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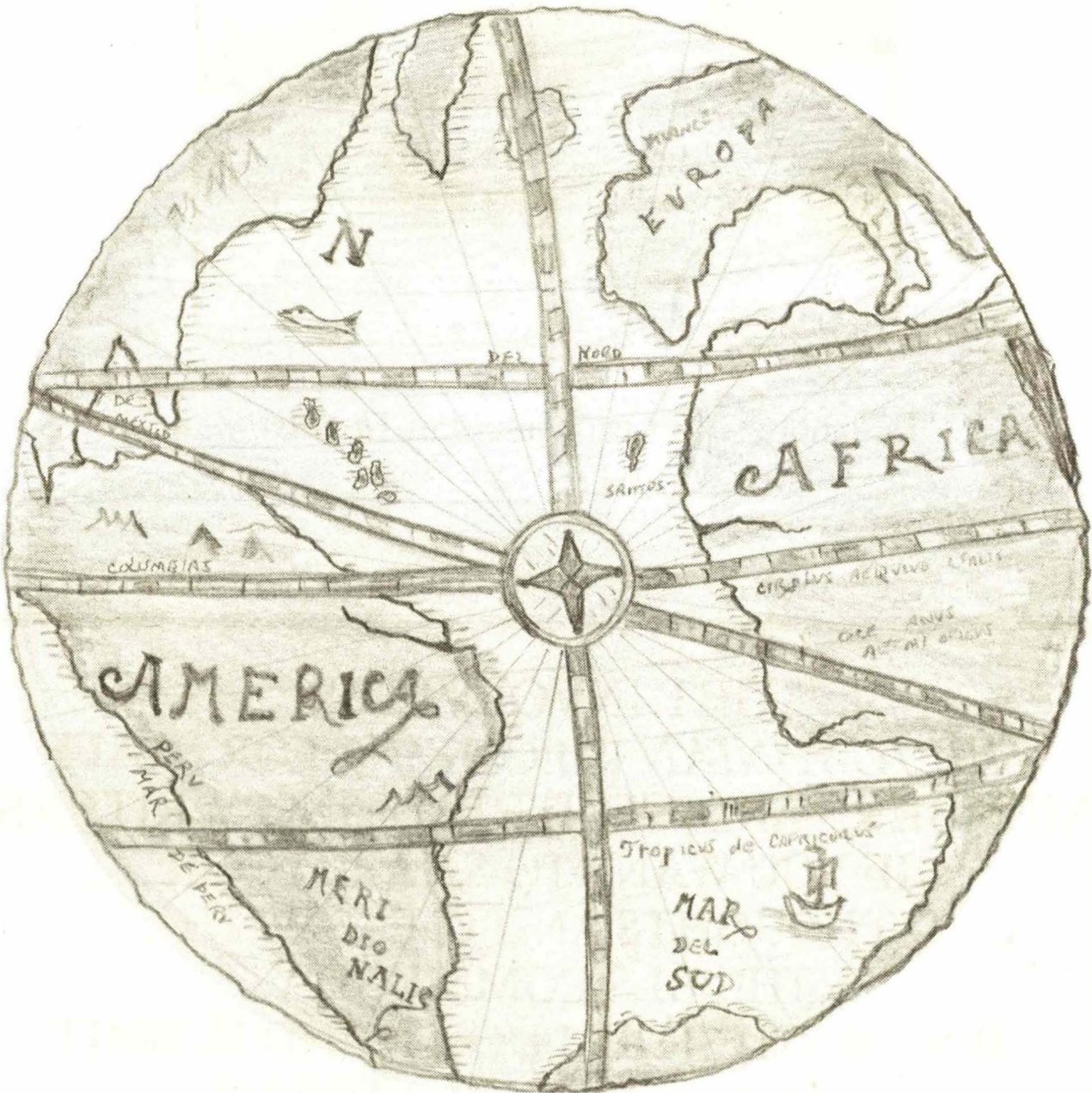
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The Justinian

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

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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

Prof. Spencer Weber Waller

Prof. Anthony Sebok

Prof. John Goldberg

Marcia Maack

Staff

Daniel Ajello, Albert Gavalis

Cover Sketch

Salvatore Matthias

Photograph of James D. Wolfensohn

Michele Iannacci

4	Editor's Corner
6	Interview with James D. Wolfensohn, President of the World Bank
11	I Am Just A Bill
12	On Political Correctness
14	School Events...
15	What Do You Think?
16	The Edward V. Sparer Public Interest Law Fellowship Program Immigration Forum
19	Cultural Events
23	Human Rights Update
24	Postmodern Jurisprudence And Beyond And An Historical Parallel
27	Law and Popular Culture
30	<i>Sub Silentio</i>

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Brooklyn Law School
250 Joralemon Street
Room 610
Brooklyn, N.Y. 11201
(718) 780 - 7986

Editor's Corner

By Muriel Richards

In this issue of *The Justinian*, we are deeply honored to present an interview with James D. Wolfensohn, President of the World Bank. In this interview, Mr. Wolfensohn describes how he utilizes his extensive experience as an investment banker and business entrepreneur to fulfill the responsibilities of his present position. Mr. Wolfensohn explains how the World Bank continues to reduce poverty and promote sustainable economic activity in developing nations through Bank sponsored projects. One of the specific current endeavors that Mr. Wolfensohn discusses is the Bank's role in the reconstruction of Bosnia and Herzegovina. *The Justinian* is extremely grateful to Mr. Wolfensohn for taking time from his busy schedule to provide us with unique and informative insights into a leading world institution. We trust that *Justinian* readers will greatly appreciate the intelligence, thoroughness and candor reflected in Mr. Wolfensohn's answers to our questions. We wish to express our appreciation again to Mr. Wolfensohn for his generosity in granting this interview.

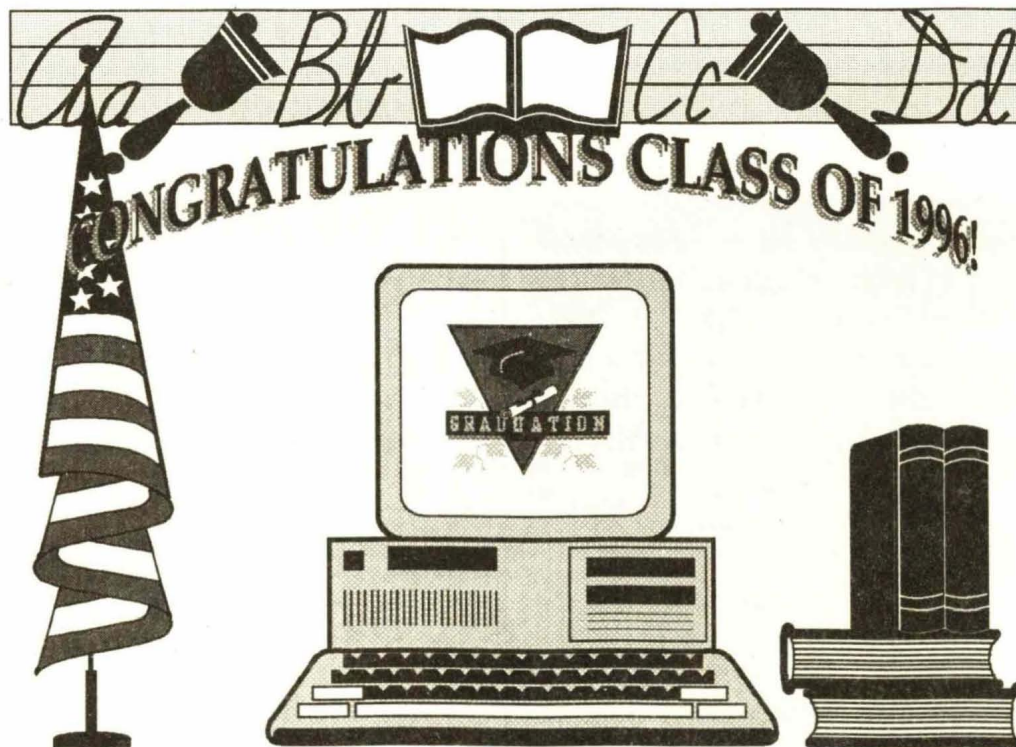
We are also pleased to present an article on The Edward V. Sparer Public Interest Law Fellowship Program Immigration Forum, which

was held at Brooklyn Law School on March 14, 1996. The Forum focused on pending U.S. immigration legislation and was attended by several guest speakers who are renowned in this field. The results of the immigration background survey of the BLS community also appear in this issue of *The Justinian*.

"I Am Just A Bill" is Daniel Ajello's latest article concerning the educational rights of parents and children. Albert Gavalis' "Postmodern Jurisprudence and Beyond And An Historical Parallel" is a thoughtful essay on the ever-changing role of the law in society. And, of course, Joseph A. Hayden's "On Political Correctness" appears in this 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. In regard to our February 1996 issue, *The Justinian* wishes to express appreciation to all those who advised us that they learned a great deal from the interview graciously granted by His Excellency Gad Yaacobi, Ambassador of Israel to The United Nations. While we are extending gratitude, we would be remiss if we did not note Nell J. Uy's (former editor-in-chief) ability and continued willingness to share her editorial knowledge.

Finally, *The Justinian* extends best wishes for a productive and honorable career to all members of the Class of 1996. Good luck on final exams!



Q.

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Interview with James D. Wolfensohn, President of the World Bank

By Muriel Richards

The Justinian is deeply honored to publish this interview, which was generously provided by Mr. James D. Wolfensohn, President of the World Bank.

James D. Wolfensohn, an investment banker and business entrepreneur who possesses an outstanding record of involvement in cultural and civic affairs, became the President of the World Bank in June 1995. He is the ninth individual to serve in that capacity since the inception of the institution in 1946. The World Bank was established following World War II to assist in the rebuilding of Europe's devastated economies. Over the years, the Bank's mission has evolved to working in partnership with developing countries to improve the quality of life of the poor and fostering long term economic growth. In the following interview, Mr. Wolfensohn outlines how the World Bank continues today to fulfill its twin goals of reducing poverty and promoting sustainable economic activity. Mr. Wolfensohn is a native of Australia and is a naturalized U.S. citizen. He earned his B.A. and LL.B. degrees from the University of Sydney (Australia) and his M.B.A. from the Harvard Graduate School of Business. Mr. Wolfensohn and his wife, Elaine, have three children.

Q: "Would you please describe some of your responsibilities as President of the World Bank?"

Mr. Wolfensohn: "After being at the Bank for nine months, I have learned that there is no typical day for a World Bank president! Since joining the Bank, I have been spending a lot of time traveling to see Bank projects all over the world; I think it is extremely important for me and all Bank staff to have a good understanding of what is happening on the ground in developing countries. Another priority I have is to widen and improve the Bank's relationship with our clients, and I have been working on that through extensive dialogue with all those who are part of the developmental pro-

cess, ranging from finance ministers to non-governmental organizations and individuals. One important aspect of maintaining client relations is listening to the concerns of our shareholders, so when I am in town (Washington, D.C.), I chair the meetings of the Bank's Board of Executive Directors. I also spend a significant amount of time with Bank staff at all levels, discussing how to address specific issues and establishing ways for us to improve the Bank's work."

