

WHAT WENT WRONG

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AN AUTOPSY OF THE 1994 LIBERTARIAN CAMPAIGN FOR GOVERNOR

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"Politics: A strife of interests masquerading as a contest of principles."

--Ambrose Bierce, 1911

The New York Libertarian Party (NYLP) suffered a devastating defeat on Election Day. The New York State Board of Elections reports that Bob Schulz, the NYLP candidate for Governor, received only 9,506 votes. That is the lowest total ever received by an NYLP gubernatorial candidate, lower even than the 10,503 votes received by Jerome Tucille in 1974, the first year the NYLP ran a campaign in New York. In 1990, Gary Johnson, with little money or media attention, received 24,611 votes.

Worse yet, while the NYLP failed to come close to the magic figure of 50,000 votes--representing permanent ballot status--two other parties did reach that goal for the first time: the Independence Fusion Party and the Tax Cut Now Party. Since all five pre-existing permanent parties received 50,000 votes, that means that there will now be seven permanent parties hovering over the NYLP on the crowded voting machine, in addition to whatever

other unofficial parties out-draw us in the lottery for ballot position.

Prospects for the NYLP in the near future are bleak as well. Without permanent ballot status, our presidential candidate in 1996 is likely to be ignored by the press and public and buried on Election Day, as has happened in every campaign except 1980, when the Koch family fortune bought us 50,000 votes.

No other statewide offices will be on the ballot in 1996. Nor do local elections hold much potential. Those 9,000 votes will resonate in the minds of editors and producers who control access to scarce air time. Already biased against us, they now have statistical justification for consigning us to the cutting room floor. We lack the funds and labor power to run effective local campaigns, and our position on the ballot will make our candidates difficult to locate, let alone vote for.

What went wrong in 1994? It will be useful to first identify what did not go wrong in 1994. The most likely scapegoat that will be fastened upon is that the nasty Republican challenge to our petitions distracted us from campaigning.¹ This explanation is false.

First, this theory avoids asking the hard question: why were our petitions challengeable in the first place? Petition

¹ A digression: it is conventional wisdom in the NYLP that all laws restricting access to the ballot are evil. There must be, however, some criterion for ballot access or there will be so many parties on the machine that voters will literally be unable to clearly see all the candidates. For the next four years, the NYLP will be suffering from a ballot that is arguably too crowded.

challenges are the stock-in-trade of New York politics and if the Sternites in charge of the petition drive left the party vulnerable to them, well, "the fault lies not in the stars, but in themselves." Second, and more to the point, it is likely that the dozens of articles written about the NYLP's ultimately successful court suits generated more favorable press for the NYLP than conventional campaigning would have done. The court suits made the NYLP newsworthy, whereas newspapers generally ignore our more substantive campaign activities.

Third, when the articles about the court fights are added to the unprecedented four televised debates, and the massive amount of publicity that Howard Stern generated for the NYLP earlier in the year, it becomes clear that, in 1994, the NYLP had far more publicity than ever before. According to Free New York, "Unprecedented TV coverage of the Bob Schulz campaign was reported in Albany." (Oct. 10, 1994). Thus, the theory that holds that court fights reduced campaigning; reduced campaigning reduced media attention; and reduced media attention reduced our vote totals, is quite simply, absurd in all of its premises, and in its conclusion. We are left in the end with the depressing facts: more publicity than ever before and the lowest vote total ever.

The poor results of 1994 cannot be blamed on poor ballot position. We have always had poor ballot position and always will until we get 50,000 votes. Furthermore, we pick up very few votes from undecided voters casually exploring the voting machine. The vast majority of our votes come from those who have decided in

advance to vote for us. It is extremely unlikely that such voters were unable to find our line on the ballot.²

The poor results of 1994 cannot be blamed on the close election between Cuomo and Pataki, or the presence in the race of Golisano. In the equally close election of 1982, our candidate received significantly more votes. More importantly, it is our central purpose to convince people that a vote for the two main parties is a wasted vote. If we failed to do that in 1994, we failed period. Golisano probably took few votes from us. He ran a non-ideological campaign and received much of his vote in his home area of Monroe County.

