

The Justinian

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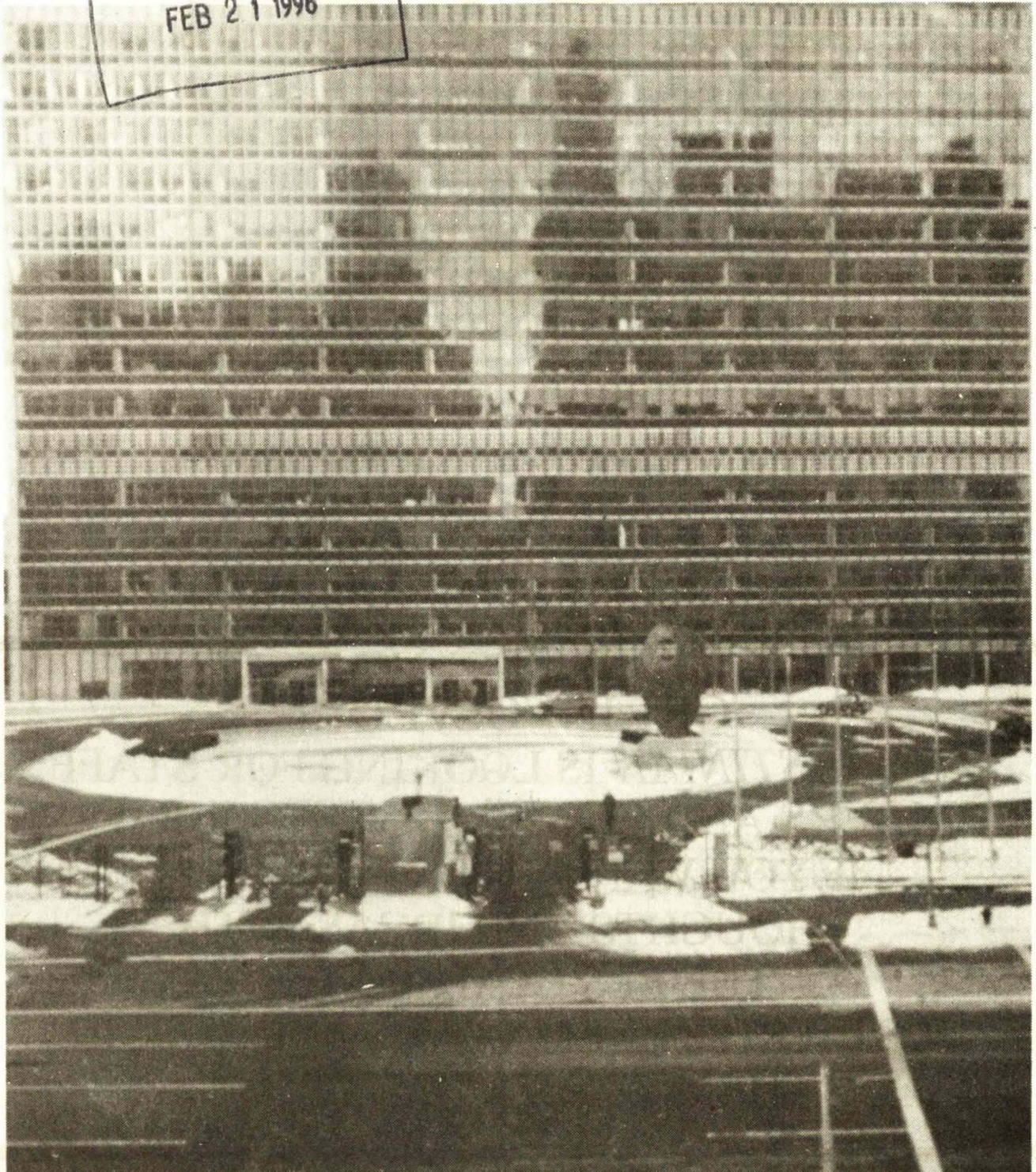
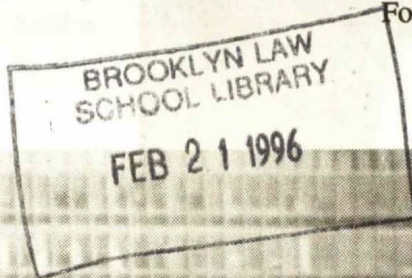
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The Justinian

Founded in 1931 • A Forum for the Brooklyn Law School Community

February 1996 • Volume 65 • Number 3



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The Justinian

A Forum for the Brooklyn Law School Community

Editor-in-Chief

Muriel Richards

Managing Editor

Joseph A. Hayden

Special Contributors

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Prof. Anthony Sebok

Staff

Daniel Ajello, Albert Gavalis

Cover Photograph by Muriel Richards

United Nations Building

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Editor's Corner

By Muriel Richards

In this issue of *The Justinian*, we have the distinct honor to present an interview with His Excellency Gad Yaacobi, Ambassador of Israel to The United Nations. We wish to express our profound gratitude to the Ambassador for granting this interview. The Ambassador describes some of the effects of Prime Minister Rabin's assassination on the State of Israel. Ambassador Yaacobi also discusses Israel's relationship with the neighboring nations and entities. The Ambassador explains the effects of the upcoming direct election for the office of Prime Minister and the broader political reverberations of that change. We trust our readers will find the Ambassador's comments on these and other matters extremely interesting and enlightening. We wish to extend our immense

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appreciation again to the Ambassador for generously providing this interview.

Other items appearing in this issue include Daniel Ajello's "A Brief Look At Parental Rights Legislation" and Joseph A. Hayden's column, "On Political Correctness". We are pleased to welcome a new staff member, Albert Gavalis. He has submitted a book review of Paul M. Kennedy's *The Rise and Fall of The Great Powers* and a satire which we have gladly published in this issue of *The Justinian*. We are also printing a response to Professor Daniel C. Kramer's essay, "Resolved: That A Twenty-Eighth Amendment Guaranteeing All A Decent Standard of Living Be Added To The United States Constitution", which appeared in our December 1995 issue.

If you would like to respond to something you have read in *The Justinian*, please feel free to bring your response to Room 610 or to our fifth floor mailbox. We also welcome article and photograph submissions at those locations.

Best wishes for a productive and informative Spring term!

CULTURAL EVENTS AROUND TOWN...

New York City Opera
New York State Theater
20 Lincoln Center
New York, New York

La Traviatta (scheduled performance dates are March 1, 9, 15, 29) **The Dreyfus Affair** (scheduled performance dates are April 2, 5, 11, 17) and **Rigoletto** (scheduled performance dates are April 9, 13, 21) are just three of the productions scheduled for this spring at the New York City Opera. Please call (212) 870-5570 for further information.

NAACP
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277 Stuyvesant Avenue
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The Honorable Thomas R. Jones will give a presentation at the AME Church on Sunday, February 18, 1996 in honor of Black History Month. For further information, please call (718) 789-3043.

Carnegie Hall
154 West 57 Street
New York, New York

The Vienna Philharmonic Orchestra is scheduled to perform at Carnegie Hall on March 1 at 8:00PM. Ticket prices range from \$25.00-\$100.00. Please call (212) 247-7800 for further information.