Q: "Were there any skills that you developed as President and CEO of your strategic and financial advisory firm that have proved particularly useful in fulfilling your responsibilities as President of the World Bank?"

Mr. Wolfensohn: "As a development institution, the Bank is very different from an investment bank, but there are similarities too. Indeed, the four priorities I established at James D. Wolfensohn Inc. are very close to what the Bank has always stressed: integrity, a commitment to excellence, human values and involvement in the community. I think my firm was different from other investment banks in terms of its strong human relationships with clients and among the staff. Of course, it is much easier with a small firm than if you have thousands of people, but I am working on creating a similar tradition at the Bank. Once a month, I host an open house gathering for one hundred or so randomly-chosen Bank staff, and I have an e-mail ideas line to which many staff have responded. This is in addition to meetings I have with the staff association, monthly meetings with the three hundred senior managers, and weekly meetings with the vice-presidents.

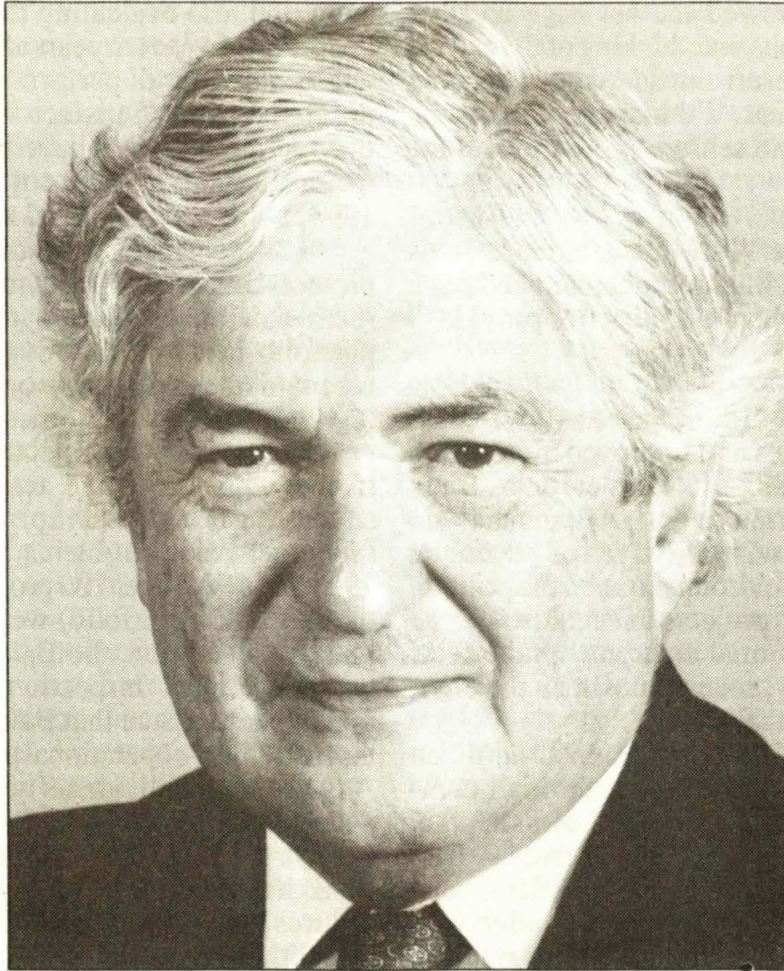
Another value I am emphasizing at the Bank is the importance of accountability and excellence. In my firm, I consistently pushed for the highest standards, and I wanted us always to be the best. Everybody there shared an image of the firm as one where the quality of the product could not be better. I would like people within and outside the

Bank to share this image too. In terms of accountability, the Bank must have a client orientation uppermost. Not everyone shares that view, but if I can get it right and people do sign on, I know I can build a positive atmosphere very quickly."

Q: "What do you consider to be the most important issue facing the World Bank at the present time?"

Mr. Wolfensohn: ing IDA (the International Development Association, the Bank's concessional lending arm). Negotiations are under way for the 11th replenishment of IDA, and there is a funding shortfall because of budget cutbacks in key donor countries. Donors are exploring the possibility of setting up an emergency fund of \$4.4 billion to tide IDA over for the first year of its next three-year program. Because of disagreement in the US Congress over cutting the deficit, the US will not contribute to the emergency fund. However, there has been some recent progress: the

The potential cutbacks fac-



United States just agreed to pay its arrears of \$934.5 million to IDA during fiscal 1997, and the United States Executive Director to the World Bank has confirmed the US commitment to returning to the usual framework of loans.

My mission as the Bank's spokesman is to help convince the Congress and others that it is in their interest to support the World Bank so that growth and stability in the developing world can benefit them and their children. Without concessional lending, we are denying the prospects for progress to the 1.2 billion people who survive on under a dollar a day, of which 70 percent are women. Actually, if you take the full extent of

IDA, which is limited to people that live on under two dollars a day, that makes 3 billion people in 78 countries around the world."

Q: "Given your background of environmental concern and the history of the World Bank on environmental issues, what environmental projects are likely to be implemented in the future? Are there any that you would especially like to implement?"

Mr. Wolfensohn: "Following the 1992 Rio Earth Summit, there has been a quantum increase in awareness of the magnitude of environmental problems, and the Bank has reacted to this by an equivalent increase in the level of resources it devotes to environmental issues. The Bank has committed a record \$5.6 billion in new environmental loans since Rio, bringing to \$10 billion the Bank's active portfolio directed at helping countries improve their environmental management. Bank environmental staff has increased from five a decade ago to almost three hundred today, and a separate vice presidency for Environmentally Sustainable Development was established in January 1993. The Bank has also strengthened its ability to deal with potentially adverse environmental impacts of projects.

The World Bank is the world's largest lender to developing countries for the environment, but it is not all about big sums of money. In my view, improving the environment should start at the grassroots level, with the individual who understands how to use water and energy resources efficiently. There have been several recent loans for rural environmental projects, including managing forests, conserving biodiversity, and investing in soil conservation and watershed rehabilitation.

Often, these loans are prepared in partnership with affected groups and NGOs.

When I was in China, I visited the Loess Plateau, an area the size of France with fields that are all sand because of years of deforestation; runoff from these eroded plains makes the Yellow River yellow. The World Bank is helping the farmers in the area change their agricultural practices to reduce erosion and inflows of sediment into the river. Already, some of the degraded plains are green again as a result of the Bank-supported project. The farmers are very poor and many of them live in caves. I talked to a farmer's wife and when she proudly showed me her cave and her child, I could see that she was thinking of the future, a future where the desert outside would become fields of corn and wheat. I'd like everyone at the Bank to have that same sense of the earth and the environment."

Q: "How does the World Bank balance environmental concerns with the economic needs of a developing nation when deciding to provide a loan?"

Mr. Wolfensohn: "I think increased awareness of environmental issues and improved monitoring mechanisms have made it much easier for the Bank and borrowing countries to design loans that are compatible with the twin objectives of economic growth and sound environmental management. Since 1989, all Bank projects are required to be screened for their potential environmental effects through an integrated process known as the environmental assessment (EA).

Beyond reducing environmental harm, an EA often enhances project design through comparison of a project's proposed design, site, technology, and operational alternatives. EAs weigh the environmental costs and benefits to each alternative, often through public consultation with NGOs and affected communities, whose role can extend beyond helping with project design to being responsible for implementation. The Bank is supporting an environmental resource management project in Ghana, for example, where local communities participated in setting the boundaries and determining the levels of resource use in coastal wetlands. This gets back to the importance of involving individuals in environmental initiatives, and indeed in the developmental process as a whole."

Q: "How does the World Bank monitor loans already made? Through the use of NGOs, its own committees, etc?"

Mr. Wolfensohn: "All the Bank's operations are evaluated—first by the staff responsible for supervising the project, and then independently by the Operations Evaluation Department (OED), which reports directly to the Bank's Board of Executive Directors. After each loan is fully disbursed, the staff that supervised it prepare an implementation completion report, which assesses the outcome, describes how the borrower plans to run the operation, and makes recommendations for the future. OED rates the impact and performance of all the Bank's completed operations, selecting about forty percent for a detailed performance audit and also evaluating the long-term effects of operations five to ten years after project completion. OED rates overall performance as satisfactory or unsatisfactory. 'Satisfactory' means that most of the operation's goals have been achieved without major shortcomings. Out of 246 operations rated in 1994, two-thirds achieved satisfactory results.

Mechanisms to monitor the performance of projects that are not yet completed include project restructuring, mid-term reviews, and country portfolio performance reviews. The two review mechanisms help the borrower and the Bank highlight implementation issues and assess whether project development objectives are still valid, and, if not, what corrective actions are needed. Restructuring occurs when a project encounters serious implementation problems. During fiscal years 1993 and 1994, over 100 projects (about six percent of the Bank's portfolio) were restructured.

In addition, the Bank's Board established an independent Inspection Panel in September 1993 to help ensure that Bank operations adhere to the institution's operational policies and procedures. Any group of individuals who may be directly and adversely affected by a Bank-supported project can ask the Panel to investigate complaints that the Bank has failed to abide by its policies and procedures. To date, the Panel has received four inspection requests."

Q: "While the World Bank's Articles of Agreement expressly prohibit the Bank from intervening in a nation's political affairs, can and does the World Bank consider the humanitarian actions of a nation prior to providing a loan?"

Mr. Wolfensohn: "When making loans to member nations, the Bank can only consider economic factors, but this could include an event which has a negative effect on a nation's economy, such as a natural disaster or massive refugee flows as a result of war or conflict. In recent years, the World Bank's financial resources and developmental expertise have played an important role in helping post-conflict societies regain economic

growth and social stability. We have also provided emergency loans and credits to countries that have suffered earthquakes and other natural disasters such as floods.

In Eritrea, for example, the World Bank is collaborating with UNHCR (United Nations High Commissioner on Refugees) on a program to assist Eritrea with repatriating and reintegrating the estimated 500,000 Eritrean refugees in Sudan. A pilot phase for the program has been completed, resulting in the reintegration of around 25,000 refugees; some 85,000 have returned spontaneously. Another African country that has tremendous humanitarian needs as a result of war is Rwanda. The Consultative Group on International Agricultural Research (CGIAR), an association of 43 public and private sector donors co-sponsored by the World Bank and other international organizations, in 1995 established Seeds of Hope, a program gathering seeds for Rwanda's farmers to plant and restore some of the country's food-generating capacity. Before the civil war, 91 percent of the economically active population of Rwanda were engaged in agriculture, but the war led to dramatic harvest losses of up to 60 percent for some crops. CGIAR has gathered and replicated seeds for varieties of Rwanda's main crops that match what Rwandan farmers have long grown."

Q: "What steps would the World Bank be likely to take concerning a nation that it ascertained was guilty of violating basic human rights?"