The latest excuse being passed around is that the NYLP was the victim of an unstoppable national Republican sweep. This is the most attractive excuse of all because it completely exonerates the NYLP for any and all misdeeds and malefactions it may have committed in 1994. The only problem with this explanation is that it is false. Even in a tough year for third parties, independents who ran attractive, professional campaigns got impressive numbers of votes in Connecticut, Oklahoma, Maine, Virginia and Pennsylvania.

Even underfinanced Libertarian candidates did well. The party captured permanent ballot status in Wyoming, South Dakota, Massachusetts, Michigan and Indiana. As for statewide LP races, the following chart speaks for itself:

² As previously suggested, ballot position probably makes more difference in local elections, in which a large number of voters are likely to be undecided on election day.

<u>state</u>	<u>office</u>	<u>candidate</u>	<u>vote percentage</u>
New Hampshire	Governor	Steve Winter	4.5
Michigan	U.S. Senate	Jon Coon	4.5
Pennsylvania	U.S. Senate	Don Ernsberger	1.7
New York	Governor/Lt. Gov.	Schulz/Dworkin	0.18 ³

We can now turn to pondering what did go wrong. We started out 1994 with two potential candidates for governor who had a reasonable chance to receive 50,000 votes. Each candidate had strengths in different respects. One candidate had received a record number of votes for U.S. Senate in 1992. She liked campaigning and was good at it; she had and has that hard to define quality we call charisma, which makes people want to listen to her and vote for her. The other candidate was from a well-known political family in Buffalo; had run for office before; was well known among drug legalizers; and had extensive speaking and debate experience and proven access to the major media and newspapers.

Six weeks before the April convention, it looked like one of these two candidates would be the nominee. That's when things started to go wrong. Howard Stern was contacted by one of our members and asked if he would be our candidate for governor. The idea appealed to him and he quickly announced his candidacy. The events that followed are well known and need not be rehashed here. The salient facts are that for the next several weeks, Stern was courted and encouraged to run by the three leading officers of our

³ Winter and Coon received twenty-five times as many votes as Schulz/Dworkin.

party,⁴ two of whom had been running apparently doomed races for the nomination themselves. The Gang of Three was joined by about seven or eight allies, who, together constituted a majority of the state committee.

The decision to court and encourage Howard Stern's candidacy was blunder number one in 1994. Of course, the decision to court Stern was allegedly⁵ based on a belief that his candidacy would be good for the NYLP. The pro-Stern faction told us that Stern would draw media attention, new members, and ultimately, new voters to the NYLP. The anti-Stern faction believed that Stern would make a laughingstock out of the NYLP and turn off most voters with offensive, nihilistic shtick.⁶ It is pointless to revisit this debate now. The theoretical debate about Stern's impact is over. It was settled empirically on Election Day. On that date, it became clear that Howard Stern, the man who spoke on national radio about what he would have done with Jackie Onassis' corpse had he been her mortician, had instead become the mortician of the New York State Libertarian Party.

However, the erroneous view among some old guard NYLP members that Stern would have a positive impact, in and of itself, would not have been enough to ensure his nomination. This was proven

⁴ Ludwig Vogel, Dottie-Lou Brokaw & Joe Brennan.

⁵ I say "allegedly" because the leader of the Gang of Three admitted recently that she backed Stern "partly because of the adventure" of "the roller coaster ride." Metro Weekend (Buffalo), Nov. 3-9, 1994, p. 4.

⁶ They also warned that Stern would likely drop out of the race. He did so right in the middle of the petition drive.

after the fact when a straw poll was taken of those attending the Saturday night banquet the day Stern was nominated in Albany. In attendance was the core of the old guard party members, numbering about seventy, and about ten new Sternites. In the poll, Ostrowski came in first, followed by Segal. (Few know to this day that during the convention, these two struck a bargain to combine forces to stop Stern if the convention went into a second ballot.) The straw poll, combined with the actual vote at the convention (Ostrowski second, Segal third), demonstrates that, if only the old guard had voted, Ostrowski would have been the likely nominee.