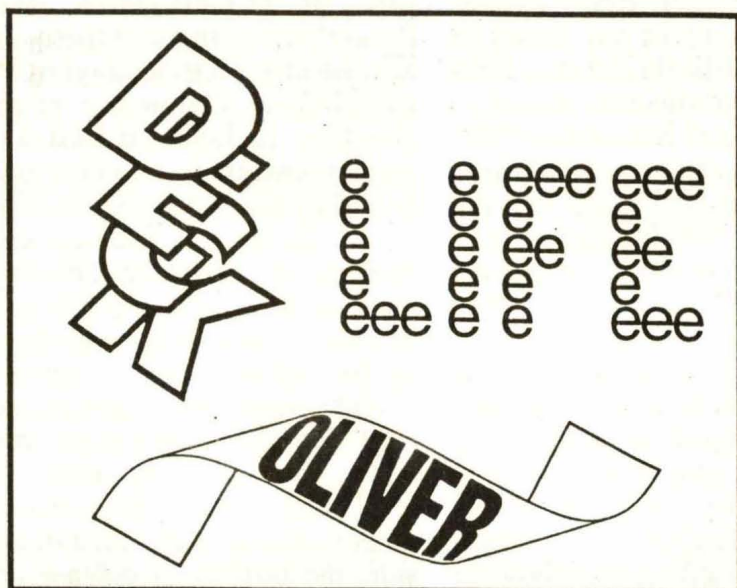


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Interview with His Excellency Gad Yaacobi, Ambassador of Israel to The United Nations

By Muriel Richards

The Justinian is deeply honored to publish this interview, which was graciously granted by His Excellency Gad Yaacobi, Ambassador of Israel to The United Nations.

Q. "The world continues to mourn the loss of Israeli Prime Minister Yitzhak Rabin. Prime Minister Rabin, as evidenced by (amongst numerous other acts of peace) his signing of the Treaty of Peace between Israel and Jordan in October 1994 and the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip in September 1995, was a leader who possessed a clear comprehension of the value of peace. What, in your opinion, is the most serious impediment to the fulfillment of a peaceful existence for Israel? What are some of the solutions to the impediment?"

Ambassador Yaacobi: "I think we achieved a real breakthrough in the history of the Middle East and the history of Israel by changing the relationship between Israel and its Arab neighbors, including the Palestinians. We now have peace with three of our neighboring countries and entities. Israel signed its first peace treaty in 1979, with Egypt, following the Camp David Accords. Our second agreement was signed with the Palestinians, following the DOP (Declaration of Principles) signed in Washington, D.C. in September 1993. The DOP is currently in the process of being implemented, albeit gradually. We have just entered the last, and perhaps most significant stage of the interim period, following the redeployment of Israeli troops from the Palestinian towns and villages and the commencing of elections for the Palestinian Authority which were held in the West Bank and Gaza Strip on January 20. Israel's third peace treaty was signed with Jordan in October 1994.

Presently, a state of war still exists, at least from a legal perspective, between Israel and Syria and between Israel and Lebanon. And of course we have an uncomfortable situation with some of the other countries in our region, inter alia with Iran, Iraq, Libya and Sudan. But at the same time, following the changes that have already taken

place, we normalized our relationship with Morocco and Tunisia in North Africa, and with Oman and Qatar in the Gulf region. We have established liaison offices in all of these countries. Since the signing of the Declaration of Principles, we have established diplomatic relations with thirty countries, including at least six African countries and countries from other parts of the world, including the former Soviet Union and Asia.

Lebanon is, in a way, under the domination of Syria. So, when we achieve peace with Syria, a peace with Lebanon will follow Syria immediately. We believe that peace with Syria will be followed by the establishment of relations with at least seven or eight other Arab countries, particularly from the Gulf. But the value and the fruits of peace are not just in the diplomatic arena. By decreasing the level of tension and threat around Israel, peace has other values as well. First of all, on the economic side, the burden of defense costs on the Israeli budget and the Israeli economy has been reduced gradually and will be reduced even more significantly in the future. Our resources can be diverted away from the conflict, into other avenues, including investments in the infrastructure, and in human resources like education, culture, technology and science. We can produce more jobs, more opportunities and a higher standard of living for the people of Israel. You must remember that Israel is currently absorbing many immigrants, mainly from the former Soviet Union—the state must invest in education, housing and the creation of new jobs for every one of them.

Secondly, economic opportunities are enhanced by the regional cooperation and development. This is mostly clearly expressed in the regional economic conferences. The first one took place a year and a half ago in Casablanca, Morocco; the second one was held in Amman, Jordan, about four months ago. Many countries

from all over the world participated in these conferences. Israel took a very active and involved role in them, initiating several regional cooperation projects. The implementation of some of these projects is already underway - the linking of electricity grids, the integration of roads and railways, the building of a joint airport between Jordan and Israel on the Gulf of Aqaba, the joint project of the development of the Jordan River Rift Valley, and the joint project to further develop the Dead Sea, which lies between Jordan and Israel.

Peace has indirect benefits as well. For example, tourism to Israel grew by sixty percent in the last two years, as a result of the feeling that we now enjoy better security and that Israel is a safer place to visit. And, of course, the psychological side is also very important because Israelis now feel themselves less isolated and see themselves as part of a more open world and region. They can drive to Jordan, they can drive to Egypt. They will be able to drive from Jordan and Egypt to more distant locations. If a peace treaty will be established with Syria and Lebanon, they even will be able to drive from Israel, by car, to Europe - through Turkey. For the first time, Israel will not feel itself as a geopolitical island, but as a country integrated with the rest of the world."

Q: "Do you wish to offer any words of eulogy for Prime Minister Rabin at this time?"

Ambassador Yaacobi: "I had the privilege of working with him for many, many years. I served with him for at least nine years in the same Cabinet. Yitzhak Rabin devoted his life to the security and peace of the State of Israel. He led the Israeli Defense Forces in the Six Day War as Chief of Staff and later on as a Minister of Defense. He brought Israel down the path of peace with the Palestinians, Jordan and other countries. Even in death, his legacy continues to serve Israel. Rabin's assassination has been a tragic event for all of us, and the country continues to suffer from a certain trauma. I believe that it is Prime Minister Rabin's legacy which has increased the support for the peace process in Israel. I think that his death will increase the support for the present Prime Minister, Shimon Peres, and his government in the next general elections, which will take place in Israel either at the end of May or October."

Q: "How will the direct election of the Prime Minister, in the elections scheduled for later this year, change Israeli politics? Do you think it will change Israeli politics?"

Ambassador Yaacobi: "It has already changed in a

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way because now it is quite clear that from now on the election of the Prime Minister will be between two candidates, not several parties. During either the first round or second round, so immediately after the elections, every citizen of Israel and every political party in Israel will know who the next Prime Minister will be. No longer will it be a matter for bargaining between political parties and political leaders. Every party that wishes to join the coalition and to be a part of the government will have to join either the already-elected Prime Minister or to remain in the opposition. The Prime Minister will be able to choose his ministers, thus creating a better, more stable government. At least half of these ministers may be nominated from among those who are not members of Parliament. This will eventually lead to electoral reform for the Parliament as well.

For many years, I was one of the advocates of direct elections of the Prime Minister and for an over-all reform of our electoral system. I am very hopeful that this change will prove to be an improvement in the political system of the State of Israel."

Q: "What is a 'typical' day like for you in the United Nations?"

Ambassador Yaacobi: "There is no such thing as a 'typical' day because every day is different from the others in many, many ways. But, generally speaking, the day is split up between coordinating, and instructing the ten diplomats and about fifteen to twenty other employees of the Israeli Mission to the United Nations. Secondly, it includes a good deal of reading and answering cables from Israel, reporting to Israel to the Ministry of Foreign Affairs, to the Prime Minister and to others on many matters. Thirdly, it includes meeting with other ambassadors. There are one hundred and eighty-five member states in the United Nations, and Israel has either diplomatic or working relations with at least one hundred and sixty of them. I meet with some of them from time to time for personal talks—at dinners, receptions, cocktail parties—there is always a lot of business to talk about.