Mr. Wolfensohn: "The Bank's position is that if violations of human or political rights were to reach pervasive proportions, then it would become an issue in our decisions. This would be the case if the violations had significant direct economic effects or if it led to the breach of international obligations relevant to the Bank. With respect to ongoing operations, the Bank would consider how any potential disruptions (such as the cancellation of elections) would impinge on the implementation of Bank programs. There have also been occasions when it has been clear to us that there was not sufficient support from our shareholders or from other donors for us to move ahead with programs in certain countries."

Q: "The World Bank, contingent upon the fulfillment of the promises of donor governments and organizations, may provide \$150 million to Bosnia to address social and reconstructive needs. At this time, would you like to add anything concerning the World Bank's role in the reconstruction of Bosnia?"

Mr. Wolfensohn: "The World Bank has been deeply involved in defining a reconstruction program for Bosnia and Herzegovina, as well as offering technical assistance to the government authorities. The Bank and the EU (European Union) co-sponsored a donors' meeting in Brussels in December, which led to firm commitments of about \$500 million for financing the priority reconstruction program in Bosnia. On January 23, the World Bank's Board of Executive Directors recommended to the Bank's governors the establishment of a \$150 million trust fund for emergency reconstruction in Bosnia, which was formally approved on February 23. The fund includes \$25 million in grants and \$125 million in concessional IDA loans.

In the first year of reconstruction, the main priorities are to restore Bosnia's severely damaged productive capacity and infrastructure facilities, to initiate production and economic activities in the war-devastated economy, including the encouragement of private initiatives, and to help address the severe hardship faced by certain segments of the population in the post-war transition period. In addition, the project will help the government establish certain institutions that will be required for effective implementation of the reconstruction program.

I think the Bank is well-placed to continue to provide leadership in the reconstruction program in Bosnia, but at the same time, I should stress that the Bank's efforts will not be successful without the financial and moral support of other multilateral and bilateral donors. We need to work very closely with other donors in the field to harmonize our efforts and coordinate our activities. The reconstruction program is very complex: it covers nine sectors in Bosnia, and we are setting up sectoral task forces led by different donors with special expertise—for instance, the European Bank for Reconstruction and Development will take the lead on telecommunications. In addition, the Bank will chair overall coordination meetings of key donors from time to time to ensure that resource commitments and development efforts remain consistent with the rapidly changing circumstances in the country.

The reconstruction of Bosnia is the key to a successful peace, but it will not be an easy task. The civilian side does not have the massive physical and financial resources of NATO, which has nearly half a century of experience and is financed by the military budgets of 16 of the world's richest nations. All those involved in the reconstruction efforts must work under extremely difficult conditions: Bosnian institutions are in shambles, security is precarious, movement is often hazardous and

communications are severely limited. Our staff Vol. 1996/18/ISSUE 19. In the area of education, we plan to have primary school education available to every girl in the world by the year 2010.”

the Bank’s resident mission in Sarajevo was working without heating for weeks. But one must not forget that these hardships are felt most of all by the Bosnians themselves, and that they deserve to enjoy the benefits of peace after this terrible war. And the Bank will do its best to help bring peace to Bosnia through reconstruction and rehabilitation of the economy.”

Q: “What was one of the more interesting regions that you visited in your capacity as President of the World Bank?”

Mr. Wolfensohn: “My first trip, which I took barely a month after becoming President of the World Bank, was to Africa. I started in Mali and went to the Côte d’Ivoire, Uganda, Malawi and South Africa. My goal was to learn about the development process at the individual level; I spent eighty percent of my time out in the field, observing Bank projects and meetings with the locals.

In Mali, I remember sitting with village elders and talking about the devaluation of the CFA franc. None of them could read, but they knew that, as a result of the devaluation, they could sell their coffee for a better return. So the elders thanked me for it. In another village, I talked to a husband and wife who were both working hard for their children’s future. The wife told me she was being more selective in planting her crops because, if there was more oxygen in the soil, she would get better plants. The husband said to me, in front of a banana tree grown with the help of the World Bank, “I’m so proud of these bananas. They’re giving me the possibility,” and he grabbed his son, “of sending my son to school and maybe even to university. And I can’t even read”. The couple are also now able to control the number of children they have due to family planning.

I felt very emotional at times. How can one not be impacted by seeing a woman, who has nothing, starting a little business in a slum and talking to you with the same pride as the president of General Motors. She then shows you her kids and tells you she is going to get them out of poverty. And that is where I hope the World Bank can help.

My trip to Africa, and the other trips I have taken since then, have shown me time and again that women hold the key to the future in the developing world. There is an African proverb which says that if you educate a woman, you educate a family; if you educate a man, you educate a man. The Bank is currently spending \$2.5 billion on loans for education, of which \$900 million is allocated to primary school education for girls. By devoting this level of resources and mobilizing

Q: “What advice would you give to law students concerning their careers?”

Mr. Wolfensohn: “I think that success and ambition should always be tempered by a sense of social responsibility. I watched my father work very hard all of his life to raise our family. Money was always short, but my parents were always helping other people, such as Jewish refugees during the 1930s and World War II. That had a strong influence on me—from a young age, I have felt that one cannot go through life without giving something back. And that is why my work at the Bank means so much to me, because I hope to bring the Bank closer to its central goal: improving the lives of the poor around the world.

All you law school graduates stand at a great moment of decision: which career to choose, what road to take. The world is full of promise for you—greater promise, I believe, than ever before in history. And you are better-equipped than any generation in history to fulfill that promise. With your diploma in hand, you will be on the fast track in today’s competitive world. I urge you to remember, however, that there is another track out there, where the poor or the weak may be losing out because society is willing to leave them behind. So, while you take advantage of your opportunities, do not forget your obligations.”

Q: “Thank you.”

I Am Just A Bill

By Daniel Ajello

Governor George Pataki is pushing a bill, S5599/A8406 (1995 New York Senate Bill No. 5599, Same as 1995 NY A.B. 8406), which would cut funding for special education services. These services apply to some children from birth (through early intervention services) and may continue through the time that the child enters school under the auspices of the Board of Education. In part the bill would heighten requirements for children to receive certain services (such as speech therapy) and pressure school districts to mainstream. Pataki claims costs are out of control and his solution is to cut funding to force districts to revamp the services they provide.

I am a parent of a child with cerebral palsy who receives many special services (therapy, transportation, equipment). As you can imagine, I am opposed to the cuts. My child, and many other children I have encountered, are severely in need of the therapy and care these services provide. The services help provide an opportunity for these children to become more self-sufficient and improve their quality of life. The goal, of course, is to enable these children to not require the services at all. For many of the severely disabled, this may not be possible, but of course, an effort must be made.

The city and state have done well in providing for many children, however, costs are out of control. Yes, there is an enormous amount of waste in the current system which involves, in large part, the Board of Education. Strange as it may seem, I acknowledge the wasteful current system, but oppose the budget cuts. The fact is that the current system spends far too much money on bureaucracy and too little on delivering services. It's like a pizzeria with fifty people to answer the phone and one person to actually make the pizzas. The problem is that when the cuts are made the guy making the pizza will be first to go.

At the root of the problem are federal and state laws which create an infrastructure which works against itself.

There are children who are classified as

special education children who should not be. I have been told of a woman with nine children currently in special education. Why? It appears she wants all her children to be so classified because they are kept out of the house for a longer period of time than "regular" children, and she receives increased welfare services due to the classifications.

Paper and meetings. The state has legislated the need for too much paperwork and constant meetings. There are countless people in the system who prepare these forms. (I say countless because a former schools chancellor, upon being asked for the number of administrators, could not say how many there were. His guess was off by a few thousand.) What is worse is that at least half of the hundred forms filled out for my daughter have been filled out incorrectly by the staff.

The biggest problem is that the city and state are too big to oversee that the services they are billed for actually took place. I met a parent who had not received therapy for his daughter for six months and yet bills were being sent and paid for. This occurs because many parents sign blank forms. In addition, parents are not provided with an accounting of what services have been billed for the care of their child.

I believe in all likelihood the cuts will take place; unfortunately the children will be impacted the most severely. While groups of parents have been writing legislators and trying to prevent the passage of this bill I do not have much hope in preventing its passage. It is much easier for the legislature to cut the funds and rely on the districts to sort it out than to enact real change in the law.

In the least, however, I would urge that legislators implement a law that requires the parent to receive documentation showing what the city/state were being billed for - that way the "ghost-services" would be eliminated.

Hopefully, even though the cuts will probably go through, the voices of the parents may have some effect in getting some legislator to enact real change at some point in the future.

On Political Correctness

By Joseph A. Hayden

More and more I see how political correctness has shaped the law. Political correctness is not a new phenomenon at all. Indeed, it is only the term that has a contemporary coinage. No one could deny that changing the name of the Department of War to the Department of Defense was a euphemism implemented to satisfy the desire for what would be later known as political correctness. In that vein, I recently learned that what used to be called "Creditor's Rights" as a law course became "Creditor & Debtor Law". Now it is even more correct to call it "Debtor and Creditor Law". There have always been political targeting of ethnic votes in this country despite what it looks like now with these straw polls balkinizing voters so profoundly.

Taking wills now I see precisely how the law has changed because of political pressure to become less elitist, particularly with regard to inheritance. Wills became so popular because of the disinheritance a spouse would be entitled to (this being the woman usually). However, when the law changed to protect the spouse in lieu of the so-called "blood relatives" of the decedent the law finally left the realm of law which said that keeping the money in the family was paramount. That was built for the benefit of the rich families undoubtedly who wanted to protect themselves from sons and daughters marrying "undesirables".

On a lighter subject, we should get back to the nitty gritty of modern problems with political correctness. It is quite fair to argue that professional sports teams' names like "Indians", "Redskins" and "Braves" just don't deserve usage. No other teams have names that refer to human beings of a certain ilk (save the "49ers" and "Yankees" which are akin to the pejorative "Okies"). Names that do not associate Native Americans with animals and objects, particularly where they have icons which are nothing more than caricatures of people which in themselves are insulting.

Then there are city names which are shortened for brevity. For some reason "Frisco" never really took off. On the other hand, not too many people know what Lalaland stands for either.

Many people assume Native American to be the most politically correct name. Why then did "Indian in the Cupboard" seem to escape scrutiny then? Certainly the film itself was politically correct. Even the drunken cowboy comes around to befriend the "Indian". It surprises me, however, that Europeans, especially the English, have so many words for people who are native to areas of the world. I guess these words come from the colonial history of the English in particular. I don't understand why "Aborigine" only applies to aboriginal people in Australia. Surely "Aboriginal Americans" has a pleasant alliteration to it, but then again I suppose "Aboriginal Australians" does too. A lot of people don't realize the depth of the "Okie" pejorative until they read *Grapes of Wrath*. But Hemingway, its author, was well known as a racist and misogynist.

There is no more tenacious word than "minority" I think in modern language. I gulp every time I say it because depending on the individual with whom it is used, he or she may very well be profoundly and genuinely offended by the term. "Minority", however, does not mean with respect to this world since no racial group is a majority. On the contrary, it is a term used to describe those segments of the population which have been systematically and historically disenfranchised from political power. This includes women, we all concede, because of their minority status in power, not in population. Although one could argue that their persuasion had a lot to do with policy before they were granted a right to pursue equal opportunities. One would be wise to avoid the word altogether if an alternative suffices.

