by everyone from the former head of the FBI, William Sessions, to former US President Jimmy Carter.

Troy has prepared himself, and to the extent anyone can, his family, for either outcome.

As he has said many times "They can take my body but not my spirit, because I have given my spirit to God."

The common wisdom, and repeated meme in the press, is that there is no remaining available judicial path for Troy Davis. But this may not necessarily be true. There are paths left to be pursued, even if narrow and dimly lit. And in an imminent execution situation, anything and everything must, and will, be pursued. The dedication, intensity, selflessness and never say die, literally, attitude of death penalty lawyers is legendary. If you have not seen them in action, you don't know, but it is a thing of beauty.

Here is but one possible path, among many, which could possibly be attempted in one form or

another by the Davis defense team. There has just, quite recently, been a fairly landmark study released on the unreliability of eyewitness testimony. Granted, the AJS study pertains to eyewitness testimony as related through police lineups, but it is further concrete evidence of a changing landscape in how the unreliability of eyewitness identification in general is treated, and the picture is quite disturbing as to lack of reliability and veracity.

Now the issue of eyewitness identification infirmity has been reviewed before in the case of Troy Davis, but not in the bright new light emerging recently. And there is one other important difference now. The Supreme Court has scheduled for oral argument on November 2, 2011 the seminal eyewitness ID case of *Perry v. New Hampshire*.

Here is how SCOTUSBlog summarizes the germane issue in *Perry v. New Hampshire*:

In a criminal case, is a court required to exclude eyewitness identification evidence whenever the identification was made under circumstances that make the identification unreliable because they tended to suggest that the defendant was responsible for the crime, or only when the police are responsible for the circumstances that make the identification unreliable?

Well then, there is your potential hook, because in the case of Troy Davis there is simply a boatload of issues within the ambit of the eyewitness issue framed in *Perry*. As related in a nice article in Time dated yesterday:

"Seven of the nine witnesses have recanted at this point. That in and of itself is problematic," says Mary Schmid Mergler, Senior Counsel for the non-profit Constitution Project, whose high-profile advisers (a mix of abolitionists

and death penalty supporters) have come out in favor of clemency for Davis. "But the most troubling thing is just the fact that a death penalty conviction rests solely on eyewitness testimony to begin with."

So, there is but one potential cognizable issue; however, the better question may be how to successfully plead it, or any other devised on behalf of Davis. One path might be to file what is known as a "state court successor" action, which will be denied, and then try to piggy back an appeal from that onto a certiorari question present in another case the Supreme Court already seems interested in addressing. Say, for instance, *Perry v. New Hampshire*. This is what was done in the Cleve Foster case described at the beginning of this post. Another alternative might be to try to fashion a new federal habeas out of the issue. You need some constitutional error to do so and, again, it is a bit weak perhaps, but *Perry* could arguably be attached as a basis.

Now the bad news. Pretty much every conceivable issue, including general forms of eyewitness arguments, have been made and denied before in the case of Troy Davis. Any new attempt will have to go through the same brutal gauntlet of southern courts in Georgia and/or the 11th Circuit. There is little hope there, any potential meaningful stay, much less real relief, will have to come from the Supreme Court. Nino Scalia has already once called Troy Davis' case a "fools errand" as did his acolyte Clarence Thomas. But that was before many of the incredible amount of infirmities were made of record in the convoluted case procedural history. Maybe, just maybe, Scalia and the Court's conservative bloc love their precious death penalty enough to keep it clean from the taint the wrongful and unjust execution of Troy Davis would bring.

This is but a glimpse of the kind of desperate ends death penalty certified specialists will go

to in defense of their clients on the line. The chances may be slim to none, but you try everything. Because nothing less is acceptable. Thankfully, the Davis team will have a lot more, and a lot better, theories than the above. It ain't over until it's over.