Additionally, I have, as does every ambassador, working relations with the Secretariat of the United Nations, including its agencies, organizations and bodies. And, finally, I have speaking engagements, either before Jewish organizations—not just in New York, but all over the United States and Canada sometimes—and for other speaking engagements which are more directly connected to the United Nations. So, there is no single 'typical' day; every day is different than the other."

Q: "What is the most challenging part of your mission from the list of things you have described?"

Ambassador Yaacobi: "The challenge, from Israel's point of view, is to maintain and strengthen the contacts, the deliberations and the negotiations with other ambassadors and with the United Nations Secretariat. This is the best way to bring about an improvement in our position in the United Nations and within the international community as a whole. We have made significant progress during the last three years; many resolutions concerning the Middle East and Israel have been changed; we have established diplomatic relations with many countries, some of which were initiated and signed here in New York between myself and ambassadors to the United Nations.

We have increased our participation at the United Nations agencies and bodies. So, this is the most challenging aspect of my mission. But of course, meeting with audiences—American audiences, Jewish audiences and others—is also quite important, because making people understand what we are doing in the Middle East, what the peace process is all about, is a very important task."

Q: "Israel is a country replete with religious as well as historical sites. Are there any sites of religious and/or historical significance that are of special appeal to you?

If so, would you please elaborate upon them?"

Ambassador Yaacobi: "Of course Israel is holy for these three religions—the Jewish, the Christian and the Muslim. We are sensitive to this fact. We know very well that the holy places in Jerusalem will have to be managed by the three religions themselves, even though Jerusalem will remain united under Israeli sovereignty. I am personally very attached to Jerusalem. Jerusalem has been the capital of the Jewish people for the last three thousand years. Jerusalem was never the capital of any other nation or country. It was always the capital - either the official capital or the diasporational capital - of the Jewish people. For two thousand of the last three thousand years, Jews have been a majority in Jerusalem. So Jerusalem is, I would say, the heart of the Jewish people. It is very close to my heart as well.

There are other places which have great meaning for me. Massada, near the Dead Sea, is a very symbolic and heroic site, where, nearly two thousand years ago, four hundred Jewish warriors committed suicide when they were surrounded by the Roman legion. Other places which are quite symbolic are those in the city of Jerusalem and the surrounding areas which were central to the

Kingdoms of David and Solomon. But we are attached to every part of our country. I was born there. My parents emigrated from Russia about seventy-five years ago. So I am very attached to the place where I was born, Kvar Vitkin, a cooperative village, which is located between Haifa and Tel Aviv."

Q: "Is there anything that you wish to add at this time that I have not asked you about?"

Ambassador Yaacobi: "I think one thing is the fact that the United Nations' headquarters, just by chance, is located in New York City, which is a multi-ethnic and cosmopolitan type of a city. I think it was the best choice that could have been made for the UN. This is the city with the largest Jewish population in the world—three million Jews live in this metropolitan area. So, in a way, I feel that I am at the second best place for me to live, short of Israel. Secondly, the fact that New York is a part of the United States, and the United States is the closest ally of the State of Israel, gives my stay here an additional significance. We feel ourselves, in the Israeli Mission and myself as an ambassador, very much at home and in a friendly neighborhood, from a human, political, diplomatic and cultural point of view. From those aspects, we are extremely fortunate."

Q: "This is the final question. Is there any advice that you wish to offer law students that might be helpful to them in their careers?"

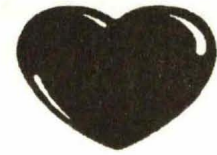
Ambassador Yaacobi: "First of all, as you know, the law is in a way, a Jewish occupation. Many prominent lawyers in the United States are Jewish. While Israel has outstanding law faculties at Tel Aviv University and at the Hebrew University in Jerusalem, many Israelis have received law degrees from American universities as well. Many Israelis study for graduate degrees in the United States because a lot of business connections and relationships have been established between Israel and the United States, as well as between Israel and the Jewish community here. A legal background is very helpful in dealing with issues related both to the United Nations as well as to business and negotiations. In the peace negotiations between Israel and Syria, as in the negotiations between Israel and Jordan and the Palestinians, teams of lawyers are taking part in the drafting of the agreements. So, law, lawyers and law studies are very significant components in the diplomatic process and in international relations."

Q: "Thank you."

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On Political Correctness

By Joseph A. Hayden

I have a real grab bag this issue.

Humorous (and so politically incorrect): I cannot take credit for the following idea, but I am paraphrasing a tongue-in-cheek Internet newsgroup that I belong to. The first thing Clinton should have done for the Bosnian situation, as someone suggested on the Internet, is not just send troops over. What Bosnia needs is a good dose of vowels, together with peace-keeping troops. The first cities on the list to have vowels deployed should be Sjlbdnzv and Grzny. Apparently the vowel deployment was successful in Africa. Hence, we have the cities of Ouauouaua, Eaoiuuae, and Aao.

Partisan: Jocelyn Edwards, the Republican scapegoat and former Surgeon General, was obviously not politically correct when she suggested that the masturbation would deter teenage pregnancy. In hindsight it is a shame that the timing of her comment was so embarrassing for the Clinton Administration.

Racy (figuratively): Busing is a touchy subject. My solution to the problem with busing has been simple and I've suggested it before in other forums. Stop the segregation in housing (particularly in federal and state housing for the poor) and the problem will go away. Somewhere there was a plan devised by the powerful among us to give small time real estate brokers the opportunity to do some social engineering which we are still living with today. These "mom and pop" shop real estate offices had limited liability when it came to discrimination (the bigger they are, the harder they fall). People need to live together to get along. I'm not suggesting "spread out the minorities" either. There of course is something to be said for tightly-knit ethnic communities with commonalities. I'm not one of those who subscribes to the assimilation doctrine. Rather, I believe it is politically correct to promulgate the appreciation of differences idea. Its called multi-culturalism. For this reason I shall be going to my first Passover Seder this year.

Racier: I remember when I lived on Staten Island being one of the few in that borough who dared to join the Staten Island Democratic Association. A couple of my colleagues and I showed up to counter-protest the bashing of the multi-culturalism several years ago that was proposed for the entire school system by a scapegoated former schools chancellor.

The result was a bunch of us far too outnumbered to be heard in an elementary school where the local politicians on the island got to spew their bigotry to their henchmen. What a politically charged night that was! I was afraid they would burn a cross on my car as they did on the lawn of the first black family that dared to move South of the expressway. What bothered me the most was the legitimacy with which these politicians were later portrayed in the media. The viciousness of their speech in this locally publicized event was never on the evening news, but I know what really happened and the deep fear of the audience members' children learning tolerance for those who are different. I was amazed how passionate and negative one can feel toward a well-intentioned idea at the same time.

Frustrated: It really bothered me that Colin Powell suspended his desire for any political office just as his book deal wound up. Coincidence? I think not. I think I've seen this before. And why is Bill Gates getting such a raw deal on his newly-published book? The man doesn't need the money (all his proceeds are being given away I understand anyway). My reasoning is that someone with a schedule like his must have something really important to say if he had time to write. Most people in his position would be sitting pretty and would be long-since retired by now. He obviously has an admirable passion. That, of course, does not help user like me when Microsoft's solution to all technical problems is to inquire with the vendor who made the Windows compatible software, but that's how you define monopoly. Talk about passing the buck! Microsoft takes money and runs with it. You have to hand it to them that they brought this world together with their uniformity, as tortious as the path has been to get there. Saffire eat your heart out.

