

# The Political Forum

*A review of social and political trends and events  
impacting the world's financial markets*

---

Mark L. Melcher  
President  
melcher@shentel.net

Monday June 10, 2002

## THEY SAID IT

“It was still possible in 1941 to walk through the White House gate and into the grounds without showing a pass or answering any questions, since the White House was not yet considered much different from any other public building in the city. Until a few years before there had been no gates at all, and on summer days government employees had lounged on the White House lawns eating picnic lunches out of paper sacks . . . .

“Six months into the war, there were so many new agencies, all known by their initials, nobody could keep them straight. The OPC was the Office of Petroleum Coordination. Its director was Harold Ickes, also the Secretary of the Interior. At a press conference he was asked about a new OPC ruling and he said, testily, “I can’t speak for the OPC.” There was a pause, stirrings of surprise and confusion among the reporters, until an aide whispered in Ickes’s ear that he was the *director* of the OPC. “I’m all balled up on all these initials,” Ickes explained. So were many others. By now there were the WPB, OPA, WMC, BEW, NWLB, ODT, WSA, OCD, OEM and many others. One office, issuing wartime regulations for plumbers, was the PWPGSJSISIACWPB.”

*Washington Goes To War*, by David Brinkley

**UNINTENDED CONSEQUENCES.** President Bush’s speech last week outlining his plan to establish a new cabinet level Department of Homeland Security received a lot of ink and talk-time in the media. But I thought his speech a few days earlier to West Point’s graduating class provided a great many more clues as to what lies ahead in the “war against terrorism.”

The central focus of that speech was a rather awkwardly worded statement that “the war on terror will not be won on the defensive.” America, Bush said, “must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge.” Then he added, “In the world we have entered, the only path to safety is the path of action. And this nation will act.”

---

Subscriptions to The Political Forum are available by contacting:  
The Political Forum  
8563 Senedo Rd., Mt. Jackson, Virginia 22842  
tel. 540-477-9762, fax 540-477-3359, e-mail melcher@shentel.net

By all accounts, this pledge was not made for rhetorical purposes only. It was, shall we say, “thought out” before hand. It is policy. My friend cyber-scribe extraordinaire Rich Galen ([rich@mullings.com](mailto:rich@mullings.com)) reported the following exchange between the President and a reporter at a press briefing held a few days later at the National Security Agency.

Q. Mr. President, you’ve got a lot going on foreign policy-wise right now, the Middle East meetings later this week, the continued efforts here. Is this all moving Iraq to the back burner?

The President: Well, I think you need to read my speech that I gave at West Point. If you haven’t, I’ll get you –

Q. I was there, sir.

The President: Oh. I think you need to have *listened* to my speech I gave at West Point. (Laughter.)

I have no problem with this. I don’t see that the United States has any choice but to go on the offensive when faced with an enemy that, as Bush put it in that speech, consists of “shadowy terrorist networks with no nation or citizens to defend,” and “when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies.”

But knowing that it must happen doesn’t make it any less worrisome to me. The President is, after all, talking, just as FDR did following Pearl Harbor, about waging what amounts to a world war. The United States, he said, “must uncover terror cells in 60 or more countries.” That’s “60 or more countries,” by the president’s own count, in which the United States is going to actively attempt to enforce its will. Left unsaid was the fact that many of the 120 or so other nations of the world, including some rather important ones in Europe and Asia, have a considerable stake in what happens in these 60.

By any measure, this task gives new meaning to Karl Popper’s assertions that “unintended consequences” nullify any attempts by politicians and planners to control and direct the course of history. Despite the necessity, and according to Bush, the nobility, of this war, it is a veritable breeding grounds for unpredictable events that truly will alter history, both domestically and globally, well beyond the plans of those directing the effort.

World War II provides an excellent case in point. Among that war’s many historically momentous unintended consequences was the virtual nullification of the constitutional concept of states rights, which were trampled in the “necessary” expansion of the federal government on behalf of the “war effort.” There was also the establishment of the military-industrial complex that concerned Eisenhower so much. Then, of course, there was the sudden appearance of hundreds of new agencies, bureaus, departments, offices, and branches to fulfill Max Weber’s prediction, made early in the century, that bureaucracy would eventually rival both labor and capital for power and authority over modern industrial societies. And finally, of course, the United States became the “leader of the free world.”