I want to thank my friend Dahlia Lithwick of Slate Magazine, and my new friend, David Dow of the University of Houston Law Center, Texas Innocence Network and author of *The Autobiography of an Execution*. The somewhat goofy thoughts here are mine, and Dahlia and David should not be blamed for them; however they gave me great feedback and discussion on this most depressing and critical case in American jurisprudence.

TRASH TALK: NCAA SHAME, EPHS AND JEFFS

Marcy is correct, the article this week in the Atlantic magazine by Taylor Branch is an absolute must read. Entitled *The Shame of College Sports*, the article opens with a 2001 investigatory hearing in front of the Knight commission, a NCAA oversight board where slimy promoter Sonny Vaccaro matter of factly tells the Commission exactly what is going on in their sport; the Commission is incredulous, in denial and clearly thinks Vaccaro is scum. The reverse is, of course, the truth.

The list of scandals goes on. With each revelation, there is much wringing of hands. Critics scold schools for breaking faith with their educational mission, and for failing to enforce the sanctity of "amateurism." Sportswriters denounce the NCAA for both tyranny and impotence in its quest to "clean up" college sports. Observers on all sides

express jumbled emotions about youth and innocence, venting against professional mores or greedy amateurs.

For all the outrage, the real scandal is not that students are getting illegally paid or recruited, it's that two of the noble principles on which the NCAA justifies its existence—"amateurism" and the "student-athlete"—are cynical hoaxes, legalistic confections propagated by the universities so they can exploit the skills and fame of young athletes. The tragedy at the heart of college sports is not that some college athletes are getting paid, but that more of them are not.

It is a long article that stretches in time from the beginning of college football in the late 1800s through the Cam Newton sham "investigation and disposition" prior to last season's BCS Championship game. Coming on the heels of the stunning article on the corruption surrounding the Miami Hurricanes football program, it is a pretty stark reminder of just how filthy big time college athletics really are.

Many people have taken to advocating that college athletes be paid – above and beyond their scholarship terms – for their "services". College basketball analyst Jay Bilas rants about doing so near daily in his Twitter stream. Personally, I am not sure that is the solution either. Do athletes at USC and Notre Dame get paid more because their brands bring in more? How much do each athlete get paid? Does Andrew Luck get paid a lot more than his left tackle? What about the universities not in say the top 64 programs, whose programs may not even be profitable, what do they do? What about basketball, baseball and track athletes? What about the girls and Title IX? I don't know what the answer is, but I don't like this one.

Interestingly enough, two of the most notoriously dirty major programs square off

today when the Ohio State Felons take on the Miami Hurriconvicts in Miami. Nearly ten years ago, these two teams played for the National Championship (which Ohio State, true to their criminal form, stole from the Hurricanes on a horrid no-call on interference in the end zone in the last seconds). Now it is just another game. If only they could both lose.

To try to find a ray of clean and hope in this sick muck, let's talk about teams that still play for the love of the game and the sport. Or so I am told. That's right, I'm talking Ephs and Jeffs! The Williams Ephs open their 2011 season today at the always tough Bowdoin at Whittier Field. While bitter arch rival, the Amherst Jeffs, open their season on the road against the fierce Bates Bobcats. Man, the stories we could tell about these games. Hopefully Marcy, Neil and/or Adam Bonin will come along and tell those stories cause, well you know, the ASU Sun Devils didn't ever play those guys, I got nuthin!

In other games of note, Boise State already just tore up Toledo last night, and don't be fooled, Toledo is a pretty good team. The BCS needs to get their heads out of their asses and give Boise some love. And Kellen Moore is simply amazing. The one truly huge game this weekend is Oklahoma down in Seminole land to take on Florida State. Oklahoma is, as befitting the number one ranked team, the favorite; but I dunno, I think FSU may be a sleeper here and, if their QB picks up where Christian Ponder left off, will win. I am agains personally interested in seeing Arizona State, who travel to Illinois. Been quite a while since ASU has been able to withstand prosperity, so being ranked at number 22 is a little scary. If Brock Osweiler has another big game, they should be okay, but the running game is not that good right now.