A Brief Look At Parental Rights Legislation

By Daniel Ajello

With every law that is passed, or government program that is undertaken, government seems to intrude a little more into our everyday lives. Of course, what some call intrusion others call obligation or even blessing. One argument has centered around the government's intrusion on the role of the parent. The debate does not center on any one issue, such as parental abortion notice or sex education, but instead throws out a broad net which may include just about every parent-child issue. The debate is over a parental rights amendment which is being sought in some states.

Parents have always been concerned with their rights regarding issues such as education and discipline. Basically, parents seem to feel that they have little control over what goes on in their schools. Parents question whether the programs are truly being presented for educational reasons, or whether an underlying social and political agenda exists. Some parents wish the focus of education to remain on the basics of reading, writing and arithmetic. A justifiable fear exists that since many schools are doing a poor job of getting through the basics, why trust them to tackle these social and moral issues?

A fear also exists for parents who have children with special needs. Parents with handicapped children, or children who are likely candidates for special education, fear placing their children into the state or city educational system with such a label because they feel they will lose control over their child.

Some of the fears may be unfounded. The education laws, at least in New York, are written to give the parents a voice and due process rights. However, for most parents these rights are never exercised, never taken advantage of. In practice, many parents are not aware of their rights and how the system works. Also, they feel too intimidated by the large bureaucracy to be effective advocates

for their children.

Feeding on parents' frustration, a national effort is being run by two conservative groups: the American Legislative Exchange Council, a free-enterprise group in Washington; and Of The People, a group in Arlington that seeks to introduce legislation for a parental rights amendment.

These groups support an amendment that says, "The right of parents to direct the upbringing and education of their children shall not be infringed".

In early January of this year, Virginia Governor George Allen, in his State of the Commonwealth address, said he would push for a parents' rights amendment to the Virginia Constitution.

The Virginia amendment would read, "The right of parents to direct the upbringing and education of their children shall be a fundamental right".

Aides to the governor insist that the amendment is simply a codification of precedents already existing in federal case law. They say it would not usurp any existing law, particularly those laws protecting the welfare of children.

Other states are reviewing similar amendments. The most popular wording reads, "The right of parents to direct the upbringing and education of their children shall not be infringed".

Supporters of the amendment want to keep the government from educating their children in a way which is against the parents' wishes. Also, parents want to be able to discipline their children without fear of government reprisal, such as child abuse charges for corporal punishment. Some parents have firmly rooted religious convictions which obligate the parent to use corporal punishment to discipline their children.

Parental rights bills have been introduced

in twenty state legislatures, with sponsors lined up in eight others.

Backers say one outcome of such a bill would be that a parent could prevent a public school from giving a child a psychological test. Some states perform such standard testing without parental consent.

Opponents contend that such a measure would give small groups of parents veto power over the curriculums of public schools, promote suits against school boards and social service agencies as well as hinder child-abuse investigations.

Supporters have framed the central question as, "Who decides what's in the best interest of children?". They say that the amendment will go a long way toward preserving families by establishing the parents as the decision makers.

Critics immediately attacked the proposal as potentially dangerous with a hidden agenda. James Joy, executive director of the Colorado chapter of the American Civil Liberties Union, warned it could be used to prevent welfare authorities from becoming involved in cases of abuse or neglect.

Thomas L. Birch, the legislative counsel of the National Child Abuse Coalition said the amendment "could lead to a situation where children suffering physical abuse at home go unnoticed".

Kate Reinisch of Planned Parenthood of the Rocky Mountains said the true issue wasn't parental rights but about "endangering the lives of Colorado's youth".

"It is yet another attempt by zealots to restrict life-saving information at the expense of our children's education and health...There are many sensitive issues for which confidentiality is critical to young people - substance abuse treatment, protection from abusive family members or mental health counseling", she stated.

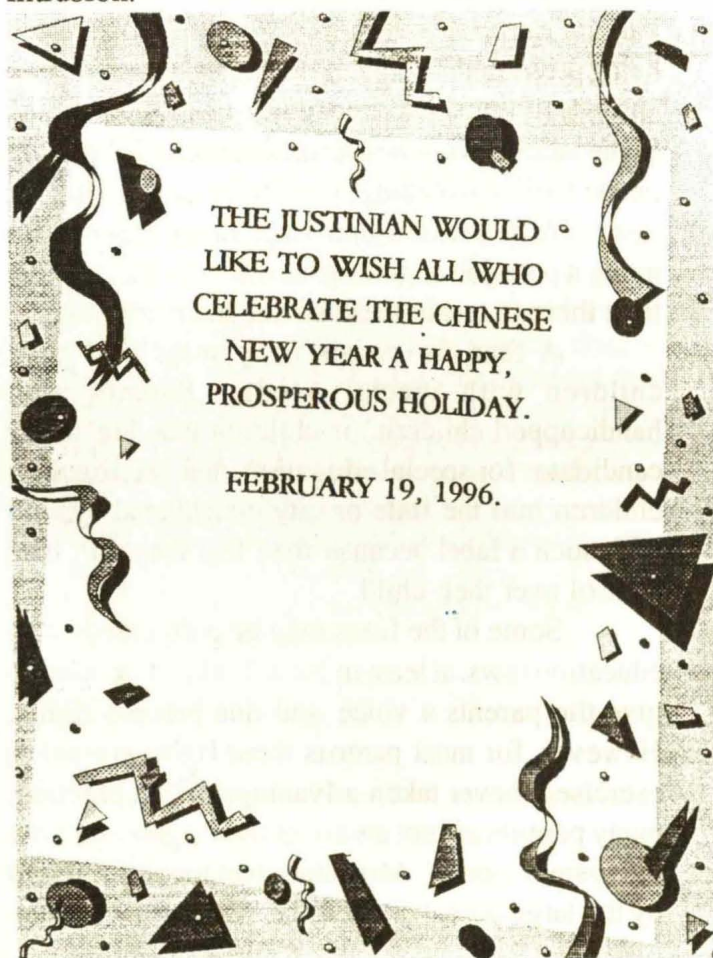
By framing the question in an "us or them" way, the supporters of the amendment have already taken the high ground. Who would question the average parent's ability to care for their child? However, the amendment seems to be too broad and by having the potential to cover so much ground it has begun to get involved in the "little" issues it had hoped to get around, such as abortion

notification and child abuse.

The parental rights amendment is, as Governor Allen admits, a long shot. However, it seems to be doing more harm than good.

Supporters seem to be going after too much with this amendment. Even if it was to pass, years of court battles would be needed to clearly draw legal limits for parent and state action. The time which would be spent on these battles may be better spent in other ways. Surely the smaller issue battles could be more easily fought by parent groups. Parents seek the one time cure-all of an amendment rather than staying on top of their school officials and hounding local politicians in promoting their cause.

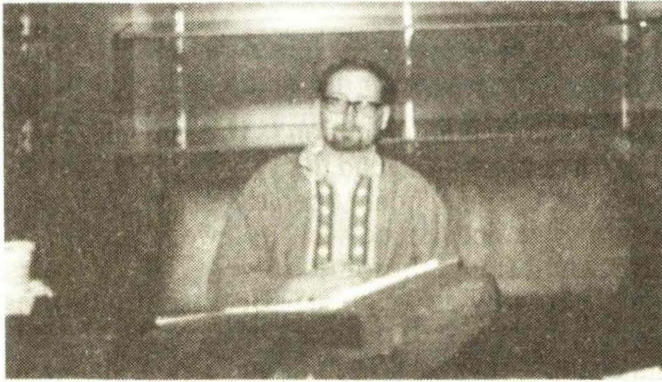
The best thing parents could do is learn about the rights they already have and try to get them enforced. The parental groups should focus their resources on uniting, educating and motivating parents to become involved in their schools and local political processes. By creating a new standard to be interpreted by the educational and justice system they are simply inviting more government intrusion.