A wonderfully readable history of this process can be found in David Brinkley's book, *Washington Goes to War*. I bought it in an airport some years ago on the advise of a friend who described it as a "good read." I expected to enjoy it. I didn't expect it to be a "keeper," a book that I would return to time and again, like I do to John Galbraith's 1929, *The Great Crash*, for enduring insights into some of the processes that drive history.

In Brinkley's words, the book describes how a "languid Southern town with a pace so slow that much of it simply closed down for the summer grew almost overnight into a crowded, harried, almost frantic metropolis struggling desperately to assume the mantle of global power, moving haltingly and haphazardly and only partially successfully to change itself into the capital of the free world."

But Brinkley makes one error, in my opinion. He says, "Nothing like it had ever been seen before," which is probably true. But then he adds, "Nothing like it is likely to be seen again," which isn't true. Indeed, those of us who are paying attention today are seeing it happen again before our very eyes.

The changes are less visible this time. No new buildings are springing up, as the Pentagon did in the wake of December 7, although it appears that Washington will eventually be treated to a giant new edifice to house the newly proposed Department of Homeland Security. No vast migration of new workers is flooding Washington. No gigantic expansion in the number of new federal agencies is taking place. But big things are happening nevertheless, and while, as Popper suggested, no one can project with any degree of accuracy all of the many "unintended consequences" that are likely to occur, a few things are, in my opinion, reasonably certain.

Even a partial list of such items would be too long to cover in one article. Indeed, an entire book wouldn't do it. So I will address a few of them one at a time over the next few months, beginning this week with some thoughts on the threat to liberty posed by this war.

For starters, the executive branch of government is certain to become bigger and more powerful, both absolutely and relative to the other two branches of government, the legislative and judiciary. Wars always do this. As I put it in an article I wrote while still at Lehman entitled "Strength From Adversity," this is "an ancient truth" which was "first revealed in a papyrus scroll, written in Aramaic, and found in a cave near Minneapolis." It reads, "Wars and other national crises are to executive power what Miracle-Grow is to houseplants."

A corollary to this ancient truth is that the Constitution, which was designed around Montesquieu's exquisite outline of the concept of the balance of powers, inevitably comes under great stress when wars expand the power of the executive. As I mentioned earlier, World War II delivered the *coup de grace* to a now long-forgotten little item called the Tenth Amendment, which is snuggled away in an increasingly meaningless section of the Constitution called the Bill of Rights. The principal Constitutional victim of this new world war will be, I believe, the Fourth Amendment, another one of those late additions to the Constitution that has, over the past

two hundred years, caused so much trouble for “Big Brother” advocates on the extremes of both left and the right. It reads as follows:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Now I am no constitutional lawyer, but I have trouble reconciling the specificity of the Fourth Amendment with descriptions such as the following from a recent article in the *Washington Post* about new federal rules covering financial records.

“The increased financial scrutiny is part of an expanded campaign by the government to tap into public and *confidential* (emphasis added) data in search of people who pose terrorist threats. . . .”

“Last week, in response to a mandate in the Patriot Act, the Treasury Department’s Financial Crimes Enforcement Network, known as FinCen, began operating a secure online network to make it easier for financial companies to report suspicious behavior by customers to the government.

Central to that relationship are suspicious-activity reports, which require officials to fill in more than 50 kinds of information, including addresses, account numbers, Social Security numbers and phone numbers.

They are maintained by FinCen in databases that are available to local, state and federal law enforcement agencies. Under Patriot Act provisions, intelligence agencies also have the right to get such reports *on demand* (emphasis added). People who are the subjects of the reports may not see them, a FinCen official said. . . .”

“The [new Patriot Act] law . . . gives law enforcement and intelligence agencies greater access to *confidential* (emphasis added) information without a subpoena while also requiring that credit bureaus secretly turn over credit reports to the CIA, National Security Agency and other intelligence agencies when presented with a request signed by a senior agency official . . . .”

It could be, of course, that I am missing something here. But I can’t help wondering what happened to the silly old idea our founding fathers had that someone from the Judiciary branch, which is charged with seeing that the laws of the land are followed, should have the final say, via the subpoena process, in whether a request from an executive branch agency for *confidential*, *private* records of citizens meets the standard of being “reasonable?”