Both Stern and his operatives in the NYLP knew this, and thus, blunder number two was committed: the decision by the Stern-controlled state committee to pack the convention with Howard Stern groupies to deny the nomination to a libertarian. That this packing of the convention violated the rules of the NYLP would be denied by pro-Sternites relying on dubious, legalistic arguments. They would argue that we have never closely scrutinized the beliefs of those who sign our membership pledge and pay the dues. That argument, however, involves the fallacy of context-dropping that good old Ayn Rand made a career of spotting in her opponents. Prior to April, 1994, there had never been any reason to scrutinize new members since it was logical to assume that anyone who showed up was sympathetic to libertarian ideas or he or she would not be there in the first place.

In April 1994, the context was far different. A talk show host was urging his supporters to pack a convention by signing our

membership pledge regardless of whether they supported our principles. It was reasonable to assume that only a small percentage of those who signed up were actually libertarians who would stay with the party and not merely convention-packing fans.⁷ This fact was crystallized for me when I listened to the Stern show on the Monday following the convention. Stern was interviewing conventioners at random. He innocently asked one man, "Are you a Libertarian?" The man apparently understood Stern to mean, "Are you a philosophical libertarian?" He said, "No." Then, realizing that Stern was really asking if he was a registered member of the NYLP, he changed his answer: "Oh yes, I am a member and I am voting for you."

For these reasons, the effort to pack the convention by signing up 400 Stern fans into a 220-member party must be seen as a violation of the rules of the party, which require each member to honestly subscribe to our principles.⁸ On a more technical level, our rules require that all memberships be approved by the state committee.⁹ This was not done. The same fallacy of context-dropping applies here. This rule had not been strictly enforced,

⁷ I was told by several Sternites that the new recruits were not groupies, but real libertarians. This is another issue which has been settled empirically. After vigorously campaigning for votes among the new recruits--by mail, by phone, and in person--I estimate that I received about five votes from the 280 or so new members who voted in Albany, as opposed to coming in first among the old members.

⁸ Interestingly, the by-laws require members to both "subscribe" to our principles and "sign" a statement to that effect. Article II.

⁹ Article IV, C.

but it never needed to be enforced until April 1994.¹⁰

Blunder number three was the total disregard of party rules at the convention by the pro-Stern forces. First, the Sternites almost succeeded in nominating Stern by an illegal voice vote. This was only prevented by actual screaming and hollering directed at the chair by several devotees of the rules. It was imminent chaos before the national media and not a pricked conscience, that led the Sternites to back down and allow a roll call vote. But soon after Stern was nominated, the rule calling for a roll call vote was violated.

The Sternites illegally held a voice vote to "waive the rules" and nominate statist Stan Dworkin¹¹ by a voice vote.¹² First, the provision calling for a voice vote is in the party by-laws and the party by-laws cannot be amended by voice vote at a convention.¹³ Second, the voice vote was illegal because at least one hundred Sternites in the room at the time were not members of the NYLP. (That means that the voice vote to move the nomination for lieutenant governor from Sunday to Saturday was also illegal.)

¹⁰ I made a strategic decision not to press this rule, the violation of which could have led to legal action to invalidate the convention. I thought Stern could be stopped by other means. I was wrong by 34 votes out of 381.

¹¹ A supporter of rent regulation, zoning, drug laws and gun control.

¹² Article V, C, requires unanimous consent to dispense with a roll call vote.

¹³ "A majority of the members cannot by vote deprive other members of their rights under the constitution and rules of the organization." 6 NY Jur 2d Section 4, p. 328 (Associations and Clubs).