A philosophy that I cannot comprehend, however is the warped idea that the infamous rapper/public speaker "Sister Souljah" maintained. Namely, she believes that "Black people" necessarily cannot be racist because they don't have enough power to be. Her narrow definition of racism, not to mention a manipulation of the language, is what many starving young minds may want to hear. However, fear not Sister Souljah, there is plenty of racism to go around. My daughter, who is half African-American certainly may be

subject to racism in the future because of her heritage but it would not behoove me to teach her that she may adopt any policy she wanted about race and still be politically correct because she is not "the Man".

Speaking of my beloved daughter, it was very painful for me to hear the word "Mulatto" applied to her when I visited Italy with her a few times. It was unbeknownst to me before I went that "mulatto" is simply a term which means nothing more than "being of mixed race". However, because of the historical pejorative use in the United States I was apprehensive about hearing the word and asked my mother to explain to my relatives since she could better than I can that it was not an easy word to take. It sounded too much like a pejorative and I had enough anxiety over the use of the word "negra" to describe my wife and "negretta" to describe my daughter. In English we are therefore left with a few alternatives. Biracial implies that there are only two races one can be and that one is. This term also does not clearly explain that one may be 1/16th of one race and 15/16ths of another. Multiracial is more accurate to describe people who are of diverse backgrounds but for brevity and better coverage I find "mixed" to be the preferred term.

Another word I continuously remind people not to use in my presence is the word "Oriental" when referring to a person of Asian heritage. "Oriental is a rug," I say, and usually that works to lighten the mood and change the individual's mind in using that arcane language.

I may get into trouble for this one but I don't see how it can be politically correct to have to wear one's wedding ring. I don't think very many people look at an individual's finger when meeting someone to immediately establish marital status anyway. Many people wouldn't care if there was a ring anyway. Absence of a ring is certainly not a sign of being single.

Last names that women choose to use is the same vein. Many probably assume that women use their maiden names when they practice law because they are asserting their individuality. However, I recently learned that changing one's last name once one passes the bar is prohibitively complex. Besides, a woman's last name is the name of her father, not her mother. Because of our social structure the maternal line is not passed down through family names. Russians use their father's first name in constructing their middle names and then, of course, maintain their father's last name as

their own (until the women marry of course). Latinos at least go back one generation to include their mother's last name as a second name.

Geraldine Ferraro went so far as to use her mother's maiden name as her own name rather than take the name of her father or husband. Now I understand why. My personal story is probably like many others. My last name, as a board member of the Italian American Law Students Association, sticks out like a sore thumb. I too have wondered if I should change my name because firstly my last name is hardly pronounceable in Italian. In fact, only about one word in the language starts with an "h" and the letter "h" in "hostess" is silent. Secondly, my last name is anglophonic because my father's father's father's father's father wasn't Italian. Of course that doesn't mean that both my father and mother aren't Italian. Indeed my father was and my mother is. Many people are prejudged because of their last name and to be politically correct we really should hesitate to assume that a name identifies one's background.

"Son of Sam" Berkowitz, who was adopted, was constantly tormented in prison for being Jewish when he was not. More sympathetically, my poor Irish friend with the last name Rosenblum used to get questioned all the time by her church congregates as to why she had converted! In my situation, Italian was my first language, I was reared partly in Italy and I go there regularly to visit my family, most of which resides there. I must say that despite my name, after the initial explanation of my heritage, I have been very warmly received by the Italian-American organizations I have contacted. Please be politically correct enough to know, however, that Columbian Lawyers are not Columbian lawyers, they are "Columbian" as in "Columbus", not the country of "Colombia". I won't get very far into why I think Columbus Day is quite un-PC since I would be shooting my own foot. However, I am inclined to say that I am in the tiny minority of Italian-Americans who think we have more admirable forefathers to exalt.

Several years ago on the radio (and perhaps even to today) a very un-PC morning radio show used to warn if certain days were "Jewish and Italian Mother Sweater Alert Days". To top it all off, they had "Afro Hair Alert" days too. Only in New York.

Minority Student Recruitment Day



Dean Joan G. Wexler is featured above with prospective BLS student Janis Prince at the 18th annual Minority Student Recruitment Day which was held this year on February 27, 1996. According to Dean Henry W. Haverstick III (of Admissions and Financial Aid), the all-day program was attended by one hundred and twenty-five potential BLS students, numerous professors, administrative staff and student organization leaders. The prospective students ranged from those who are presently juniors and seniors in college to individuals who possess advanced professional degrees. The purpose of the program is to generate interest in BLS amongst people in the minority community in order to enhance the diversity of the student body.

BarBri Bar Review's Barrister's Bowl 1996



BLS's Charles Jainchill ('96), Vic Suri ('98) and Jason Lamonaco ('97) represented our school at the Bar/Bri Bar Review's Barrister's Bowl. Participants from various law schools (including Columbia, Hofstra, Fordham, etc) competed, utilizing their knowledge of law, music and other topics in this trivia contest. The BLS team advanced to the New York State finals, held at Fordham Law School's Moot Court Room on February 3, 1996. Each BLS representative received a runner-up prize of \$500 and the SBA was awarded \$2,500. Congratulations to the BLS team!

What Do You Think?

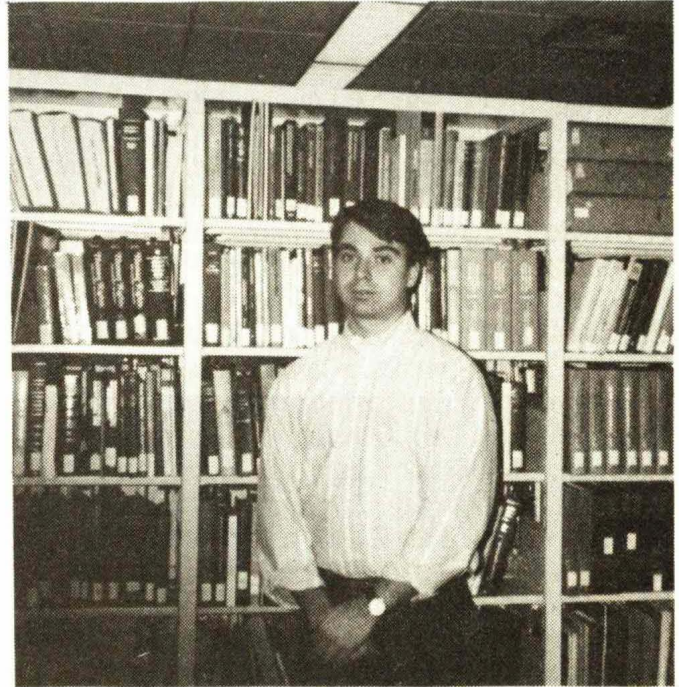
What do you think the U.S. role should be in Taiwan?



“I think that we have to defend Taiwan at all costs—even if that means getting into a war with China. Especially since the Chinese are telling us we can’t bring our ships into international waters. That, I think, is particularly wrong.”
James Mathieu BLS '96

(Photograph not available)

“I think that it is admirable that President Clinton is committing the U.S. Navy to protect democratic ideas in Taiwan. However, I believe that in the long term, the benefit conferred by the U.S. policy of international policing will be outweighed by our expenditures of financial resources, morale of our armed forces and the good will of foreign countries.”
David Zelman BLS '96



“I think the U.S. should take an active role in Taiwan to promote free trade. Sometimes promoting the economic atmosphere will promote human rights development.”
Louis C. Tomasella BLS '96

(Photograph not available)

“The U.S. has no business in Taiwan. The whole separation came about because of U.S. and British involvement in the first place. They should leave it to the sovereign decisions of China to figure it out.”
A.B. Ritchie BLS '96

The Edward V. Sparer Public Interest Law Fellowship Program Immigration Forum

By Muriel Richards

The focus of the eleventh annual Edward V. Sparer Public Interest Law Fellowship Program Forum centered on the timely topic of United States immigration. The forum, held this year on March 14, 1996 at the Subotnick Conference Center at Brooklyn Law School, represented the culmination of a ten-day undertaking by both Sparer Fellows and Professors Maryellen Fullerton, Elizabeth M. Schneider, Stacy Caplow and Susan Susman to heighten the awareness of the BLS community on immigration issues. Featured speakers included David A. Martin, General Counsel, Immigration and Naturalization Service of the United States Department of Justice, Professor Janet M. Calvo of the City University of New York Law School at Queens College, Charles Kamasaki, Senior Vice President, National Council of La Raza (a nonprofit, public interest group that advocates the rights of legal immigrants through lobbying efforts and outreach programs) and Edward Levy, National Advisory Board Member, Federation for American Immigration Reform (a nonprofit, public interest group that seeks to severely restrict immigration to the United States). The forum moderator was Professor Maryellen Fullerton.

Mirroring current debates in the U.S. Congress, the speakers presented information on various aspects of immigration legislation, ranging from the exploitation of immigrant labor to the changing legal definition of "immediate family" (of special concern to family-sponsored immigrants). In his speech, Mr. Martin stated that the House Committee on Agriculture has proposed that farmers be allowed to employ foreign workers without demonstrating that they attempted to recruit U.S. citizens (or lawful permanent residents) for those positions. The farmers would simply file attestations to that effect. The Attorney General and the Secretary of Labor have both sent letters of opposition concerning this legislation to the House Committee on Agriculture. Another proposed change discussed by Mr. Martin was the Jordan Commission's (which was chaired by Barbara Jordan prior to her recent death) recommendation for reductions in the family-sponsored immigrant category. This program provides the opportunity

for adult U.S. citizens to have their spouses, children and parents become legal permanent residents. One of the proposed modifications of this category regarding children is that permanent residency would be restricted to infant children of U.S. citizens rather than to offspring of any age. (Mr. Kamasaki, in his address, noted that the existing definition of "immediate family" is underinclusive as it fails to recognize that in many South American and Asian families, aunts, uncles, etc, are culturally considered "immediate family members".)

Elaborating on a statement made in his speech in which he stated that the increasing focus on "enforcement" (of immigration legislation) is the "correct remedy for decades of neglect on a wide-spread scale", Mr. Martin told *The Justinian*, "We want to strengthen the work site enforcement system. We have some pilot projects that are under way right now. The senate bill (S.269) would really support our doing those pilot projects. We want to do it in a fairly careful way-improve work site enforcement and also pay attention to privacy concerns and discrimination concerns as well as concerns about costs. That is the way we want to proceed on that". Addressing issues regarding exploitation of immigrant labor, Mr. Martin continued, "Generally, on enforcement, there are some provisions that would increase fines if there is also a labor law violation. That would affect those sort of circumstances, and it really should. It (enforcement) should be tightened up, if we're going out and doing enforcement against essentially sweat shop situations".

