

Does the End Justify the Means?

PAST PRESIDENT'S COLUMN, Mike Lamb, Helena

In Joseph Heller's best-selling novel about a bomber wing stationed in Italy during World War II, "*CATCH-22*," Milo Minderbinder, the flight group's commissary officer, arranges in the interest of free enterprise to bomb his own squadron with his own planes. His intricate network of commercial enterprise had crossed all battle lines and he was flying foodstuffs and delicacies back and forth to officers' messes throughout Europe and North Africa with planes and pilots commandeered from every country. The next step in improving the profitability of his multinational "mart" was to diversify – get into the war business. But when he contracted with the Germans to bomb his own American flight wing with American planes operated by American pilots, the bombing patterns and strafing runs choreographed by Milo himself from the group's own flight tower, everyone thought he'd gone too far.

Of course, everyone thought he'd gone too far only until he threw open the corporate books and disclosed the huge profit he'd made for the mart by contracting with the Germans to do the job. In addition, there was the fuel savings and plane/crew loss avoided by not having to fly from Germany to Italy to effect the attack; and the American pilots, familiar with their own base, were much more deadly. And since everyone – even those killed in the attack – had a "share" in the cooperative, everyone was a winner. The attack was a financial success. And Milo, of course, was a hero.

In the pre-Iraq/Haliburton days, I used to think *Catch-22* was high humor. The idea of war profiteering/commercialism supplanting morality and the philosophical foundations of our country was absurd. Once again, I was just naive. The axiom is always true: Absolute power corrupts absolutely.

In Milo's case, he was warned that the only way he could get into trouble was by apologizing or acting embarrassed about what he had done. And by assuming an air of righteous indignity when his actions were questioned, he persuaded everyone that killing people was all right as long as you could show a profit. It was patriotic. Doing the right thing, speaking the truth, was only an option or, at best, an uncomfortable nagging itch. Based on current experience, that apparently can be true even when some of the victims are America's best and brightest. Packaging and Advertising – the foodstuff of the complacent mind.

All appearances to the contrary, we are not without power to try to change things – assuming such things trouble us. According to Jefferson, we are obliged to. And there's no room for complacency even in Montana, far from the international and national scene. As the epidemic of political ads on radio and TV demonstrates, there are people here who will literally say anything to line their own nest. The message is Milo's – never apologize, never quibble about the truth – if you win, trampling on principle is a small enough price to pay. Only the coming election itself could convince me that Montanans would ever agree with that. But, once again, you can never underestimate the power of packaging and advertising.

Most recently here in Montana, we all take heart from Judge Sandefur's decision in early September throwing out the three initiatives because of the fraudulent and underhanded way in which signatures for them were gathered. Incredibly, setting the defects in the signature gathering process aside, polls suggest that all three initiatives enjoy popular support among voters. Once again, it's not the product that's being sold so much as the packaging and the advertising. Everyone wants to limit government spending, everyone wants to get rid of bad judges, everyone

wants to protect their private property from the government. But the fact is, we already have appropriate laws in place designed to address these precise issues, and a legislature in place to tune them up as may be necessary.

The most far-reaching and dangerous of these initiatives is CI-98 – the judicial recall initiative. CI-98 would allow a handful of disgruntled citizens to force a judge to face a recall petition and expensive election, for any non-reviewable reason, every 75 days. As we have all explained to those who will listen, being a judge is not a popularity contest: every time an order is entered at least half the people involved in the case are going to be unhappy with the decision. If that (or some unspoken reason) is a basis for recall, watch out. Assuming the “judge busting” initiative were to become law, it will be the rare ordinary Montana citizen, upset with a judge’s decision, who will be able to generate the energy and financial backing to have the judge thrown out. But out-of-state interests, corporate interests with a bigger bottom line than Montana’s budget, and consortiums of business interests acting in concert, will suffer no such limitations. There will be cow pies wrapped in iridescent packages with pretty pink bows being hawked by silver-tongued carnies on every street corner – and we’ll snap them up like hotcakes: just like last time – packaging and advertising.

Constitutional democracy does not mean government by the majority or the powerful – free to trample on those who disagree. On the contrary, democratic government depends upon preservation of the rights of the minority in the face of the position of the majority on any particular point. You should never have the right to bomb your neighbor, even if it’s a profitable undertaking. We are a society based on inclusion, tolerance, hearing all sides of the argument. The last bastion of defense for a free society is an independent judiciary. The conduct of our judges is already reviewed every election cycle. If the day arrives when they, in making a decision, must consider who their decision might offend, the tide will truly have turned. From that day forward, those judges who offend the powerful will be marked with Robert Louis Stevenson’s “Black Spot.” Judicial suicide will be avoidable only by deference to the legislative majority, the corporate policy, or a vocal, mudslinging minority.

But, of course, the lion’s share of the voting populous will never know the danger because the packaging and the advertising will continue to determine the perceived quality of the product – as opposed to the product itself. We must educate Montanans on the necessity of an independent judiciary – one that need not look over its shoulder, but always do the right thing, the just thing, to the best of its individual and collective ability. We are blessed with many able, hard-working, and – most importantly – independent jurists. As a profession we must have their back. We are the only ones trained to know exactly what is at stake.

The legitimate initiative process has a valuable place in government, as evidenced by the game farm debacle Idaho is currently dealing with and which we will hopefully avoid here because of Montana’s successful initiative banning game farms. But the next time we see the initiative process in action, where those manipulating it are forces from out of state or operating behind closed doors or from under a flat rock, they will be smart enough to do it the right way – dot all the “i’s,” cross all the “t’s,” etc. And the packaging will be even more colorful, the advertising more compelling, and the product more poisonous. Milo was wrong, might does not make right; the end does not justify the means; the dollar is not almighty. Don’t get comfortable, get mad. Enough is enough.