What the government seems to be asserting here is that unlike ordinary crimes, such as murder, robbery, or theft, where police can focus their investigation on people who were actually in a position to commit the crime, terrorism is open-ended. Because anyone can, theoretically, be a terrorist, or in cahoots with a terrorist organization, then no one can be presumed innocent. So

everyone is therefore a legitimate target for the kinds of investigations that use giant computers to sweep financial records and transactions, e-mails, health reports, phone conversations, and surveillance cameras. And no one seems to be concerned about whether any of this is in line with the blanket Constitutional guarantee that American citizens are “secure in one’s papers and effects.”

I am aware that, in the wake of September 11, most Americans support these and other expansions of federal investigative powers, which is why all of this is sliding so easily through Congress. I am also aware that the bromide under which it is all being done is that “people who have done nothing wrong, have nothing to fear.” But like so many simplistic phrases that purport to explain complicated issues, this one is not true. I have nothing to hide. But nevertheless, I think I, and all Americans, have something to fear from all of this.

I am, after all, old enough to remember that this nation once had an unscrupulous, unethical president. Indeed, it seems like only yesterday that America had a president who had a full-time private investigator named Terry Lenzner working for him, his party, and his wife, whose firm, Investigative Group International, specialized in digging up dirt on people. *Vanity Fair* described this firm in an article entitled “The President’s Private Eye,” as “Washington’s most feared and vilified private-investigation firm.” Clinton’s erstwhile buddy, Dick Morris, called it “the White House secret police.”

Indeed, it seems like only yesterday that this nation had a president who, shortly after taking office, accumulated over 900 confidential FBI files on Republicans, and also had former FBI General Counsel Howard Shapiro running back and forth between the Bureau and the White House like some sort of bicycle courier. When last heard from Shapiro was at a big D.C. firm where his clients included, of all people, Terry Lenzner. As they say in Disney Land, “It’s a Small World After All.”

Indeed, it seems like only yesterday that this nation had a president who had a well-known pornographer named Larry Flynt running interference for him in something called an “impeachment investigation.” A friend of Clinton operative James Carville, Flynt announced, during the “Monica thing,” that he had evidence of sexual improprieties on six or so top Clinton critics in Congress, told the world about one, and promised to release information on any of the others who continued to attack Bill over Monica. It was a brilliant gambit, since many more than six legislators had reason to fear that they might be on his list, and many more than six suddenly became strangely silent during the subsequent impeachment proceedings. Cute. Very cute.

But this stuff isn’t a joke. Information is power, as the saying goes, and, as Bill Clinton proved time and again, dirty information is real power in a town like Washington, especially when it is in the hands of dirty politician.

I shudder to think of the kind of information that the next unethical president will have at his fingertips, when the computers begin their task of producing a “continuously adaptive profiles” via “comprehensive, enterprise wide surveillance” of the myriad information that is now, and will in the future become available to “Big Brother.” On that day the grim ferryman will come for the already ailing Fourth Amendment.

I am not trying to make the case here that no new surveillance authority should be granted to the executive branch agencies. The fight against terrorism is fundamentally a trade off between liberty and safety, and there is little question that, given the nature of this enemy and the weapons he is using, some adjustments that favor security are going to have to be made in this equation.

I am worried, however, that one of the unintended consequences of this war is that Americans will make a massive contribution of their liberties on its behalf, and gain, in return, little new security from it and a many fold increase in government corruption.

**A MODEST PROPOSAL.** I have no strong feelings one way or the other about the creation of the new homeland security department. In the final analysis, the President has the responsibility for protecting Americans from the threat of terrorism, and if he feels that the tools that he needs to accomplish this purpose should be arranged in a certain way in order for him to proceed, then I see no reason to argue, so long as the changes are reasonable.

Every manager of people has had to deal with such requests at one time or another. “Sally can’t work unless she has a plant in her office.” “Carl needs a window with a view.” “Bob likes to have new pencils, sharpened and placed in a row.” “Esmerelda wants a goat.” One advantage of responding with: “So get it for them and tell them to get to work,” is that they have fewer excuses if their subsequent output is “below expectations,” so to speak. And so it will be with Bush and his terrorist busters.

In short, I am much less concerned about how the tools are arranged, than I am about the tools themselves and the skill of the craftsmen who are using them. For example, as I indicated above, I can’t help but wonder whether the executive branch needs access to every American’s underwear drawer, or if this is just a case of hyperthyroidic bureaucrats taking advantage of September 11 to chip away at some pesky little Constitutional impediments that make their jobs more difficult.