Mr. Kamasaki stated in his speech that the proposed House bill (H.R.2202) would limit anybody from entering the U.S. who did not have an income two hundred times above the poverty level. Additionally, Mr. Kamasaki explained that under the provisions of this bill, lawful permanent residents would still be required to pay taxes and yet not be able to avail themselves of tax-supported programs like Medicare and Medicaid. Another aspect of the bill would require hospital emergency rooms to report undocumented immigrants who seek emergency care if the hospital seeks reimbursement. Additionally, immigrant discrimination claims against an employer would require a showing



(l. to r.) David A. Martin, General Counsel, Immigration and Naturalization Service of the United States Department of Justice, BLS Professor/Forum moderator Maryellen Fullerton and Professor Janet M. Calvo, City University of New York Law School at Queens College at the reception following The Edward V. Sparer Public Interest Law Fellowship Program Forum on Immigration.



Professor Elizabeth M. Schneider, Chair of The Edward V. Sparer Public Interest Law Fellowship Program, at the Immigration Forum.



Jean Jablonski, BLS Librarian, stands next to one of several immigration information displays that she created in the BLS library in connection with The Edward V. Sparer Public Interest Law Fellowship Program Immigration Forum.

of intent.

Professor Calvo addressed the issue of a proposed new legal definition of U.S. citizenship in which a person born in the United States who has at least one parent who is not a U.S. citizen at the time of the person's birth would not be a U.S. citizen. Professor Calvo stated that, because her mother was a war-time bride, she would not be a U.S. citizen under this definition.

In response to a question from *The Justinian* regarding examples of the intellectual and cultural contributions that immigrants make to this country, Professor Calvo stated, "The stories that I am most aware of now are my law students. I have a number of law students who I think are amazing. They came to the United States, were able to get themselves a college education and into law school. English is a second language (for many of them). They are educated and now they are lawyers. Now, they are becoming citizens of the United States. That is really the amazing story. People from all over-South America, the Far East, the Near East, etc-have a depth of understanding of the values of society that is much more (than people who are native born U.S. citizens)... People who have been refugees really understand the value of freedom and the value of opportunity. People who are becoming naturalized citizens really think very deeply about the value of citizenship. They also feel very strongly the pain of exclusion. They feel very deeply the notion that they could possibly be excluded for something other than what their personal worth is, something other than their commitment to the values and ideals underlying the citizenship. (Earlier, in her speech, Professor Calvo quoted President Theodore Roosevelt, 'Not color, but personal worth should be the criteria for citizenship'.) So, those discussions that I have with my students are the most inspiring stories that I have". These stories belie the image of the immigrant who comes to the United States to bilk our social programs. "These are people who have worked their way, most of the time, through college and through law school; they are going to become lawyers. They are going to be contributing members of the society". In response to *The Justinian* question whether restricting their entry into this country would detract from national resources, Professor Calvo replied, "It sure would. They are making great, constructive contributions".

Not all of the speakers reflected the belief that the contributions of immigrants far outweigh any initial investment that the United States might make in settling these individuals. Mr. Levy cited the concern that the current proposed legislation is necessary to curtail what he views as an explosion of immigrants who will be a dangerous drain on

environmental resources (the water supply, etc). While Mr. Levy was in the minority on the dais, his perceptions are echoed by many Americans, as evidenced by aspects of the proposed laws. Mr. Levy also voiced the concern that our nations' schools are overburdened with children of illegal immigrants.

Regardless of their position on the topic of immigrants, BLS students, faculty and staff have been afforded an opportunity to increase their knowledge because of the work of the Sparer Program. The Sparer Forum was preceded by a week of films on the immigrant experience. Laura Rodriguez, BLS '97, headed a Sparer Forum subcommittee that selected the films and arranged for their showing in the Student Lounge. In addition, another Sparer Forum subcommittee headed by Marcia Maack, BLS '96, developed a questionnaire to survey the immigration backgrounds and knowledge of the Brooklyn Law School community. Hundreds of questionnaires were completed. Ms. Maack has prepared a report on the data collected, which appears in this issue of *The Justinian* following this article. Soo Young Chang, BLS '96, headed yet another Sparer Forum subcommittee to develop a brochure to supplement the Forum itself. The brochure included a short history of U.S. immigration law, a summary of the current immigration legislation and highlights of the proposed immigration bills in Congress. It also includes a selected bibliography and filmography on immigration topics.

BLS librarian Jean Jablonski and BLS student/library assistant Brett Magun also provided major support to the Sparer Forum. The library acquired novels and other information to educate the BLS community. For example, one of several immigrant centered novels now available at the BLS library is *Call It Sleep*¹, a true to life tale of the experience of a Eastern European Jewish child growing up on Manhattan's Lower East Side at the turn of the century. This work and thirteen other novels are available for general circulation. Additionally, *Ellis Island: An Illustrated History of the Immigrant Experience*, a collection of photographs by Ivan Chermayeff, Fred Wasserman and Mary J. Shapiro, is shelved at the BLS reference desk. The poignancy of the expressions of the immigrants as they arrived fearfully, hopefully and expectantly on these shores have been memorialized and presented in this book.

Ms. Jablonski, in an interview with *The Justinian*, stated that beginning researchers in the immigration field should use "the Westlaw database LRI, the online version of the current law index". Ms. Jablonski gave specific tips for this research, "Pick the root of the topic you are working with (i.e.

“immigra”), place the hyphen after the root, and add the words pathfinder or guide or bibliography”. Ms. Jablonski stated that this is an ideal way to obtain cites to publications such as The Legal Reference Services Quarterly and The Law Library Journal, which publish on a monthly basis a detailed reference guide on a particular topic. Other good sources of information are bar journals and scholarly legal periodicals. Interpreter Releases: Report and Analysis of Immigration and Nationality Law, a weekly newsletter which reports on Federal developments in immigration law, is another useful research tool, according to Ms. Jablonski. Lexis has a bill text and a bill tracking file which is wonderful to access the text and status of a bill. Additionally, for those who do not have access to services such as Westlaw, Ms. Jablonski stated that many practitioners maintain a newsletter on immigration issues on the internet, which is available for use in many public libraries. For those who wish to conduct genealogical research, Ms. Jablonski stated that the National Archives, Northeast Region (located at 201 Varick Street, NYC) is a particularly useful center that maintains

historical records dating back to the 1680's. Prior to visiting, one should call the center (1-212-337-1300) for information on requirements to obtain a researcher identification card. In response to The Justinian's inquiry, Ms. Jablonski said the center might be especially helpful for people who have a family name that was anglicized or shortened upon entering Ellis Island. In addition to Ms. Jablonski and Mr. Magun, Rosemary Campagna, the BLS federal government documents librarian, assisted in the development of the library resources by obtaining material from Ellis Island. Librarians John Nann and James Murphy helped also, as did supervising librarians Sara Robbins and Linda Holmes. The BLS library staff, combined with the efforts of Sparer Fellows, several BLS professors and guest speakers prepared and presented excellent materials to educate the BLS community about pending immigration legislation in the United States.

¹Roth, Henry. Call It Sleep. New York: Farrar, Straus and Giroux, 1991.

CULTURAL EVENTS AROUND TOWN...

Carnegie Hall
154 West 57 Street
New York, New York

The Preservation Hall Jazz Band (scheduled performance date is Wednesday, May 1, 1996) and the **Israel Philharmonic Orchestra** (scheduled performance date is April 25, 1996) are just two of the many performances scheduled for this season at Carnegie Hall. Please call (212) 870-5570 for further information.

Brooklyn Botanical Gardens
1000 Washington Avenue
Brooklyn, New York

The Sakura Matsuri (Cherry blossom) Festival is scheduled to be held on April 27 & 28. In addition to the botanical feature of this festival, a Japanese tea ceremony and demonstration of dance concepts will be presented. For further information, please call (718) 622-4433.

The Brooklyn Museum
200 Eastern Parkway
Brooklyn, New York

Converging Cultures: Art & Identity in Spanish America is an exhibition that is on view now through July 14, 1996. The exhibition includes over two hundred works of textiles, paintings, sculptures, manuscripts, domestic and religious objects from the Spanish colonial vicerealties of New Spain and Peru. Please call (718) 638-5000 for further information.

THE EDWARD V. SPARER PUBLIC INTEREST LAW FORUM SURVEY RESULTS

by Marcia Tavares Maack

The Edward V. Sparer Fellowship Student-Faculty Committee has compiled preliminary results from the survey conducted in conjunction with the Forum, "Whose Country Is This Anyway?: Perspectives on Current Immigration Initiatives," held at Brooklyn Law School on March 14, 1996. The purpose of the anonymous survey was to obtain a broad picture of the immigration history of the Brooklyn Law School Community and gauge the perspectives of our community with regard to immigration patterns in the United States. Some basic information regarding the student body of BLS and statistics on immigration in the United States follows. Further information will be published later this spring after the Sparer Committee has completed its analysis.

In total, 277 students responded to the survey. In addition, 21 faculty and 28 staff members completed the questionnaire. Of those students who responded, 84% were born in the United States, while 16% were born outside the United States.

Students Born in the United States

Of the students born in the U.S., 93% listed their first language as English. For the remainder, first languages include Spanish, Polish, Italian, Greek, German, Portuguese, Russian, and Korean. Interestingly, 35% of U.S.-born students have at least one parent whose first language is not English. Among this group, the most common first languages are Italian (15%), Spanish (13%), French (7%), German (7%), Greek (6%), Hebrew (6%), and Korean (5%). Other first languages spoken by a parent include Arabic, Chinese, Czech, Dutch, Gaelic, Gudradi, Guzarati, Hungarian, Japanese, Macedonian, Portuguese, Russian, Tagalog, and Yiddish.

In addition, 29% of those students born in the U.S. have at least one parent who immigrated to this country. The most common countries of origin are Italy (13%), Ireland (7%), Israel (7%), Greece (6%), Hungary (6%), and Korea (6%). Other countries of origin include Argentina, Austria, Brazil, China, Cuba, Dominican Republic, Egypt, France, Germany, India, Lebanon, Philippines, Palestine, Poland, Russia, Sweden, Spain, Tunisia, Uruguay, and Yugoslavia. In listing their parent's reason for immigrating, 62% of respondents cited better economic opportunities, 34% the need to flee persecution, 20% family reunification, 2% educational opportunities, and 9% "Other".*

More than half (55%) of all U.S.-born student respondents have at least one grandparent who immigrated to the U.S. The majority came from Italy (25%), Russia (19%), Poland (12%), Hungary (10%), Ireland (9%), and Germany (8%). However, these immigrant grandparents also arrived in the U.S. from such places as Austria, Barbados, Canada, Cuba, China, Czechoslovakia, Cyprus, Dominican Republic, England, Egypt, Greece, Iran, Latvia, Lithuania, Norway, Panama, Spain, and Syria. An overwhelming 65% of respondents checked off economic opportunities as their grandparent's reason for immigrating. In addition, 34.4% cited the need to flee persecution, 20.3% family reunification, 2.3% educational opportunities, and 9.4% "Other".*

Students Born Outside the United States

Of the student respondents who were not born in the U.S., 73% are naturalized American citizens, 20% are permanent residents, and 7% hold a non-immigrant visa. Thirty-two percent have been in the U.S. more than 20 years, 30% have been in the U.S. for 11-15 years, 18% for 6-10 years, 14% for 16-20 years, and 7% for less than 5 years. In addition, these foreign born students have wide ranging countries of origin, including Burma, British Guyana, Canada, China, Costa Rica, France, Germany, Honduras, Hong Kong, Iceland, India, Israel, Iran, Ireland, Italy, Japan, Jamaica, Korea, Lebanon, Norway, Philippines, Romania, Russia, Sri Lanka, and Trinidad. Fifty-seven percent wrote that English was not their first language. For these students first languages are Arabic, Burmese, Chinese, Creole, Farsi, French, German, Guzarati, Hebrew, Japanese, Korean, Italian, Norwegian, Romanian, Russian, and Spanish.