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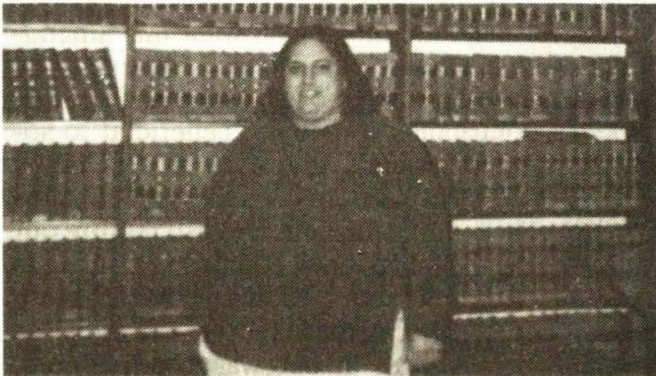
What Do You Think?

What do you think you would have rather been doing during the Blizzard of '96?



"I didn't think that was snow. You call that snow? I'm from Minnesota where we've got real snow. You know, we get eighteen-twenty inches of snow three times, four times every winter and you don't hear about it for a week on the national news. But, I had to listen to 'New York Blizzard' on the national news and (it) interrupted t.v. shows and everything. So, I thought it was crazy. That was no blizzard."

Paul Weig BLS'98



"I think I would rather have spent the time laying on the beach in Jamaica-the island, not Queens-and reading Civil Procedure, of course."

Nancy Donovan BLS '98

Photograph not available.

"I think I would rather have been anywhere, even the library of BLS, than in my apartment during the storm."

Scott Barabash BLS '96

Justinian February 1996

What do you think of the flat tax?

Photograph not available.

"I don't think the flat tax is such a good idea because a progressive tax, even though as you increase your income you end up paying more tax. However, with an increase in income and tax bracket, you also have more opportunities to gain money for capital investment returns as well as tax deductions. I think that considering that a flat tax would just keep everyone the same status and the problem that people are concerned that the wealthy are not paying enough tax and the flat tax would not solve the problem. It will only worsen it."

Sabino Biondi BLS' 98



"I think that those people who believe in the progressive tax-i.e., that rich people should pay more than poor people have the same mentality as the three year old child in nursery school who complains to his mommy, 'Mommy, mommy, mommy, mommy, Johnny has more candy than me'. I think it is the same liberal, infantile mentality."

Todd Bank BLS '96



"I like the way the flat tax sounds, a flat tax on everyone's income. The only thing that concerns me is that the tax breaks and incentives that we now have for lower class and middle class families will still be there. If the federal government can assure that those tax breaks will still be present, then I am for the flat tax rate."

Alphonzo Grant BLS '98

What, Me Worry? You Bet.

Name Withheld

The Justinian received the following response to the essay, "Resolved: That A Twenty-Eighth Amendment Guaranteeing All A Decent Standard of Living Be Added To The United States Constitution", which appeared in our December 1995 issue.

The writer received her B.A. from Northwestern University and her M.A. from Occidental College. She is currently a second year law student at Brooklyn Law School.

I read the article *Resolved: That A Twenty-Eighth Amendment Guaranteeing All A Decent Standard of Living Be Added To The United States Constitution* with both respect and disbelief. The article was certainly well-written and well-researched. But there are loopholes that haven't been filled or explained away successfully.

Please forgive me — I have only the greatest respect for the educational background of the article's author. I myself am a former hippie, educated at a Big Ten School in the Midwest and a liberal school in California. For the last twenty years, my life has been like a taxi, driving through some of the most intense intellectual circles on through some of the most bizarre entertainment circles into one of the most wealthy real estate circles and back out into a trademark law firm and here...Brooklyn Law School. Basically, what I am getting at is that I began my intellectual career as a firm liberal. Now one might call me a liberal conservative. Then again, one might call me a conservative liberal.

So, when I say, NO, to the twenty-eighth amendment, it's not because I do not see the method behind the madness. I, too, love theory and philosophy. The proposed theory, though, would not work here in the United States. The United States is not Japan nor does it have the rigid spiritual background of Japan. On the other hand, how much did this amendment help India or the communist countries, and if it cannot help, why have it?

I am especially amused by the sentence, *It would discourage some from working*. Some?!? Come now, I would say a lot more than some. From where I sit, it looks more like an amassing infestation. In today's society, more and more people do not want to work and more and more want to collect social assistance. Tantamount is the fact that the quality of work today has seriously diminished, as has the general level of understanding

in everyday communication. Has anyone ever called a company and had to say something twelve times to the telephone operator or receptionist before (s)he understood what you were saying? I have, and I find it tiresome.

So why do I say no? Because it puts the burden on the rest of the inhabitants of the United States to support the lazy louts and mental slackers who won't take responsibility for their lives. You are right, people do deserve a decent standard of living and those who truly are unable to earn for themselves due to physical or mental disabilities deserve our compassion and help. I thoroughly believe in low-income housing, low-cost daycare and health care for all, and private contributions to charities, including some of those sleeping on our streets. Adding this amendment, however, would do little more than make our whiners whine even more! *Why should I work, I'm guaranteed a decent standard of living. NOT!*

So, there are those who want this amendment? Why not add a sentence to it, like everyone is entitled to a decent standard of living if he, too, works or contributes something beneficial to society, noting of course, that even this is fuzzy because it does not account for those unfortunates who simply cannot contribute, yet still require our help. And while this twenty-eighth amendment is being written, how about adding a twenty-ninth amendment: preserving the U.S. right to English as the primary language. If one wants to live here, learn English. Anything less confuses the workplace — to say nothing of the curdling and separatist effect it has on this so-called melting pot.

So, I trust my colloquial language and my lack of statistics will not be considered against my position. To me and a lot of others I know, this twenty-eighth amendment is as useless as the eighteenth amendment.

LAW AND

POPULAR CULTURE

Professor Spencer Weber Waller
Professor Anthony Sebok

We welcome Vanderbilt University School of Law to our growing syndication network. In return, we had to promise that Vanderbilt Professor John Goldberg could do a guest review of *Toy Story*. Why hasn't anyone at BU stepped up to offer a guest review?

The holiday season was a busy one with many movies both highbrow (*Richard III*, *Smoke*) and low (*Biodome* and *Dracula: Dead and Loving It*) on our schedule. We refused to follow the crowds to anything by Jane Austen. Unfortunately, we missed *Sudden Death* before it disappeared from nearby theaters. Instead, we focus on the vast urban wasteland called Los Angeles and in tribute to the Blizzard of '96 ask the question: winter wonderland or urban nightmare?

* * * * *

HEAT

SWW: This is the first time that Michael Mann has ever disappointed me. I recently went back and watched some old Miami Vice episodes I had on videotape which Mann executive produced. They were brilliant (*Smuggler's Blues* is a masterpiece). His series *Crime Story* had the look and feel of Chicago law enforcement. His first feature film *Thief* with James Caan is an engrossing and terrifying look at the lower levels of organized crime that rang true with all the prosecutors and FBI agents I knew. *Manhunter* to my mind is the best movie about serial killers ever made and even has the first film appearance of Hannibal Lector played by Brian Cox in a manner more terrifying than Anthony Hopkins. Even *Last of the Mohicans* was pure visual pleasure.