In any event, Stern was nominated and his non-campaign proceeded to avoid campaigning. But the damage had already been done. As the late, great, Murray Rothbard wrote in June:

"The porno shock jock and clown Howard Stern has not only seized the publicity of a Libertarian race for governor. He has inevitably stamped the Libertarian Party, from this point on, in his own repellant and delayed-adolescent image."¹⁴

Nevertheless, some will be surprised to know that, after he was nominated, I wanted him to stay on the ballot. My thinking was, the NYLP has sold its soul to the devil; let's at least get the benefit of the bargain: the 50,000 votes. That was not to be. Stern, as many of us had warned, was not a serious candidate. Because of various legal problems, well known before the convention, there was no way he could complete the campaign.¹⁵ He left under cover of a frivolous lawsuit, lying on national television about the nature of the financial disclosure the state required of candidates.¹⁶

By the time he actually declined the nomination, it was probably too late to mount an effective campaign. But it was still worth a try and both pre-Stern favorites remained available to run.

¹⁴ "Howard Stern for Governor?", Rothbard/Rockwell Report, June 1994. Rothbard's article is by far the best published report on the convention. Murray's death on January 7, 1995, was a monumental loss to the libertarian movement he founded.

¹⁵ "Ostrowski added that he does not think Stern will actually run if he receives the nomination, primarily because of the Federal Communication Commission's equal-time rule." Buffalo News, March 31, 1994.

¹⁶ New York Post, August 5, 1994 (Stern really pulled out because "he feared . . . the FCC's 'equal time' requirements.").

In the days after Stern pulled out, I had two firm and three soft votes on the 11-member committee on vacancies, with no other candidate in sight. The prospect of an anti-Stern candidate taking Howard's spot, however, was apparently too much for the pro-Stern faction to take. They went to work in search of a stop-Ostrowski candidate, and thereby committed blunder number four.

They found their man in Bob Schulz, a mild-mannered, retired, constitutional conservative and master pro se litigant. The pro-Sternites had already backed one candidate who was neither a member of the NYLP nor a libertarian. So it didn't bother them in the slightest to work for another outsider against a fifteen-year veteran of the libertarian movement. Nor did it bother them that Schulz supporters were at that very moment circulating petitions to put Schulz on the ballot against the NYLP.

After all, Schulz was, according to the leader of the Gang of Three, "the greatest candidate to come along since Thomas Jefferson!" When I got word that the Sternites were plotting to enlist Schulz, I pondered. Then I wrote a memo announcing my candidacy and questioning Schulz's credentials as gingerly as I could:

"As for Mr. Schulz, I have nothing bad to say at all. I don't really know the man, having heard him speak for the first time at the state convention. He appears to have done much good work litigating against the state in court. I don't know what his philosophy is on the whole range of libertarian issues and I suspect the same is true of most LP members whose support he would need in the campaign. That's precisely the problem."¹⁷

¹⁷ From a letter dated August 15, 1994, never mailed.

What it came down to was this: I was told by members of the committee on vacancies that if I lobbied hard, I would likely win the nomination. But by then, I had decided that the NYLP nomination for governor was damaged goods; that my loyal family and friends had suffered enough; and that I simply refused as a matter of personal pride to lobby my fellow libertarians to vote for me against a non-libertarian, non-member of the NYLP, after all that I had been through. I dropped out of the race.

That left Schulz, who had never run for office before, to face off against Cuomo, Pataki and the boys. His first comment, reported in the New York Times, was that he wished to close tax loopholes benefiting New York corporations. That is, his first comment was, in substance, that he was going to raise business taxes.

Schulz never had a chance to get 50,000 votes. He was not well known outside his home county and beyond a select group of journalists and lawyers who read the New York Law Journal. Although I often read the New York Law Journal and occasionally watch Inside Albany, I had never heard of Bob Schulz before April, 1994. Moreover, he was almost certainly going to emphasize the very dry legalistic issues of illegal public spending in violation of the New York State constitution that are his forte. His primary issue was likely to be cutting taxes and spending, an issue already seized by Pataki. Why vote for an anti-tax candidate who will lose when you can vote for one who can win?