More than half (56%) of the foreign born students said they came to the U.S. along with their parents. Twenty-five percent came to attend school, 15% for the economic opportunities, 14% for family reunification, 12% to flee persecution, and 7% for "Other" reasons, including adoption.* For those students whose parents also immigrated, close to half (48%) came for the economic opportunities, 20% for family reunification, 18% for educational opportunities, 14% to flee persecution, and 18% for "Other" reasons.*

Immigration Statistics**

In 1995, the number of legal immigrants who entered the United States was approximately 720,000. This figure represents a 10% decline in legal immigration from 1994 and a 20% decline from 1993. In fact, there has been a steady decrease in legal immigration since 1991, when the number of legal immigrants entering the country totalled 1,827,167. Between 1989 and 1994, the majority of legal immigrants came from Mexico, with a total number of 2,834,725. From the European Continent, the majority of legal immigrants came from the former Soviet Union (276,767), followed by Poland (180,672), and the United Kingdom (166,742). From Asia, the majority came from the Philippines (606,461), then Vietnam (469,736), and China (383,851). From Africa, the majority came from Nigeria, with 49,740, followed closely by Ethiopia (40,372) and Egypt (38,786). From the Caribbean, Central, and South America, the majority of legal immigrants came from the Dominican Republic (374,057), followed by El Salvador (308,665), Jamaica (226,323), Haiti (198,233), and Colombia (152,404).

The Immigration and Naturalization Service estimates that approximately 300,000 illegal immigrants enter the U.S. each year. As of 1992, the most recent date for which statistics are available, the INS approximated there were 3,379,000 illegal immigrants residing in the U.S. The majority of these illegal immigrants are from Mexico, with 1992 figures totalling 1,321,000 illegal Mexican immigrants. Following behind Mexico were El Salvador (327,000), Guatemala (129,000), Poland (91,000), the Philippines (90,000), Haiti (88,000), and Italy (67,000).

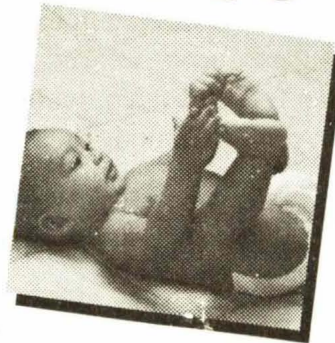
In New York City, the City Planning Department estimates that as of 1992 there were 490,000 illegal immigrants residing in New York State, out of a total population of 18 million.

The majority of illegal immigrants in New York came from Italy (26,000), Poland (23,000), and Ecuador (23,000). Also in the double digits were the Dominican Republic (20,000), Trinidad (20,000), Colombia (19,000), Haiti (19,000), Jamaica (18,000), Ireland (17,000), El Salvador (17,000), Israel (13,000), Pakistan (13,000), Guyana (10,000), and China (10,000).

* These numbers do not total 100 because respondents were permitted to check more than one reason for their own, their parent's, or their grandparent's decision to immigrate.

** Sources: Immigration and Naturalization Service; New York City Department of City Planning.

March of Dimes
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Walk for
Someone you love



On WalkAmerica day, hundreds of thousands of people will be walking for someone they love...a son, a granddaughter, or a neighbor's child. A pregnant friend, a healthy baby, a sick baby, a baby yet to be born.

Who is the special someone you'll be walking for?

Call the March of Dimes and sign up for WalkAmerica today.

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Join Our Campaign for Healthier Babies

Human Rights Update

By Muriel Richards

In 1949, Tibet was invaded and conquered by the Peoples Republic of China. China has since held the reigns of political power in that nation. Tibet is geographically a strategic region for China to control, as it provides a natural, physical buffer between China and Nepal and India. While the official stance of the Chinese-operated government is that their presence has not materially altered the Tibetan culture or impinged upon the rights of Tibetans, there are many who disagree. The Fourth Geneva Convention, Article 49¹, prohibits an occupying power from transferring its nationals into the occupied region. China has infused the region with Chinese nationals who work in the government, school systems and labor markets of Tibet. One of the most compelling examples of the pervasive Chinese influence is found in the area of education. The booklet prepared by The Tibetan Women's Association (located in Dharamsala, India, seat of the Tibetan government in exile) for the United Nations Fourth World Conference on Women, *In The Trek To Freedom: Tibetan Women and the Refugee Experience* cites examples of both girls and boys of Tibetan heritage who have been denied educational opportunities.

A required proficiency in the Chinese language for higher education and employment is an often mentioned barrier facing Tibetans. Tibetans are often relegated to second-class status because of this poor (or, as is especially true for children of farmers, non-existent) educational background and severely limited economic opportunities.

Another aspect of Tibetan culture in the process of annihilation is religion. The majority of Tibetans are adherents of the Buddhist religion and recognize His Holiness the Dalai Lama (who has been in exile since 1959) as their earthly and spiritual leader. An estimated 12,000 Tibetans have sought refuge from 1991-1995; nearly half of that number are estimated to be clergy members.² The high number of Tibetan refugees who are Buddhist nuns and priests offers compelling evidence of the Chinese government's hostility to this integral component of Tibetan culture. The actual number of Tibetan refugees is reportedly to be much greater. The deflated figure is attributed to refolement, forced repatriation and unsuccessful attempts to flee Tibet.

Additionally, the deforestation of Tibet is in contravention of the Buddhist belief in the sentience of and resulting respect for living creatures. The deforestation also has ramifications beyond Tibet. Reportedly, the deforestation has also created silt build up in rivers that flow into India, Bangladesh, China, Nepal, Pakistan, Thailand, Burma and Vietnam.³ According to a human rights fact sheet prepared by The Office of Tibet (located in New York City), individuals in Tibet who voice opposition to the Chinese policies in Tibet are subject to arrest, torture, "re-education" and death. In May of 1995, several Tibetan human rights activists, including Gendum Rinchen and Lobsang Yonten, were arrested when they reportedly attempted to disseminate human rights information to the visting European Community Ambassadors. Human rights entities have been repeatedly denied access to prisons in Tibet.

¹ Fourth Geneva Convention of 1949, Article 49

² *The Trek To Freedom: Tibetan Women and the Refugee Experience* A Report for the United Nations World Conference on Women. The Tibetan Women's Association, Central Executive Committee, Dharamasala, India. September 1995. Pgs. 5 -6

³ *Development for Whom? A Report on the Chinese Development Strategies in Tibet and Their Impacts.* The Tibetan Youth Congress, Dharamsala, India, 1995. Pg. 56

Postmodern Jurisprudence And Beyond And An Historical Parallel

By Albert Gavalis

I. POSTMODERN JURISPRUDENCE AND BEYOND

If Postmodern 20th Century American law is approaching an art form through such epithets as law and economics, critical legal studies, critical race theory, critical feminist theory, and law and literature, the close of the 20th century requires recognition of the regenerative metamorphosis that is transpiring. In looking to parallels in other fields, the field of American law should find strength and comfort that the legal process itself may take various forms. If a country just over 200 years old is to find its place among the great civilizations of history it must face its ability to regenerate itself from within and be willing to acknowledge that its post-transformative state may be different from its pre-regenerative form. Just as human biological transformation occurs through childhood, puberty, adulthood and old-age, so too the legal infrastructure of society within a nation will undergo a transformation that will yield a different and unfamiliar, yet ever advancing form. This is not to predict the future but simply to acknowledge that change itself is a constant and that which does not change dies.

Even in linguistics, the romance languages of French, Spanish, Italian, and Portuguese all have their roots in the now "dead" language of Latin. If linguistics, psychology, statistics, economics, ethnics and feminist based theories brought new insights into the field of law, so too must law bring new insights into these fields as well. Law is a human endeavor involved in giving and taking where much on both sides is expected in the exchange. What this transformation will be is unpredictable but should be faced with an explorer's courage. For this is no longer the exploration of the earth by ships sailing across oceans of water, nor is it the shooting of rockets into the outer-limits of space, nor is it the sub-atomic searching into the inner-limits of the elements, but rather this is the exploration into the outer and inner limits of human nature itself.

Prior to Langdellian and Holmesian legal modernism, moral judgments from a religious

foundation supplied structural guidance in the field of law. Not since Blackstone's Commentaries have "rights" been contrasted with "wrongs." With law segregated from religion we have a primordial fear of loosing law itself as if it were the firstborn child of a Neitzschian humanity. As Abraham feared slaying Issac, even though this slaying was to occur at the command of God, so to does this postmodern society fear the slaying of its firstborn child called "Law." If law itself is in a crisis, if postmodern jurisprudence cannot reconcile past methods with the current crisis, if old ways do not provide new solutions, if logical reasoning and rational methods fail in cross cultural contexts, if hierarchical constructs refuse to share the power constrained within them, if countercultures based on irrational belief methodologies become dominant, if economic collapse cannot be upheld by the existing legal structures, if fear of the unknown yields fear of the present, if the legal structure is autonomous and its former religious foundations themselves are also in crisis, a fear exists for which there is no answer.

Law as a perceived creation of the culture in which it exists will undergo transformation as the culture itself undergoes change. As a culture regenerates itself, so too the law will adapt. However, as the law regenerates itself, will the society acquiesce? The rest is left only to the imagination of some type of pre-historic barbarism perhaps still prevalent in the outer reaches of some ancient society, maybe even our own. However, some such same culture, through traditions which allowed for their survival up through the twentieth century may provide insights into how a multicultural legal system can be established. For those without the so-called western law may have created a form of law which worked to allow for their survival. Societies strong enough to keep boundaries in tact yet not so strong as to self destruct from within as was the case with so many of the so-called "advanced" western civilizations of the past. Fragments of solidity pliable enough to forgo change, strong enough to endure, yet not so rigid as to crack under the winds of change.

II. AN HISTORICAL PARALLEL

One need only look at history to see a parallel. By acknowledging that this is not a new phenomena and that it has happened before, one may derive courage to face this unraveling. Perhaps the first postmodernists were the "Dadaists" of the World War I era in Europe. The popular version of the origin of Dada during World War I in neutral Zurich Switzerland was advanced by the German writer Huelsenbeck where a French-German dictionary opened at random produced the word "dada," meaning a child's hobby/rocking horse.¹ Also meaning hobby, event, or obsession in French, this nonsensical movement had serious intent:

"[The] critical re-examination of the traditions, premises, rules, logical bases, even the concepts of order, coherence, and beauty that had guided the creation of the arts throughout history."²

According to Justice Holmes:

"Behind the logical form lies a judgement ... often an inarticulate and unconscious judgement, it is true, and yet the very root and nerve of the whole proceeding. You can give any conclusion a logical form."³

So horse-sense is before the rigid cart of reason to carry forth its cargo in the decision making process.

