5-2004

De Novo, May 2004

New York Law School

DE NOVO
this moment is always new
MAY 2004

UNDER NEW MANAGEMENT

(BECAUSE THE REST OF US ARE OUT OF HERE)

It has been two years since the birth of De Novo. The name it self it a prophecy of sorts. The nature of law school is such that people come and go and so Law Review, Moot Court and all extra curricular activities must be continually refreshed by new members, with even more commitment and greater vision than those who came before. De Novo is no exception, and a group of committed, bright and motivated students have stepped forward to carry the torch.

DeNovo can provide a valuable service to the law school community. Our goal was to provide something for everybody, from current events to school news to humor. It has been an enjoyable adventure trying to accomplish that goal and we know the new team will be successful in their endevours.

When DeNovo was first published it was warmly received with great support from the student body and the administration. As the new management takes over we hope they will be received the same way and those interested in being part of the community dialogue will look to get involved and offer their own insights into an array of topics.

Thank you to all those who contributed to De Novo. Now we must be on our way. Thank you New York Law School.

ALISSA HERNANDEZ - 2L EVENING

ASHA SMITH - 2L EVENING

NERISSA COAN - 2L EVENING

ALICE KING -2L EVENING

SOCIAL REVOLUTION OR NO REVOLUTION:

Government Surveillance Lives On

by ALISSA HERNANDEZ

In the 1950's, with the help of J. Edgar Hoover, then Director of the Federal Bureau of Investigation, America's communist paranoia continued to thrive even though Joseph McCarthy had become unfashionable. Corruption abound, Hoover launched his Counterintelligence Program (COINTELPRO) in 1956, under the guise of preventing violence, maintaining order by "neutralizing" those perceived as political dissenters and most importantly, protecting national security. In a similar fashion, about one year ago the government implemented the Patriot Act to "deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes."

Over two thousand operations were conducted by COINTELPRO before its demise in April 1971, including those labeled by the FBI as "The Communist Party USA", "Socialist Worker's Party", "New Left", "Black Hate Groups" and "White Hate Groups". Groups seeking independence for Puerto Rico, such as Movimiento Pro-Indepedencia de Puerto Rico (MPIPR) and Federacion Universitario Pro-Independencia (FUPI), were not overlooked, mostly due to support of their cause offered from Fidel Castro. The Communist Party of Mexico was also under the Bureau's

GUILTY- THE MARTHA STEWART STORY

by ASHA SMITH

Guilty on all counts! She's going to jail! Yeah! "Victory for the little man!"...Just headlines and sound bites from the day that the Martha Stewart verdict was announced.

The Martha Stewart Trial bothered me...a lot. First, Martha Stewart (hereafter, MS) was heavily vilified in the media. The amount of attention paid to situation surrounding MS was off-kilter in comparison to the way that the former Enron executives and their heinous acts are **not** being discussed any longer. For some perhaps, it is not a matter of the amount of money that is important, but the action itself. That is a valid point, but if one chooses to view the situation in that manner, one must also see that on a scale from zero to ten, MS (involving an amount less than $100,000) was a "one" and Tyco and Enron (involving amounts in the millions) were both "ten plus." There is no comparison. Whose actions had the most detrimental effect on our society?

When the "guilty on all four counts" verdict was released, I was surprised that the jury found her guilty beyond a reasonable doubt on **all** four counts. The four counts were: (1) conspiracy to obstruct justice; (2) obstruction of justice; and (3) & (4) two counts of making false statements. For Martha Stewart to have been found guilty on all four counts means that the government not only established each element of every charge, but that the jury unanimously found that the evidence presented by the prosecution proved MS's guilt without question. True, MS did not take the stand in her defense. This was probably a strategic maneuver of her legal defense team - in essence, saying that the testimony of the witnesses and evidence presented by the prosecution, were questionable enough to put reasonable doubt in the minds of the jurors. Obviously...that strategy did not work.

In their initial and subsequent discussions with Securities Exchange Commission (SEC) and FBI Investigators, both MS and Peter Bacanovic (her broker; hereafter PB) stated that they had spoken on a previous occasion about selling MS's Imclone stock if the price of the stock dropped below a certain point. Neither MS nor Peter Bacanovic ever waivered from this version of events.

So why was the prosecution's evidence against Martha so convincing to the jury? The trading assistant, Douglas Faneuil (hereafter DF), the prosecution's star witness, had a credibility issue. According to various media reports, DF said he came forward because his "conscience told him was the right thing to do." But little mention is made of the deal he cut with prosecutors to avoid jail time, because of his illegal behavior. DF testified that PB told him to tell MS that Sam Waksal (former founder and CEO of Imclone, who is serving a 87 month prison sentence for Insider Trading and Fraud) was selling his stock, thus disclosing to her information that supposedly was not available to the general public. But the prosecution was not able to prove that MS sold her stock based on information not known to the public (if this were the case, she would have been convicted of "insider trading" and "fraud" along with Waksal) If they could not prove that MS and PB were guilty of "insider trading," then what "justice" were they "obstructing" and what "false statements" were made by PB and MS if there is no proof that she a serious securities violation was committed in the first place? Obviously, the actions of the government were "legal," because it went before the Court. But should the matter have gone before the Court?

The media has portrayed MS as so afraid to lose money, that she sidestepped the law to avoid having monetary losses. That is why one

A MOMENT OF CONTEMPLATION

LEARNING IS THE ONLY

WEALTH TYRANTS CANNOT

DESPOIL. ONLY DEATH CAN

DIM THE LAMP OF
KNOWLEDGE

THAT IS WITHIN YOU. THE

TRUE WEALTH OF A NATION

LIES NOT IS ITS GOLD OR
SILVER BUT IN

ITS LEARNING, WISDOM, AND
IN THE

UPRIGHTNESS OF ITS SONS.