The problem is that *Heat* sucks. At least it sucks as a three hour movie. I suspect there is a fabulous 120 minute lurking under all that flab. It has all the Michael Mann tricks, good

supporting players, a fabulous synthesizer soundtrack, and great visuals, but no heart. Characters prattle on about the meaning of life in a way that makes you want to holler. Al Pacino has lost the ability to act, and screams and mugs through the movie. (In the next five years people are going to say the same thing about Nicholas Cage). Also, how come everyone has a million dollar home with a great view regardless of their employment or income situation?

On the good side, De Niro is one of the few reliable actors left. He disappears into his character. (In the next five years, people are going to say the same about Sean Penn). Much of the visuals are great, but this time they just look like tricks. In a way this is like *Casino*, where Scorsese does every technically, right but you just don't care. For example, in *Heat* there is a twenty minute sequence involving a botched bank robbery which is astonishing choreography, but it's almost irrelevant and there is still another hour left in the film. In contrast, *Manhunter* features a twenty minute sequence of equal power fueled by the use of Iron Butterfly's 60s psychedelic rock anthem "Inna-ga-da-vida." Here this music video sequence is critical to the plot, drives you to the climax and then boom, the movie's over.

Similarly, at the substance level, it has all been done before. Sure, the depiction of the life of a street crew seems immediate and life like, but Mann did it better in *Thief* and Scorsese did it better in *Goodfellas*. Finally, I don't buy the central conceit of the film — that a street crew of armed robbers and the squad of policeman going after them are really the same at some existential level. There are some rules of the game that both sides obey for the betterment of all of us, but deep down inside the real cops I know wouldn't sit down admiringly with a ruthless killer and thief like Robert De Niro's character and have a chat over a cup of coffee and psychoanalyze their

lives. They would cuff him, and pistol whip him if no one was looking. Or is that just that Los Angeles cops and thugs are no more interesting than the vapid ex-urban landscape in which they live? Urban nightmare all the way.

AS: I am mystified and a little frustrated at the public acclaim that *Heat* is getting. While I respect Michael Mann for bringing Giorgio Armani into Middle America's living rooms through Miami Vice, I can't think of what could have justified this exercise in self-indulgence (not even the Brian Eno soundtrack).

The plot of the movie is simple, which is no crime: Robert De Niro is the leader of a group of very professional criminals who plan a big heist and Al Pacino is the leader of a group of good cops who try to stop them. Of course, no really good crime movie is about the crime; it's about the men (and women) involved. The problem with *Heat* stems from its peculiar idea of what makes criminals and cops interesting. Mann wants his ideal criminal to be a pure criminal: so pure, in fact, that he becomes a formal abstraction. De Niro's character is not motivated by money (he has a lot which he never spends), loyalty (he is a loner), pride (he has zen-like humility), cruelty (he has zen-like self-control), or love (his "romance" with Amy Brenneman, the bookstore clerk who picks him up, consists of a one-night stand). Pacino's character, on the other hand, is supposed to be a variation on this theme: instead of a zen loner, he is a volatile loner. The point is that real genius, whether it manifests itself either in criminal behavior or law enforcement, can only happen when men (and Mann means *men*) cut themselves off from all human motivations and just do—you guessed it—"what a man's got to do."

Mann is simply reheating a familiar stereotype in our popular culture, the idea that when guys do great things it is because they have been moved to action by a primal force called heroism (when it's physical) or genius (when it's expressive). *Heat* thinks it is being innovative by pointing out that the primal quality of heroism or genius is in fact amoral. The film, as far as I can tell, exists just for one scene—where De Niro and Pacino meet at a coffee shop to talk, elliptically,

about the burden of being heroic cops and robbers. As you probably can tell, I don't think very much of Mann's worldview. It is hard for me to get engaged by the stereotype upon which he relies, partially because it removes any psychological complexity from the antagonists, and partially because it seems so dated in 1995 (Peckinpah played with the amorality of heroism in the mid-sixties with *The Wild Bunch*).

Because the two leads in *Heat* are ciphers there is very little driving the movie forward. As W² notes, the final bank robbery scene is well done (although my friends in law enforcement remind me that it's against police policy to fire thousands of rounds of ammunition at criminals who are hiding among traffic in a city street—even in L.A.). But you have to suffer through so much to get to that scene (and through another hour until the end) that it's not worth it. You want a great film about antiheroic violent criminals that actually makes you care about who lives and dies? See *Reservoir Dogs*. One nice thing about *Heat* is that most of it is filmed in the part of L.A. rarely filmed—the miles and miles of industrial wasteland that made up the city's now shrinking job base. It's an urban nightmare, in more ways than one.

* * * * *

WALLER BONUS MINI-REVIEW: *GOLDENEYE*. Who would have thought that the most financially successful Bond movie of all time would be a brilliant feminist post-modern deconstruction of the icon of phallogocentric Western imperialism. Without sacrificing any of the stunts, special effects, or action sequences, this movie shreds Bond's identity until there is nothing left outside of an inexplicable sense of duty to a Great Britain that no longer exists confronting a villain seeking revenge on a Soviet Union that no longer exists. In the end, there is nothing but Bond.

SEBOK BONUS MINI-REVIEW: *NIXON*. A skillful and sneaky movie—just like the man it's about. Stone is always fun to watch, and this film is no exception. It moves so smoothly and so quickly that one hardly realizes that it is a three hour movie. Anthony Hopkins and Joan Allen bring nuance and range to Dick and Pat, and to Stone's credit, he gives them enough space to actually do some acting. Now

for the bad news. I personally thought that Stone's view of Nixon was dead wrong. Stone's Nixon is as much a victim of the "system" as the Americans he sent to Vietnam or spied upon. I simply don't accept Stone's Foucaultian analysis when it comes to a man as smart and as monomaniacal as Nixon. But hey, it's Stone's movie. (If I have academic freedom in the classroom, he can have it on the set.)

* * * * *

OUR BEST AND WORST OF 1995

BEST:

1. *Tank Girl*
2. *Smoke*
3. *Richard III*
4. *Babe*
5. *The Usual Suspects*
6. *Naked Killers*
7. *Love and Human Remains*
8. *Hoop Dreams*
9. *Nobody's Fool*
10. *Get Shorty*
11. *Devil in a Blue Dress*
12. *The Madness of King George*

WORST:

12. *The Monastery*
11. *Ace Ventura II: When Nature Calls*
10. *Disclosure*
9. *Waterworld*
8. *Judge Dredd*
7. *The Addiction*
6. *The Scarlet Letter*
5. *Safe Passage*
4. *Just Cause*
3. *The Hunted*
2. *Dumb and Dumber*
1. *To Wong Foo, Thanks for Everything, Julie Newmar*

Human Rights Update

By Muriel Richards

In Niger, West Africa, the democratic government was toppled in a coup d'etat carried out by the military earlier this month. This could be a dangerous precedent, as Niger is a nation where the democratic government had not been in existence long enough for the people of that land to witness the potential benefits of democracy. Other nations in the region who are similarly situated (as the democratic government of Niger was) are in a state of alarm. Many individuals, in their indulgence of the human preference to eschew change, combined with the selective memories of some, espouse a desire to return to the older system of government, even if that system of government was totalitarian. This is much more likely to occur when the new, more egalitarian government is still weak and perceived to be ineffectual in certain areas. A recent example of this may be found in nations of the former Soviet Union, where some people are often heard to lament for the days of communism. While the individual rights were not as extensive under the Soviet regime, there was a stability that is often felt to be lacking in the present government.