As to the pros, well the Deetroit Lions are the story of the year! The Kitties get KC, who got their asses kicked last week, at home in Ford Stadium. Look for Deetroit to go 2-0! Bears and Saint and Pats versus Bolts are the only other

real excitement this week. I am going to let Marcy and Randiego battle that preview out in comments.

SPECIAL UPDATE!! – Uh, it turns out we gots some restless natives in these here parts, and they been demanding extra coverage. In another CRITICAL game, likely rivaled in scope only by the epic Cowboys/49ers tilt, Colt McCoy and the Cleveland Brownies are on the road at the Colts, and the Brownies are road favorites by 3. Wow. I must say, however, the fate of this game lies with Peyton. Peyton Hillis that is;the other one ain't walking through that door. Oh, and speaking of Deetroit, Rosalind is right, the Tigers clinched their division yesterday. Congratulations, you gotta love Jim Leyland and Justin Verlander, who may yet be the first 25 game winner in MLB in decades (since Bob Welch).

Find more Jo Jo Gunne songs at Myspace Music

RAINING ON THE WEST MEMPHIS PARADE: FUNDAMENTAL FAIRNESS DENIED

The West Memphis 3 are free!! Yea!

Three men convicted in the 1993 murders of three boys in West Memphis, Arkansas, were ordered released after entering new pleas following a court hearing, prosecutor Scott Ellington said Friday.

Damien Echols, Jessie Misskelley Jr. and Jason Baldwin pleaded guilty and were sentenced to 18 years in prison with credit for time served, a prosecutor said. They were to be released on Friday.

The three entered what is known as an Alford plea, which allows a defendant to maintain innocence while simultaneously acknowledging that the state has evidence to convict, Ellington said.

Cause for celebration, right?

Not here; I feel nothing but sweet sorrow because, while Damien Echols (who had actually been on death row most all of the intervening time), Jessie Misskelley Jr. and Jason Baldwin are free, a solid little chunk of the American justice system, due process and fundamental fairness was sacrificed in the process.

Let one of the three, Mr. Baldwin, speak for himself and me here:

This was NOT justice. I did not want to take this deal, but they were going to kill Damien and I couldn't let that happen.

And therein lies the huge rub. The facts had never been particularly solid against these three once young men. They were brow beaten by avaricious prosecutors, sought to be lynched by a southern community ginned up on fear, horror and emotion and poorly served by their attorneys at the original trial level. In short, every facet of the American system of due process was compromised and tainted, and they have sat convicted, one on death row, ever since as a result.

Thanks to a litany of friends, motivated activist celebrities like Johnnie Depp, Natalie Maines and Eddie Vedder, and documentary filmmakers the cause of the West Memphis Three has never died. And, in fact, I would love to say that all that sweat, love and belief was vindicated today. But, sadly, that is simply not the case.

Yes, it is good, and truly heartwarming, to see "The Three" in sunshine. That said, justice and

the rule of law are a little more dead for the effort if they are truly innocent. And the facts, including the key absence, indeed exclusion, of DNA evidence, now known – almost unequivocally – militate to a conclusion of innocence. While people should be happy, no thrilled, they are out of custody, I cannot believe there is not concurrent shrieking at the highest levels as to how exactly that has transpired.

Let's be honest, no prosecutor in his right mind walks these three men out the front door of the courthouse if he truly believes they are guilty and there is even the slightest chance in hell he can make the charges stand up in a retrial. And no prosecutor lets them do it through *Alford* pleas. I do not care what kind of happy pabulum they spew to the television cameras and press, it is really just that simple.

So, what we have here is nothing but a reaffirmation, ratification and craven ass covering of the original miscarriage of justice that railroaded the West Memphis Three. There will be no words of commendation here for the prosecutors, nor for Judge David Laser for giving the court's imprimatur of propriety to this; in fact, they should all be questioned as to their ethics and morals.