And again, back to the Dadaists who co-existed in cultural time and essence with Holmes, though not necessarily space or framework:

"The artist [or creator, or writer, or judge for that matter],... is a mediumistic being who does not really know what he is doing or why he is doing it. It is the spectator who through a kind of "inner osmosis" deciphers and interprets the work's inner qualifications, relates them to the external world, and then completes the creative cycle. The spectator's contribution is consequently equal in importance to the artist's...."⁴

Such mediumistic osmosis may include disagreeing with the audience in contrarian fashion to provide balance as exemplified in Justice Holmes' dissent in *Lochner v. New York*⁵:

"The decision will depend on a judgement or intuition more subtle than any articulate major premise."⁶

As lone dissenter, Holmes did not resort to eloquent

rhetoric but rather through the use of unconventional sarcasm such as "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics." he made his point.⁷

Holmes' dissent in *Lochner* serves as an example of contrarian methodologies to balance the "bad results" of overarching reason and rational decisionmaking. The majority in *Lochner* purported a "rational" *laissez-faire* economic framework to override physical limits of work hours spent in employment which pushed beyond "reasonable" limits of "human" capacity.

Just as a "little-bit" of nonsense might bring us back to our senses, so also postmodern movements in jurisprudence may keep this structured thing called "law" in check.

¹ H. H. ARNASON, *HISTORY OF MODERN ART* 291 (Abrams, New York 1968).

² *Id.*

³ Oliver Wendell Holmes, Jr., *The Path of The Law*, 10 HARV. L. REV. 457 (1897), reprinted in *COLLECTED LEGAL PAPERS* 167 (1920).

⁴ MARCEL DUCHAMP, *SEMINAR ON CONTEMPORARY AESTHETICS* Houston Texas (1957), reprinted in CALVIN TOMPKINS, *THE BRIDE AND THE BACHELORS - FIVE MASTERS OF THE AVANT GARDE* 9 (Penguin Books 1968) (Seminar lecture reminiscing the ideals of the early 20th century Dada movement).

⁵ *Lochner v. New York*, 198 U.S. 45, 74 (1905) (Holmes, J., dissenting)




⁶ *Id.* at 76.

⁷ *Id.* at 75.

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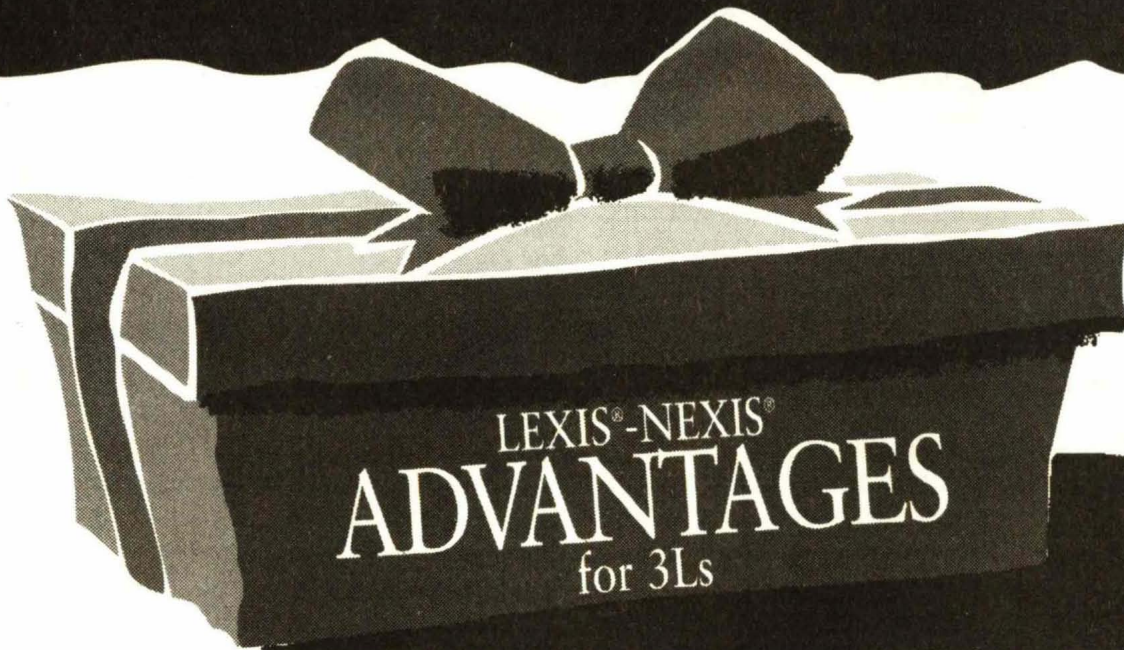
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LAW AND POPULAR CULTURE

Professor Spencer Weber Waller
Professor Anthony Sebok

"More than 15 Movies Reviewed Since 1993"

Instead of being trapped in dialectical reasoning, we draw on the teachings of postmodernism to search for the excluded voices that lie beyond either-or propositions. Therefore, we offer a Zen koan of a trivia contest: Why did we choose to review these particular films?

All entries must be submitted in writing or e-mail to Professor Sebok by April 30. All winners will be acknowledged in the next issue and one winner drawn at random will be awarded the opportunity to prepare a bonus mini-review for the next issue. All decisions of the judges are final. All employees of Brooklyn Law School and winners of trivia contests within the past thirty days are not eligible, but students and faculty at Boston University and Vanderbilt are welcome to enter.

We are also pleased to publish, albeit belatedly, a guest review from our last column that didn't quite make it to us before we went to press. As you may recall, we announced earlier that Professor John Goldberg of Vanderbilt University Law School offered to join our debate over law and popular culture, and we are honored to include his review of *Toy Story* in this issue. However, the review below clearly suggests that Professor Goldberg, our favorite faux-Southerner, has become a victim of suburbia, and we invite him to drive his minivan back to New York City any time he likes.

* * * * *

Down Periscope

SWW: The opening of *Down Periscope* provides a perfect opportunity to discuss the screen writing career of Andrew Kurtzman, my college roommate at the University of Michigan. After a brief stay at Barnes & Noble, Andy began writing for *Saturday Night Live (SNL)* during the Eddie Murphy years. These were the years originally referred to as the period after the original cast had left, but now generally referred to as "back when the show was funny."

After a couple of years, Andy and his SNL writing partner, Eliot Wald left the show to write for the movies. They have sold an enormous number of scripts that were not ultimately produced, acted as comedy doctors for other people's scripts (*The Distinguished Gentleman & The Super*), had their first drafts rewritten so you wouldn't recognize it (*The Scout*), and turned down a number of sequels like *Major League II* and *My Cousin Vinny II* (so far unproduced but the premise is that Vinny goes to London and has to try a case at the Old Bailey).

And yes, he previously has written a number of things that actually have his name on it in the credits. Andy wrote a pilot for PBS called *Channel Zero* in which I had a brief non-speaking appearance as a rabbi, a T.V. movie called *Hot Paint, Hear No Evil, See No Evil, Number One With a Bullet* and the underrated *Camp Nowhere*.

Down Periscope bears all the hallmarks of a Kurtzman-Wald film. It's zany, it's wacky, and it is better than what you would expect for a comedy of this genre. But comedies of this genre come with some baggage. In this case, the movie came with a director who thought he was a writer (just because he won an Oscar for *The Sting* 25 years ago), a writer of the first draft whose claim to fame was *Police Academy*, and a star who expressly demanded not to be given any jokes, under the mistaken impression that he was Henry Fonda in *Mr. Roberts*."

In the end, you get a loveable cast of misfits engaged in bizarre and reckless tactics to outsmart a bunch of better equipped, but highly repressed, rivals in naval war games. It's all good fun. Moreover, it has surprising high production values, and is highly watchable. Kelsey Grammar has a pleasant screen persona that arguably is different from his character on *Frazier*. The crew, led by "Sonar," each have comically dysfunctional personalities that combine to make this movie a laugh riot, or at least a laugh civil disturbance. I rec-

commend this movie both on the merits, and because the more it makes, the more Andy makes. And the more Andy makes, the more money he spends on his Christmas presents, especially to old roommates who suck up shamelessly in print.

AS: As the reader may have noticed, SW² spent the balance of his review *not reviewing this movie*. In fact, if it were not for his former roommate, it is not clear to me what critical insights my partner would have to offer about *Down Periscope*. On the other hand, I can see why he took the easy way and tried to distract the reader with three paragraphs about Andy Kurtzman: there is only so much you can say about this frothy Kelsey Grammar vehicle.

There are two sorts of persons who would really like this movie: ten year old boys and submarine movie fanatics (I know: sometimes these sets intersect). Young boys would enjoy *Down Periscope* because of its full menu of bathroom humor—the sort of jokes that still form the core of any good episode of *Beavis and Butthead*. Director David Ward deserves credit for staging familiar routines involving bodily functions, the mysterious female body, and harmless practical jokes with what appears to be sincerity, if not enthusiasm. For those who love submarine movies, the script is a sly send-up of the genre. Both *The Hunt for Red October* and *Crimson Tide* were impressive, but they took themselves so seriously—Sean Connery and Gene Hackman acted like their subs were floating churches. There is something weirdly satisfying about watching the “Sonar Scene” (a prerequisite in every submarine movie) get taken to its bizarrely logical extreme, and I did enjoy Kelsey Grammar dressing up like a pirate.

Finally, stuff gets blown up in the end, which I think is always a good thing in a movie.

Beautiful Girls

SWW: Everyone I know over the age of thirty (including my college roommate Andrew Kurtzman) hated this film with a red hot burning passion that does not fade over time. This is supposedly an ensemble film with *Big Chill* aspirations. It really is neither. The cast has recognizable names but no real star power or talent. Matt Dillon radiates stupidity with every pore of his being, and it is by no means clear that he is acting. A number of the other so called stars are merely annoying or have so little screen time that it is impossible to tell what they are doing. Lauren Holly is merely embarrassing. Timothy Hutton is throwing away whatever second career he has frame-by-frame.

The writing is hideous, culminating in Hutton standing on a skating rink whining to a precocious thirteen year girl “I’m not your Pooh” as if this is the sole reason why a 30 something year old man might not be the perfect soulmate for a girl in the seventh grade.

The only resemblance to *The Big Chill* is a soundtrack with songs that you remember from a long time ago. Only these are the songs that annoyed you and forced you to change the radio station in the car in high school. Particularly excruciating is a bar scene where everyone spontaneously begins singing Neil Diamond’s “Sweet Caroline.” Everything about this film was either derivative, low rent, or both, except the ever reliable Uma Thurman who does what she can to save a role that makes no sense.¹ The only other positive sign was Natalie Portman who plays the 13 year old girl who lives next door to Hutton’s family. Her talent is so radiant that in the next five years she will either be one of the brightest stars in Hollywood or the most annoying over-exposed 18 year old on the planet. My wife hated this movie so much that she wanted to leave after the first twenty minutes. If only she had told me.