Niger is a former colony of France that gained independence in the late 1950's. France and other nations are presently negotiating with the military coup leader in an attempt to restore democratic systems in that country.

The Ambiguous Conversation

By Albert Gavalis

Enemigo: Hi Albert. How are you doing?

Albert: Horrendous.

Enemigo: Oh really? Tell me about it.

Albert: I got a "D" in my tax class.

Enemigo: I'm sorry to hear that.

Albert: What about yourself?

Enemigo: I'm almost afraid to say. I don't want to offend you with how well I'm doing.

Albert: That's OK, I understand.

Enemigo: Well, what are you going to do about your "D" in tax?

Albert: I'm going to overcome my fear of tax by taking a civil extern clinic at the I.R.S. Maybe some real-world experience will help me put things into perspective.

Enemigo: Wait a minute! How did the I.R.S. accept you for an internship if you got such a bad grade in tax?

Albert: Well, there's this government shut-down, you see. They are kind of mixed-up I guess. Anyway, the average citizen would be mollified in knowing that a "D" student is behind the scenes there.

Enemigo: Well that's nice for the average taxpayer, but what about you?

Albert: Success is easy, It's how to handle shortcomings that matters. I figure by working at the I.R.S. it would compensate for my poor tax grade.

Enemigo: What about the I.R.S.? What if they find out that their student intern is academically incompetent?

Albert: Well, that goes for the government as well. They are not very successful these days either. They can't seem to balance their budget and since there wasn't enough money they had to scrap their "audits from hell" program. Maybe it's better for the average taxpayer that the government is falling short. After all, this is supposed to be a government that is "for" the people and not against them. If the government is already squandering the taxpayers money why should they "audit them from hell" for more?

Enemigo: But you're an anarchist! You're out to destroy the government from within by planting yourself there in order to procure bad results.

Albert: Not me! That's what congress and the president have been doing with their "impasse" and shut-downs!

A Free Night Out

There's a concert at Carnegie Hall and second-and third-year students are invited.

It's in April, before exams and bar review courses cramp your social life. The award winning Carnegie Mellon University philharmonic will perform works of the Greek contemporary classical composer Iannis Xenakis to kick off a celebration of the maestro's 70th year. Tickets would be \$35 each if you had to pay for them, but second- and third-year students can get up to 2 free. The program includes works for full orchestra, small percussion ensemble, and soloist. *The Washington Post* thinks the CMU Philharmonic is "decisive and clean playing." Was your last memo of law that good? Just fill out the coupon and invite a friend for a night at Carnegie Hall.

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December 4, 1995

John Pieper, Esq.
c/o Pieper Bar Review
90 Willis Avenue
Mineola, NY 11501-2630

Dear John,

I am a 1995 graduate of Touro Law School who took your course and passed the New York State Bar Exam with an MBE score of 165. When you came to Touro's BEAT program, I heard many students complain that you made them work too hard and they said that they were going to take [the competitor's] course because it was easier. Considering the fact that it was the **New York State Bar Exam** that we were facing, I did not see the wisdom of taking the easy way out. I found your course very difficult and despite all of my efforts, I seemed to be able to do only 60% of what you asked of us. However, I kept trying, and the hard work paid off.

Your course not only lasted more weeks than [the competitor's] did, but as your students sat in class each day, we would see [the competitor's] students walk to their class which began later in the morning than us and we would see them leave earlier than us in the afternoon. They would look in at us in a relaxed manner, wondering why we were foolish enough to do so much writing. When we would see them later in the day, they would tell us that they were pleased with [the competitor] because their hands were not sore.

I could not understand what, if anything, they could possibly be learning. At times, I would wonder if [the competitor's] method was better than your's and if their students learned just as much with half the effort. Following the New York day of the bar exam, I understood that this was not so. All of [the competitor's] students whom I talked to were completely baffled because they had never before seen the supposedly "obscure" subject matter on which the essays tested. To the contrary, while I was concerned about the detail and accuracy of my recollection, there was nothing on the test which I had not at least seen before in your course.

Thank you for teaching a great bar review course.

Very truly yours,
Dominick J. Penzetta
Dominick J. Penzetta

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December 28, 1995

Ms. Muriel Richards
Brooklyn Law School
The Justinian
Room 610
250 Joralomon Street
Brooklyn, New York 11201

Dear Ms. Richards:

Thank you for conducting a toy drive and donating several bags of new toys and games to the children staying at the New York City Ronald McDonald House.

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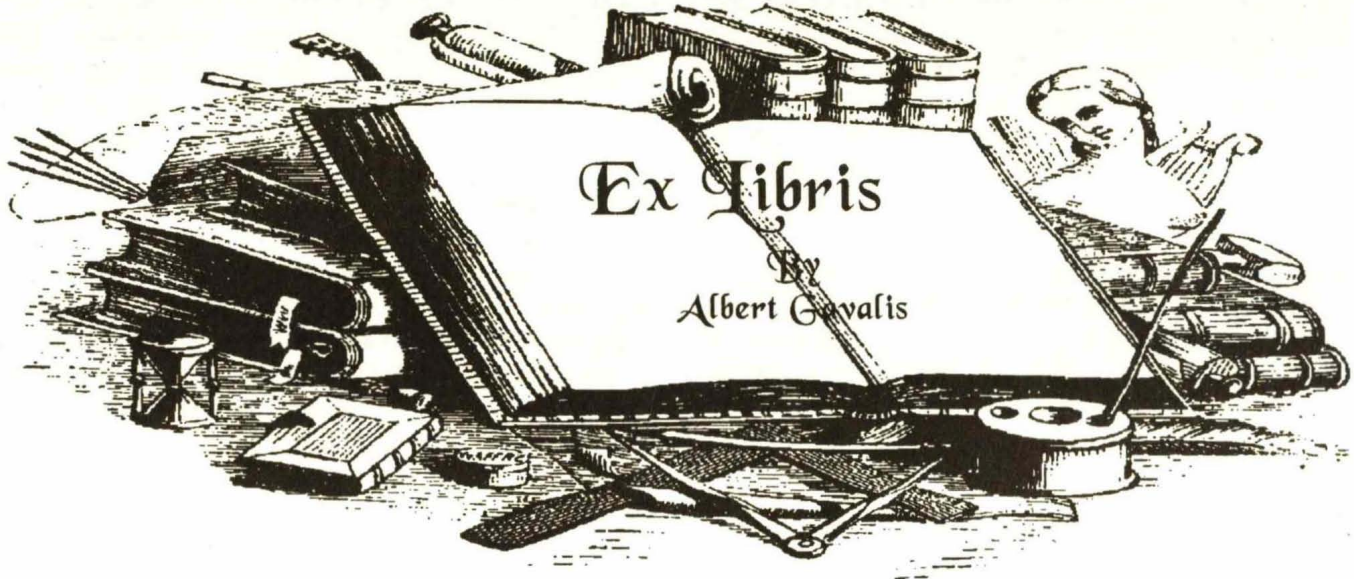
Again, thank you for collecting toys and for thinking of us this holiday season.

Best wishes for a happy holiday and prosperous new year.