This is nothing short of Mike Nifong making the Duke lacrosse players take misdemeanor pleas and register as sex offenders in order to save his precious reputation and job, and stop civil damage suits. Nifong did not get away with such depravity in Durham, and the prosecutors in Jonesboro Arkansas should not either.

Somewhere a gold lady with a set of scales weeps because another pint of her lifeblood has been spilled in Jonesboro Arkansas in the name of prosecutorial malice, vanity and civil damage mitigation. So many people have put their souls into this case, but the work is not over and the job not done yet. Because until the names of Damien Echols, Jessie Misskelley Jr. and Jason Baldwin are cleared in full, due process has

been denied and fundamental fairness refused.

F1 GERMAN GP AT NURBURGRING & A NEW YORK RAINBOW IN THE NIGHT

This weekend does not bring the excitement of last did with the Women's World Cup, but there are three notable events, two of which are even sports related.

First up is the German Grand Prix from the famed Nurburgring in the Eifel Mountains. Nurburgring was also the site of the 1961 German Grand Prix. Continuing with this year's homage to the 50th anniversary of the Championship season for my late friend Phil Hill, let's go back for a minute to the sounds and smell of The Ring in 1961.

Nurburgring was a far different circuit in the 60s than it is today. Phil Hill took pole position in qualifying by shattering the lap record, becoming the first person to lap in under 9 minutes, with a stunning lap of 8 minutes 55.2 seconds (153.4 km/h or 95.3 mph) in the famed Ferrari 156 "Sharknose". In the race though, Phil could not match Stirling Moss in his Lotus-Climax. Here is the Wiki description:

The race was won by British driver Stirling Moss driving a Lotus 18/21 for privateer outfit the Rob Walker Racing Team. Moss started from the second row of the grid and lead every lap of the race. It was the first German Grand Prix victory for a rear-engined car since Bernd Rosemeyer's Auto Union Type C took victory in 1936. Moss finished just over

20 seconds ahead of Ferrari 156 drivers Wolfgang von Trips and Phil Hill, breaking a four-race consecutive run of Ferrari victories. The result pushed Moss into third place in the championship points race, becoming the only driver outside of Ferrari's trio of von Trips, Hill and Richie Ginther still in contention to become the 1961 World Champion with two races remaining.

It was the last home country appearance for points leader von Trips before his death at the Italian Grand Prix five weeks later. His second place finish saw Ferrari secure the constructors' championship. The remaining championship points scorers were all from British racing teams. Scottish driver Jim Clark (Lotus 21) was fourth for Team Lotus; former motorcycle World Champion John Surtees (Cooper T53) was fifth for Yeoman Credit Racing and young New Zealander Bruce McLaren was sixth in his factory-run Cooper T58.

The Nurburgring of today is a far different, more sterile and safer track, and much shorter, with a length of just under 3 miles as opposed to the former 14 miles plus. Mark Webber of Red Bull was fast in practice Friday and took pole today with a surprising P2 for Lewis Hamilton of McLaren. Sebastian Vettel in the other Red Bull is in P3, the first time he will not start from the front row this year. The Ferraris of Alonso and Massa will start in P4 and P5 respectively. The race day weather forecast is for cool temperatures, clouds and some rain, which should make for a very interesting race. Again, the assholes at Rupert Murdoch's Fox TV will make US F1 fans watch the race on a tape delay, starting at 12 EST and 9 am PST.

In other sporting news, it looks like the great NFL Football lockout is in its last throes. From Marke Maske at the Washington Post:

NFL player leaders are scheduled to meet Monday in Washington, where they are likely to recommend approval of the lockout-ending collective bargaining agreement already ratified by the league's franchise owners, several people familiar with the deliberations said Saturday.

The lockout could officially end next Saturday with the opening of the free agent market and teams beginning training camps, those people said, cautioning that those plans were subject to change. The 10-year labor agreement first would have to be ratified by a majority of the nearly 2,000 NFL players.

But if free agency begins and training camps open Saturday, the preseason would be likely to be played as scheduled beginning Aug. 11, said those people familiar with the situation.