AS: *Beautiful Girls* should be a better movie than it is. It actually builds on the basic theme of “Diner” (the movie it is clearly ripping off): it tries to suggest that one big reason why young men have trouble with adulthood is their adolescent view about women. To this end, writer Scott Rosenberg (who did not room with Professor Waller) gives us a wonderful monologue, delivered perfectly by Rosie O’Donnell about the way pornography ultimately makes men miserable.

The movie doesn’t work, and I think the reason for this rests mostly with the fact that the male half of the ensemble is not just immature, but unbelievable. Matt Dillon and Michael Rappaport, the friends to whom Tim Hutton’s character returns, are supposed to be regular guys, but their “everyman” symbolism is undermined by the fact that they seem to possess the verbal and social skills of troglodytes. Near the end of the film one gets impatient with the premise—you begin to wonder why the nice, attractive and normal women of this small town in Massachusetts would want to marry, much less reproduce, with these guys.

BONUS GUEST FACULTY REVIEW

Professor John Goldberg²

I wish to thank Professors Sebok and Waller for the opportunity to contribute to their timely and important dialogue. I particularly appreciate their willingness to entertain a broad spectrum of viewpoints, including those of suburbanites (am I to infer that Kings County has formally seceded from the rest of Long Island?). In the same spirit, I have endeavored to converse here in language accessible to black-clad urbanites.

Toy Story

Toy Story simultaneously confirms the claim of neo-radicals that Hollywood is horribly complacent and the claim of neo-puritans that Hollywood is abhorrently wicked. Thus we have confirmation that the two groups share the same beliefs.³ The movie's central conceit is to reverse the priority of the animate over the inanimate. As usual for the film industry, there is nothing but rank conservatism in this purportedly radical change of reference. Toyland is not wonderland, but Wonderbread.

The protagonists are the cowboy-toy Woody (voice of Tom Hanks) and the astronaut-toy Buzz (voice of Tim Allen), respectively the established favorite and pretender among a healthy crop of toys owned by a young boy.⁴ It goes (almost) without saying that these two toys are the quintessential signifiers of the dominant ideals of violent and imperialistic Anglo-Saxon culture. As usual, an attempt is made to blunt these unpleasant associations by imposing on Woody and Buzz the currently-reigning, and laughably improbable, Hollywood idealization of the American male. Both are self-centered, but in a charming not boorish way; both are earnest, but in an endearing rather than overbearing manner; both are brutish and simpleminded yet savvy and compassionate at appropriate moments. *Toy Story's* reactionary agenda finally gives up the game — it reminds the Woodys and Buzzes of the world to redirect their uncontrollable competitive and destructive urges away from each other and toward the foreign and domestic forces that pose the real threat to their place of social privilege.

Inspection of toy society further reveals an unredeeming, anomic account of human existence. Among the toys, there are no families, no associations, no bonds other than a minimal and fragile social contract (broken, as it turns out, by the

slightest strain). Things only get worse as we shift attention to the parallel human universe. Father is nowhere to be found. Mother, albeit present, serves mainly as the deliverer of consumer goods. No supervision is provided, no lessons imparted, no virtues instilled.

Nor does it take Max Weber to see that this film is the apogee of modernism's bleak exaltation of science over humanism, naturalism and religion. The salvation of Woody and Buzz lies in their ability to harness technology. Humans are at one level subordinated to products, at another displaced by them. Creation is reduced to artifice, manufacture. *Toy Story* is, in the end, the sound of the "iron cage" of purposeless instrumental rationality and pointless consumerism slamming shut. Thus in a moment of eery confirmation did my two-and-a-half-year old calmly depart the theater after 15 minutes, heading in a bee-line across the mall to F.A.O. Schwartz.

¹ Pop Quiz: If you were Uma Thurman having a perfect life in Chicago, would you schlep out to some dying milltown in Western Massachusetts in the middle of winter so you could be slobbered over by the friends of your loser cousin named Stinky who owns the local bar?

² Guest reviewer, Vanderbilt University School of Law. I have no credentials relevant to this undertaking.

³ OK, maybe it only demonstrates the under-determination of film theory by film fact.

⁴ No toy gives voice to Susan Sarandon or Angela Basset. Quite the contrary, a Little Bo Peep doll is improbably added to the boy's collection solely as an excuse to provide a Donna Reed to Hanks' Jimmy Stewart/Woody. A PC scrap is tossed in the form of a younger sister who turns out to be clever in an Olsen twins, rather than Lisa Simpson, kind-of-way. But the sister, like all the human characters is irrelevant, see *infra*.



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Sub Silentio

By Muriel Richards

Recently, my resolute belief in not disclosing my status as a law student to people at random was resoundingly affirmed. Now, please do not misunderstand—the reasons for my taciturnity do not stem from feelings of shame. Rather, I keep my own counsel (pun intended) regarding my legal studies for reasons that concern the reaction of others to this knowledge. Perhaps a couple of examples will serve to elucidate the message. A few weeks ago, I was sitting in the dentist's chair, waiting for the novocaine to become effective prior to the root canal treatment. I was not especially nervous at first—my canals have seen more work than the City of Venice. But, when the dentist hovered menacingly next to me with the drill and said, "Your aunt informed me that you are in law school", I broke out in a sweat. My extensive dental history makes me a natural choice from which to obtain a recommendation for a dentist. So when my aunt's dentist retired, she asked me who I used. I (rather foolishly, in hindsight) did not hesitate to tell her. I obviously underestimated her ability to impart information about my life while simultaneously rinsing her mouth. I realize at this point, some of you will be thinking, "What is the big deal?" I am aware that some of my classmates advocate informing dentists, physicians, etc that one is a law student. They claim that one will be less likely to be the victim of negligent treatment as the professional will realize your vast potential as a litigant. I do not agree with them, for reasons that should become abundantly clear momentarily.

Fleetingly, I considered denying having an aunt. I decided, instead, to be silent, hoping the dentist would take the hint. Of course, he did not. As he perched the drill right over my sore tooth, he said, "So, you are a law student. Well, well". Fervently praying that he had not recently been the defendant in a malpractice claim that settled for \$1.2 million, I nodded in the affirmative. I know that I can never prove it, but he got this gleam in his eyes as he increased the power of the drill. "You have taken property law, already, I suppose?" he queried. I made a noncommittal noise, but that did not deter him. (I have always wondered why dentists do not take this rare ability to understand even the most unintelligible (to adult humans)

sounds and apply it where it is really needed, like communicating with the dolphins, deciphering the chatter of toddlers or translating political speeches into the vernacular.) I said "yes" as best as one can while experiencing root canal. "There are different rules in property, aren't there? Adverse possession, etc, right?" Wonderful! The fate of my tooth was in the hands of someone who would rather be conveying titles than cleaning teeth! Ignoring what must have been the sheer look of terror on my face, he continued. "So, what can you tell me about the Rule against Perpetuities?" At that precise moment, I knew that several provisions of the Universal Declaration of Human Rights were being violated. Like everyone else who has attended law school, I have endured the cruel rituals of the Socratic method, studying for finals, scrambling to obtain the model answer before the class magicians make it disappear—but this went beyond the bounds of acceptable sadism. I briefly considered using a BLS professor's favorite line, "Free advice is worth the price that you pay for it", but decided that such a response would not be sagacious while every nerve in my tooth was at the mercy of the inquirer.

I managed to extricate myself from the dentist's chair before he could get around to asking me what the United States Supreme Court's current position is on the Establishment Clause. Thankful to have arrived home with equal the number of teeth I had when I left earlier that day, I was reading a casebook when the telephone rang. I answered it unhesitatingly, expecting it to be the dentist's receptionist, requesting that I return the lead apron that I ran out of the office wearing. When I heard the voice on the other end, my hair stood on end. I wished I was back in the dentist's chair. It was the voice of my third grade teacher, who I will refer to as "Ms. Wizeden". For those who had a teacher like Ms. Wizeden in their formative years, an extensive explanation will not be necessary. For those who were not subject to this special blend of torture/education, no explanation would suffice. When a Marine Corps. boot camp sergeant visited our class on career day, he described her as "a little too harsh". For years, I considered the semester spent under her tutelage as one of needless suffering. That is, until I began law school. I suppose one

of the chief reasons I was not more traumatized by the first year was because anything that the law professors threw at us was child's play compared to what Ms. Wizeded had dispensed over a decade ago. (Rumor has it that once this was discovered, she began teaching a mandatory weekend seminar for all first year professors.) My seven year old cousin, Andrew, is currently enrolled in her class. She reportedly has mellowed with age, but I have my doubts. Once a fire-breathing dragon, always a fire-breathing dragon. So, I just managed to stammer, "Why, why, why, are you calling me?" "Do not stutter. You never stuttered when you were in my class. Is that what they have taught you in law school-how to stutter?" she asked, in that same tone that she used to inquire about the status of one's homework. "No, and, and, and how do you know that I am in law school?" I asked, a chill running down my spine. "I have my ways. However, this call is not about you. I am calling you about Andrew. Now, do not be alarmed. He is perfectly fine. I want to know exactly what you were thinking when you informed him that he does not have to do his classwork because his cousin is studying to be a lawyer." For a moment, I did not know what she was talking about. True, I had bought Andrew a child's attorney kit. It was pretty inclusive of what one would find in an attorney's office. It contained billing forms, retainer agree-

ments, checks-everything but the dorsal fin. But, I had never told Andrew that he did not have to do his classwork. "The class can continue to wait for an answer." she said ominously. "I do not know what you are talking about. I never told him that he did not have to do his classwork. He must have misunderstood something in the attorney's kit that I bought him." Then, feeling uncommonly brave, I decided to use a couple of favorite attorney phrases. "Ms. Wizeded, what reasonable person would foresee..." She interrupted me, "I am not a reasonable person and have never purported to be". (Now, I ask you, how does an attorney manage someone who does not care if they are viewed as "unreasonable"?) Ms. Wizeded and I decided that Andrew put a tad too much reliance on an attorney's ability to defend a client. I almost escaped from this interchange unscathed when Ms. Wizeded said, "Oh, and there is something else. I never received your book report on 'My Favorite Adult'". I responded, "But Ms. Wizeded, I am in my twenties! Surely, you cannot expect me to complete a book report, especially on a topic like that!"

I trust that the two examples cited supra will be sufficient warning that one should not divulge one's career aspirations indiscriminately. Now, if you will excuse me, I have to attend to a pressing matter. "My Favorite Adult is..."

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ATLANTA, GA	Southern College of Technology - Student Center - Marietta	1:30PM
AUSTIN, TX	DEFINITE - Location to be Announced	
BERKELEY, CA	UC Berkeley - Boalt Hall	1:30PM
BOSTON, MA	Boston Univ. School of Law	9AM/1:30PM/6PM
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	B - Westside -	
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