I believe that if the administration had the imagination and the courage to define the list of potential terrorists a little more narrowly than the entire citizen base, it could accomplish a lot more terrorist catching with a lot less intrusion into the rights of its citizens.

Another way of saying this might be that if someone must give up sacred constitutional rights on the alter of this war, then perhaps someone should consider an approach that might not be quite so egalitarian but more effective.

These are, of course, fancy ways of saying “Why the hell don’t you guys stop this insane pretense against racial profiling and go after the people, as you would in any crime, who are the most likely suspects?”

Sometimes, particularly in troubled times such as these, much can be learned from the comedians, because, like the court jesters of old, they can cross barriers in the name of Erasmus’

Folly, that others must honor, or cross at great peril to their livelihoods. It is in this spirit that I offer the following “test” from those ubiquitous, anonymous comedians of the e-mail circuit. It reads as follows:

To ensure we Americans never offend anyone, particularly fanatics intent on killing us, airport screeners will not be allowed to profile people. They will continue random searches of 80-year-old women, little kids, airline pilots with proper identification, Secret Service agents who are members of the President's security detail, 85-year old Congressmen with metal hips, Medal of Honor winning former Governors and Compaq employees wearing black leather jackets.

Let us pause a moment and take the following test.

**1. In 1972 at the Munich Olympics, athletes were massacred by:**

- a. Olga Korbut
- b. Sitting Bull
- c. Arnold Schwarzeneger
- d. Muslim male extremists mostly between the ages of 17 and 40

**2. In 1979, the US embassy in Iran was taken over by:**

- a. Lost Norwegians
- b. Elvis
- c. A tour bus full of 80-year-old women
- d. Muslim male extremists mostly between the ages of 17 and 40

**3. During the 1980s a number of Americans were kidnapped in Lebanon by:**

- a. John Dillinger
- b. The King of Sweden
- c. The Boy Scouts
- d. Muslim male extremists mostly between the ages of 17 and 40

**4. In 1983, the US Marine barracks in Beirut was blown up by:**

- a. A pizza delivery boy
- b. Pee Wee Herman
- c. Geraldo Rivera making up for a slow news day.
- d. Muslim male extremists mostly between the ages of 17 and 40

**5. In 1985 the cruise ship Achille Lauro was hijacked and a 70 year old wheel-chair-bound American passenger was murdered and thrown overboard by:**

- a. The Smurfs
- b. Davie Jones
- c. The Little Mermaid
- d. Muslim male extremists mostly between the ages of 17 and 40

**6. In 1985 TWA flight 847 was hijacked at Athens, and a US Navy diver was murdered by:**

- a. Captain Kidd
- b. Charles Lindberg
- c. Mother Teresa
- d. Muslim male extremists mostly between the ages of 17 and 40

**7. In 1988, Pan Am Flight 103 was bombed by:**

- a. Scooby Doo
- b. The Tooth Fairy
- c. Butch Cassidy and The Sundance Kid
- d. Muslim male extremists mostly between the ages of 17 and 40

**8. In 1993 the World Trade Center was bombed the first time by:**

- a. Richard Simmons
- b. Grandma Moses
- c. Michael Jordan
- d. Muslim male extremists mostly between the ages of 17 and 40

**9. In 1998, the US embassies in Kenya and Tanzania were bombed by:**

- a. Mr. Rogers
- b. Hillary, to distract attention from Wild Bill's women problems
- c. The World Wrestling Federation villain: "Mustapha the Merciless"
- d. Muslim male extremists mostly between the ages of 17 and 40

**10. On 9/11/01, four airliners were hijacked and destroyed and thousands of people were killed by:**

- a. Bugs Bunny, Wiley E. Coyote, Daffy Duck and Elmer Fudd
- b. The Supreme Court of Florida
- c. Mr. Bean
- d. Muslim male extremists mostly between the ages of 17 and 40

**11. In 2001 the United States began to fight a war in Afghanistan against:**

- a. Enron
- b. The Lutheran Church
- c. The NFL
- d. Muslim male extremists mostly between the ages of 17 and 40

**12. In 2002 reporter Daniel Pearl was kidnapped and murdered by:**

- a. Bonny and Clyde
- b. Captain Kangaroo
- c. The Beastie Boys
- d. Muslim male extremists mostly between the ages of 17 and 40

What's to know here?