Lastly, and quite charmingly, we have the first vows in New York resulting from the recent passage of marriage equality in the state. As soon as the clock strikes midnight, Kitty Lambert and Cheryle Rudd are going to be the first married under the new law at a rainbow-lit Niagara Falls. From The HuffPo:

Two Buffalo women plan to be the first to legally wed under the state's new same-sex marriage law, which goes into effect on Sunday, one month after Gov. Andrew Cuomo signed it into law. The pair, Kitty Lambert and Cheryle Rudd, are to be married the minute after midnight as the Niagara Falls are lit up with the colors of a rainbow.

Sounding much like any other nervous newlywed-to-be, Buffalo resident Lambert told HuffPost they were "really excited, a little overwhelmed, a whole lot

frightened." After 11 years together, she said, "I don't know why I'm frightened by this commitment."

Jitters or not, the couple has a big ceremony planned. Lambert, 54, and Rudd, 53, have five adult children and 12 grandchildren. The umbrella advocacy group New Yorkers United for Marriage is promoting the marriage as the first of its kind in New York State. Local politicians will be in attendance along with an estimated hundreds of friends and gay rights advocates for a meal, speeches, and a candlelight procession on Goat Island that will lead across Bridal Veil Falls and then to Luna Island. And the falls, of course, will be illuminated to look like a rainbow, a symbol of the gay rights movement.

That is pretty darn cool. Hats off to the happy couple, and let's hope they find happiness on the other side of their rainbow.

REGGIE WALTON UNLEASHES THE ROCKET'S RED GLARE

.

Well well well. who couldda knowd?? Acute prosecutorial foul play has ended the big Roger Clemens perjury trial at it's gestation. From ESPN:

The judge presiding over Roger Clemens' perjury trial declared a mistrial over inadmissible evidence shown to jurors.

U.S. District Judge Reggie Walton said

Clemens could not be assured a fair trial after prosecutors showed jurors evidence against his orders in the second day of testimony.

He will hear a motion on whether a new trial would be considered double jeopardy.

Whooo boy, Judge Walton must have been a little upset. Why yes, yes, he was:

"I don't see how I un-ring the bell," he said

Walton interrupted the prosecution's playing of a video from Clemens' 2008 testimony before Congress and had the jury removed from the courtroom. Clemens is accused of lying during that testimony when he said he never used performance-enhancing drugs during his 24-season career in the major leagues.

One of the chief pieces of evidence against Clemens is testimony from his former teammate and close friend, Andy Pettitte, who says Clemens told him in 1999 or 2000 that he used human growth hormone. Clemens has said that Pettitte misheard him. Pettitte also says he told his wife, Laura, about the conversation the same day it happened.

Prosecutors had wanted to call Laura Pettitte as a witness to back up her husband's account, but Walton had said he wasn't inclined to have her testify since she didn't speak directly to Clemens.

Walton was angered that in the video prosecutors showed the jury, Rep. Elijah Cummings, D-Md., referred to Pettitte's conversation with his wife.

"I think that a first-year law student

would know that you can't bolster the credibility of one witness with clearly inadmissible evidence," Walton said.

Well, yes, Reggie Walton is exactly right. It was not only an inappropriate attempt at backdoor admission of what was, at the time, hearsay but, much, much, more importantly flew directly in the face of a direct and specific previous order of the court on this EXACT issue. You just do *not* do that, and if you do you cannot whine when the court spansks your ass. You got said ass whuppin the old fashioned way, you earned it.

So, now the germane question is where do we go from here; i.e. what about a new trial. Well, that depends on a fair amount of pretty complicated things that are not going to be self evident to those not more than intimately experienced in the nuances of technical trial law are going to understand. I will get into that in detail, and discuss the legal implications and situation, when the pleadings are filed. Judge Walton has scheduled a Sept. 2 hearing on whether to hold a new trial, or dismiss the case permanently due to double jeopardy. clemens' defense team will have until July 29 to file the motion to dismiss with prejudice and the prosecution has until Aug. 2 to respond.