At an election night party at my home, four lawyers with

decades of experience in major party politics predicted Schulz's vote. The average prediction was a generous 25,000, and the highest prediction was 32,000 (I predicted 30,000). And yet, the Sternites had foisted another outsider, non-libertarian, candidate on the party, presumably in the belief he could get 50,000 votes.¹⁸ Stern, meanwhile, showed what stern commitment he has to libertarian principles by endorsing Pataki for governor.¹⁹

This, in summary fashion, is what happened in 1994. The debacle was traceable to four, readily identifiable blunders, all committed by the same pro-Stern crowd that engineered the Stern coup d'etat and which, in spite of the presence of anti-Stern chair Gail Bova, is in firm control of the state committee to this very day! To recap, those blunders are as follows:

- (1) Encouraging Howard Stern to run for governor.
- (2) Conspiring with him to stack the convention, in violation of the spirit, if not the letter of party rules.
- (3) Blatantly violating the party by-laws at the convention with respect to the nomination of

¹⁸ By the way, Schulz had no coattails--he trailed the rest of the Libertarian ticket by more than 8,000 votes.

¹⁹ New York Post, Nov. 10, 1994, p. 24. However, Free New York, Oct. 25, 1994, claimed that Stern endorsed Schulz. If true, that endorsement should be taken as a joke, according to the advice given by our senior vice-chair: "Libertarians need to lighten up. We can sometimes be a humorless bunch." Metro Weekend (Buffalo), Nov. 3-9, 1994, p. 4. Ironically, this advice was given to those who treated Stern's candidacy as a joke by one who took it seriously!

Stan Dworkin for Lt. Governor.²⁰

- (4) Drafting Bob Schulz as a doomed stop-Ostrowski candidate after Stern's predictable departure from the race.²¹

These four blunders share a certain well-know characteristic: a pragmatic disregard of the principles of libertarianism. Blunders One and Four involved supporting non-libertarian candidates for office. Blunders Two and Three involved violations of our party's by-laws. By-laws are a contract among the members on which the members rely in investing their time, energy, reputations and money on such things as running for the party's nominations.²² The sanctity of contracts is integral to the protection of property rights and both are bedrock libertarian principles.

As a consequence of these unprincipled blunders, the NYLP lost the respect of both the public and its own members. To the press and public, it did indeed become the laughingstock so many had predicted. Gil Gross, a syndicated radio talk show host, said it best: "libertarian ideas are good, but the Libertarian Party stinks." He said the LP "stinks" twice. To dozens of its own key members, the party became, in the words of Mark Axinn, a "whore".

²⁰ I do not recall what position vice-chair Joe Brennan took on this issue or on the attempt to nominate Stern by voice vote.

²¹ I wish to emphasize here the word "drafting". I do not mean to imply any criticism of those who supported and worked for the Schulz campaign after his nomination was a foregone conclusion.

²² 6 NY Jur 2d, supra.

As a result, many of these previously active members sat on their hands during the petition drive and campaign.

The irony is that the NYLP was undone by a philosophical error decried many times by the woman whose ideas spawned the Libertarian Party in 1971--Ayn Rand. Rand incisively defined "pragmatism" as

"the philosophy which holds that there is no objective reality or permanent truth, that there are no absolute principles, no valid abstractions, no firm concepts, that anything may be tried by rule-of-thumb. . ."²³

Pragmatists believe that whether ideas are true or not can only be judged by their consequences. Unfortunately, this means that pragmatists and their followers often rush into disastrous misadventures without any philosophical stop sign to save them from their folly. The consequence of the "pragmatic" political moves of the Sternites was 9,506 votes.

After the Bay of Pigs disaster, President Kennedy, who accepted full blame, wryly noted, "'Victory has a hundred fathers, but defeat is an orphan.'"²⁴ Will the parents of those 9,506 votes have the character to claim them as their own?

²³ Capitalism: The Unknown Ideal, (New York: New American Library, 1966), 222-223 (emphasis added).

²⁴ Phrase coined by Galeazzo Ciano (1942).

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I would like to take this opportunity to thank my loyal friends and family who supported me to the very end--Marty & Brenda, Mary & Bill, Mike, Julie, Becky & Mark, Gail & Jack, Bernie, Don M., Steve B., Tim L., Lorissa, Fred, and Bob F.

"We have fewer friends than we imagine, but more than we know."²⁵

²⁵ Hofmannsthal.