Sincerely,

Suzanna C. Houston
Assistant General Manager

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Book Review--

The Rise and Fall of The Great Powers

by Paul Kennedy

Published by Random House 1987

One is challenged in reading Paul Kennedy's The Rise and Fall of the Great Powers to look beyond events in history towards an underlying explanation of why they happened as they did in terms of economic and militaristic principles. Elements of regional power are analyzed in the birth and growth of nation-states since the renaissance and the power of those entities are then measured relative to each other.

1500's-1600's

While the sixteenth century saw China's Ming Dynasty as the largest nation in it's day (and arguably population-wise today as well), Ming-China was not strategically the center of world affairs due to inward political and mercantile revisions taking greater importance over outward relations. In contrast, Europe of the post-renaissance era was a diversified cluster of individual states each outwardly conflicting with each other in a type of Darwinian survival-of-the-fittest model of growth. Conflicts of European states with Turkish/Muslim boundaries brought a religious element to the political and economic spectrum as well. The Protestant reformation furthered religious fervor as a political and economic combustion mechanism to moralize and justify one's inward beliefs as a means of attaining outward survival.

1600's-1800's

On a strategic level of analysis, the Hapsburg "bid for mastery" functioned as the first post-renaissance example of how a leading power can overextend itself to the point of exhaustion. Widespread wars of attrition of the Hapsburg lands coupled with added maintenance costs created economic inefficiencies to the point of collapse. The remnants of New-World trading routes as means of financing the Hapsburg lands were later to develop as independent political entities.

Technological advances in military armaments included financial innovations of credit to pay for the same. Geographic positions, population sizes, as well as progress from agrarian to industrial societies all factored into the equation of Europe's centralization of world growth and power. The scope included Sweden's boon to supply resources and the Netherlands ability to finance the wars of the "bigger leagues." Interrelated effects of major conflicts involved the whole of seemingly unrelated situations.

At the time of Napoleon, France as an agrarian based nation required its army to "march on its stomach" by plundering lands conquered in order to survive. The shift of France in the post-Napoleonic era to a diplomatic intermediary illustrated the intellectual leverage France attained

to rise above mere physical undertakings. polar power opposite the Soviet Union.

Concurrently, the British rise of naval power resulted from an economic necessity to build sturdy merchant ships. These same sturdy boats of commerce were found to be quite effective in the mobile transport of military cannon and were especially devastating in the Mediterranean isles where boats of lightweight maneuverability prevailed. The geographical dominance of France in Europe contrasted the naval dominance of Great Britain in the hemisphere. Two separate yet dominant powers each retained their own realms - one at sea with colonies and one on the continent. The birth of America during this era waned reflections of a prior era's distant occupation taking on a life of its own.

1800's-1900's

While wars prior to the 1800's would last from thirty to even a hundred years at length, the advent and influence of technological innovations witnessed greater efficiencies in military conflicts. Financial leverage became a greater factor over population sizes in the winning of wars. Capacities beyond immediate resources procured a greater leverage of strength.

With the advent of railways and armament manufacture via technological advances such as the steam engine, the American Civil War served as a vignette example of the new industrial state's ability to vanquish the old order agrarian state. While the American northern Union was industrially more advanced and financially more secure, as well as greater in population size, the southern agrarian based Confederacy didn't stand a chance. Back in Europe, Prussia and the "German Question" along with Russia's situation in Crimea witnessed the same; the powers that were defeated were those that failed to adopt the technological, financial and military innovations of acquisition, manufacture, mobilization in equipping large armies via improved communications offered by railway, steamship, and telegraph. Efficient methodologies of war prevailed over numerical "bulk" efforts of population strength. Though population size remained a major factor, efficient servicing of the military in times of war prevailed over merely replenishing the military out of the population.

Into the 1900's

While the two geographical bookends of Europe of the latter 1800's-France and Russia left Great Britain to become the first "world" power via the seas, the cluster of German states advanced towards unification and culminated at the advent of World War I. American isolationism during this time only set the stage for its future role as a bi-

In looking at history spread-out, the breathing space between the two world wars may be viewed as a regrouping and reestablishing of macroeconomic principles at work. Astounding growth rates of Germany before both world wars I and II, as well as factorial increases in Americas industry and population pointed towards a greater "functional" role of nations in the global dynamics of power. The time before and between the world wars also witnessed Great Britain's overextension to parallel the Hapsburg situation two centuries earlier as a dissipation of all beyond its immediate grasp. The latter part of *Powers*, published in 1987, however is too preliminary in its attempts to address post WW II cold-war issues such as the "unlikelihood" of German reunification. Not enough time has elapsed to properly put such recent history in its place.

In conclusion, what was once yesterdays barter-route may become today's power-base while overexpansion may cause dissipation.

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Vicarious Vacations

By Muriel Richards

Like many of my classmates, I did not take a "getaway" vacation during the winter break because of work demands. However, that did not prevent me from removing myself from my surroundings and traveling mentally—a self-preservation technique that anyone who has suffered through Legal Process should be familiar with. One weekend during the break, I sat on my couch, closed my eyes and tried to picture myself in the Bahamas, I pictured myself on a beautiful beach, with pink sand, balmy breezes and the sun beaming down on me. This fantasy vacation was going pretty well until I remembered that I burn faster than ignited charcoal and that the last time I was on a beach, the local crustacean life decided to embed a claw into me. Not only did I resemble a lobster but I was bonded to one. So, I decided to switch vacation fantasies and pictured myself on the Swiss Alps. While the humdrum of life in one of the New York City boroughs continued unabated outside of my window, I was whizzing my way past trees, leaping snow mounds, waving to those individuals less agile than myself who were amazed with my athletic ability—until I recalled last winter. I was walking like a slow octogenarian, en route to school, when I skidded on the ice. If I practiced ice skating every day for ten years, I do not think I could reenact the motions I went through that morning to avoid meeting the sidewalk face to concrete. I flailed with my arms to stay upright. A small child that I passed by tried to get my autograph as she thought I was a professional dancer, demonstrating my trade at 8:30AM on a Monday morning on a Brooklyn street. I could not spare the breath to tell her that I was merely trying to stay upright, not pirouette. I suppose the blame is mine if the child feels snubbed and refuses to become a fan of ice skaters/dancers.

I coasted past a mailbox, too far from the blue hunk of steel to obtain any safety or comfort. Just when I thought my efforts were in vain and that I would have pulled every muscle in my body only to become more familiar with the sidewalk than I had ever intended anyway, I saw a fire hydrant. Never again will I underestimate the joy that my dog experiences upon visualizing these devices (although, I assure you, the reasons underlying the

joy are quite disparate)! I seized the top of the hydrant and held on for dear life. So, I decided to change fantasy vacations yet again. (Too bad one cannot amass frequent flyer miles this way!)

I pictured myself on a boat on a lake in France. As I can swim and generally do not suffer from seasickness, this vacation fantasy was not too threatening. In my mind's eye, I was sitting in the craft, reading a good book, when another boat pulled up near me and asked for directions (in French). Since the only phrase that I know in French means "shut-up", I was unable to help them. (This rather limited grasp of the language probably explains, in part, why Henry Kissinger has never beat down my door when he was looking for an assistant.)

Just as I was getting used to the idea of never using my passport (even in my imagination), the telephone rang. It seems it was one of my classmates who had managed to get away on a ski vacation in the Poconos (in reality, not fantasy). She was playing scrabble and wanted to know if I knew of a synonym for "world traveler". I yelled into the phone that I was expecting this type of sick, sadistic behavior from her ever since she told everyone in first year that she was looking forward to the challenge of writing the moot court brief and that the honor of even being considered for law review would be enough for her.

I cannot wait until classes begin again.

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