A lot of judges would have tried to paper over this bogosity by the prosecution. Reggie Walton is PISSED. He may well say they are done based on double jeopardy. Those are gonna be fun briefs, and a very interesting oral argument.

One further thing, despite the incredibly short tenure of this jury trial – literally really in the first day of evidentiary presentation – today's antics were NOT the first instance of prosecutorial misconduct. Oh no, the government was acting maliciously and unethically from the get go in the opening statements.

[Judge Walton] said it was the second

time that prosecutors had gone against his orders – the other being an incident that happened during opening arguments Wednesday when assistant U.S. attorney Steven Durham said that Pettite and two other of Clemens' New York teammates, Chuck Knoblauch and Mike Stanton, had used human growth hormone.

Walton said in pre-trial hearings that such testimony could lead jurors to consider Clemens guilty by association. Clemens' defense attorney objected when Durham made the statement and Walton told jurors to disregard Durham's comments about other players.

Yes, boy howdy, that is precisely right.

I think that the Laura Pettite bit, coupled with the improper attempt at prohibited guilt by association in the openings makes a fast pattern to malicious prosecution. If Reggie wants, he can dismiss and ground it upon both mistrial and sanction for malicious.

I've been telling people for years that it was NOT just former IRS goon come FDA stoolie agent Jeff Novitsky (although it *all* starts with him) that was malfeasant in the BALCO cases, including the Mitchell report kerfuffle, it was the AUSAs too.

This mendaciousness is just bogus and deplorable. Congratulations to Judge Reggie Walton for fingering it for what it is. Now dismiss this bunk forever please.

NEW YORK'S ENLIGHTENMENT &

SOME THOUGHTS ON PERRY PROP8 CASE

New York gets it done on marriage equality, and it will have many profound, and positive, ramifications for the Perry Prop 8 case.

WHERE I WALK MY DOG

I actually wasn't going to post this video. I haven't lived in Grand Rapids all that long (so it's really not my place to criticize this video), but the video misses some of the real funkiness of the art and buildings even in the streets that were filmed.

But it's getting some play on other blogs and, well, it does show some of the streets and parks where I walk my dog, so I felt obliged.

So here's the story: this video is meant as a snub to Newsweek, which back in January named Grand Rapids (with Flint and Detroit) as one of Michigan's three top-ten dyingest cities in the country. So now Newsweek, seeing how a bunch of Grand Rapidians will parade the streets to prove Newsweek wrong, has sheepishly apologized.

To the Grand Rapids crowd: First off, we LOVE your YouTube LipDub. We're big fans, and are inspired by your love of the city you call home.

But so you know what was up with the list you're responding to, we want you to know it was done by a website called mainstreet.com—not by Newsweek (it was unfortunately picked up on the Newsweek web site as part of a content sharing deal)—and it uses a methodology that our current editorial team doesn't endorse and wouldn't have employed. It certainly

doesn't reflect our view of Grand Rapids.

They should have just asked my dog. He loves Grand Rapids. He's very urbane and so loves to strut through all these city streets, plus he's figured out a place (that appears in the video) where he can jump in the river when it's hot.

HAPPY EASTER



Hi folks, Happy Easter! It has been a pretty frustrating week on a lot of the fronts we follow here. There are far too many such weeks. Even the one piece of positive news, the reinstating of the charges against the Blackwater Nisour Square shooters, was based on a somewhat suspect decision by the DC Circuit Court and still very well may lead to another dismissal of the charges in the District Court because, quite frankly, it is probably appropriate that they be dismissed due to the monkeywrenching by the State Department and their demand for *Garrity* statements from the individuals involved in the shooting.



But that was the week that was, now it is Easter Sunday and it is time to relax, eat and have some fun, whether it is a religious holiday for you or just a good chance to chill. Marcy and Mr. Wheel have been enjoying the last few days by moving. You know how much fun moving is! As for myself, after an extremely busy week, the bmaz family went driveabout in Southern Arizona. Thought, just for grins, I would share a little of our trip. One of the places we went to was San Xavier del Bac Mission, which is just due south of Tucson.

A National Historic Landmark, San Xavier

Mission was founded as a Catholic mission by Father Eusebio Kino in 1692. Construction of the current church began in 1783 and was completed in 1797.

The oldest intact European structure in Arizona, the church's interior is filled with marvelous original statuary and mural paintings. It is a place where visitors can truly step back in time and enter an authentic 18th Century space.

The church retains its original purpose of ministering to the religious needs of its parishioners.



The current church dates from the late 1700's, when Southern Arizona was part of New Spain. In 1783, Franciscan missionary Fr. Juan Bautista Velderrain was able to begin construction on the present structure using money borrowed from a Sonoran rancher. He hired an architect, Ignacio Gaona, and a large workforce of O'odham to create the present church.

Following Mexican independence in 1821, San Xavier became part of Mexico. The last resident Franciscan of the 19th Century departed in 1837. With the Gadsden Purchase of 1854, the Mission joined the United States. In 1859 San Xavier became part of the Diocese of Santa Fe. In 1866 Tucson became an incipient diocese and regular services were held at the Mission once again. Sisters of St. Joseph of Carondelet opened a school at the Mission in 1872. Franciscan Sisters of Christian Charity now teach at the school and reside in the convent.

Clicking on any of the images will give a full

size view. The upper is obviously the outside of the mission, the middle one a view of the inside of the church portion and the final view more of a closeup of the altar area, which is simply ornate beyond description and beautiful. It is guarded by two huge golden lions on each side, although they are a bit hard to see well in the picture. San Xavier is pretty cool and just about the only place like it still standing this completely in what was referred to in the 1600s and 1700s as New Spain.

The other completely awesome place we went was Kartchner Caverns. Kartchner Caverns State Park is about 50 miles southeast of Tucson, is only about ten miles off of Interstate 10 and is easily accessible. It is one of the most beautiful state park facilities you can imagine. Here is a wonderful history of how the cave came to be a jewel in the state park system in Arizona. One of the key players you will read about is Ken Travous, who was along with us on the tour the bmaz family took Saturday; it was really a special occasion.

In November 1974 two young cavers, Gary Tenen and Randy Tufts, were exploring the limestone hills at the base of the Whetstone Mountains. In the bottom of a sinkhole they found a narrow crack leading into the hillside. Warm, moist air flowed out, signaling the existence of a cave. After several hours of crawling, they entered a pristine cavern.

The formations that decorate caves are called "speleothems." Usually formations are composed of layers of calcite called travertine deposited by water. The form a speleothem takes is determined by whether the water drips, flows, seeps, condenses, or pools.

Kartchner Caverns is home to:

one of the world's longest soda straw stalactites: 21 feet 3 inches (Throne

Room)

the tallest and most massive column in
Arizona, Kubla Khan: 58 feet tall
(Throne Room)

the world's most extensive formation of
brushite moonmilk (Big Room)

the first reported occurrence of
"turnip" shields (Big Room)

the first cave occurrence of "birdsnest"
needle quartz formations

many other unusual formations such as
shields, totems, helictites, and
rimstone dams.

The complex at Kartchner Caverns features a
Discovery Center with museum exhibits, a large
gift shop, regional displays, a gorgeous
theater, and extensive educational information
about the caverns and surrounding landscape.
There are also campgrounds, hiking trails,
lockers, shaded picnic areas, a deli, an
amphitheater, and a hummingbird garden. It is
simply an incredible experience, and I highly
recommend it for anyone visiting the Southern
Arizona area. Seriously cool.

So, the members of the bmaz family are back home
now, the Wheels are semi-unpacked in their
groovy new digs, and all are ready to eat and
have happy hour. The best from all of us to all
of you, the greatest readers and commenters in
the blogosphere. Enjoy!