- KAHLIL GIBRAN

De Novo

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Luis Moreno Ocampo & The International Criminal Court.

by Nerissa Coan

On March 24, 2004 Independent Prosecutor, Luis Moreno Ocampo, spoke at the 2004 Otto L. Wallace Lecture, presented by the NYLS Center for International Law. Mr. Ocampo is the Chief Prosecutor for the International Criminal Court (ICC). Mr. Ocampo has been involved in high profile public interest cases, including the extradition from Argentina to Italy of Nazi officer Erich Priebke, and the trial of Chilean secret police for the murder of Carlos Prats.

The ICC was established by the Rome Statute of the International Criminal Court on July 17, 1998. States participating in the "United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court" adopted the Statute, which has been ratified by over 90 States Parties. The ICC was created to try persons accused of genocide, war crimes, or crimes against humanity.

In addition to the independent prosecutor, Mr. Ocampo, the Court is composed of 18 judges, who are permanent members of the Court, and are elected by the Assembly of States Parties (a body composed of all parties to the Statute), in a secret ballot election. The judges are selected for their competence in criminal law and procedures, or relevant areas of international law, such as international humanitarian law and the law of human rights.

States Parties and the United Nations Security Council can refer situations to the Office of the Prosecutor. Because the ICC is a court of last resort, it can only hear cases that States Parties are unable or unwilling to hear. Their jurisdictional reach is also limited by the residency of the individual to be tried. For the ICC to gain jurisdiction over an individual, they must be a resident of a Signatory State. The ICC also has jurisdiction over individuals from a State Party, for crimes committed elsewhere.

Ocampo stated that the ICC's objective is to get referrals from States Parties to handle international clients of signatory states, or international victims. Without referrals, the ICC cannot initiate an investigation. Once a referral is obtained from a State Party or the UN Security Council, an investigation may begin. The Office of the Prosecutor is divided into three key areas, one of which is the Investigation Division. The Investigation Division will include staff members who are nationals of the countries that are being investigated. This method has two results. First, it will help weed out individuals whose background or political affiliation would create a conflict of interest. Second, it will give the ICC a better understanding of the cultural and social norms of the State where an investigation may take place.

The ICC's investigative methods are similar to those employed in the investigation of any crime. For example, Ocampo described following a money trail to determine not only that a crime had been committed, but also to determine the leadership that is responsible for the crime.

In the case of mass crimes, such as genocide, Ocampo described the dilemmas that face the ICC: uncertainty as to how to compensate the victims; where the compensation should come from; and what form the compensation should take. According to Ocampo, "the victims don't need money. They need education, food, and peace." He suggested that the way to get these necessities into countries like Uganda and the Democratic Republic of the Congo is to organize the business community to become involved in international markets, instead of limiting themselves to commerce in the American, European, and Japanese markets.

With each passing year, advances in technology and communication increase our awareness of human injustice all over the globe. The formation of the ICC is a natural response to this increased knowledge of genocide, crimes against humanity, and war crimes. The goal of the ICC is ensure that these gravest international crimes do not go unpunished. It will be interesting to see how their first case unfolds.

FACULTY PRESENTATION DAY

by Asha Smith

As a first year student with professors predetermined mandatory classes, Faculty Presentation Day was an opportunity to see and listen to professors whom I might want to take classes with in the future. The school sends you a faculty face/bio book at the beginning of your first year in law school with these austere pictures and their list of credentials, but seeing a professor as a living breathing human being is substantially more informative than a two dimensional picture and a paragraph of two about her accomplishments.

Unfortunately, I didn't see too many of my classmates there, nor did I see a lot of students period. But at my table, for each event, there were students, alumni and faculty; so there was a good mix. One alumna told me which professors he thought was good and to get Gannon for Civil Pro (N.B: already had it.) and talked about what he was doing after graduation. Then we listened so attentively to the faculty as they gave their presentations. I was only able to see two presentations: "Sexuality and the Law" and "The Impact of Brown v. Board of Education." I did not stay for the full lectures at each event, but certain presentations stand out for providing me with a new or entirely different outlook on various issues.

At "Sexuality," Professor Newman did a presentation on Melzer v. Board of Education. Melzer was a teacher in New York State who lost his job and had his right to privacy violated after it was discovered that he did not believe that sexual relationships between men and boys should be illegal. Melzer, of course, never engaged in any harmful behavior towards his students (he was a public school teacher), yet he was vilified in the media and lost his job, because of his private beliefs.

An interesting fact I learned from Professor Leonard's lecture is that other countries consider decisions that our Supreme Court decisions as persuasive, while the United States' judicial system has thus far refused to consider high court opinions from other developed countries as persuasive. I can't say that I was surprised that our judiciary would not consider the legal opinion from other countries, but was surprised to learn that other judicial systems lacked that prejudice.

At "Brown," Professor Benson spoke about various legal/illegal resident statuses that exist for people from different countries, who currently reside in the United States. I had no idea that there were so many different issues in Immigration Law. Other than the infrequent situations on news report about those in immigration limbo, I would never have known that such a myriad of INS designations. Professor Ellmann spoke at length about the fact that Justice Brown of the Supreme Court that decided Brown really wanted to vote in opposition of the other members of the bench. Ellman discussed the possible concessions that were made by the various Justices in order to issue an unanimous opinion. Again, I learned something new.

By attending Faculty Presentation Day, I got a better understanding of the scholarship in which some of the professors here are engaged. It's good to know.

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MARTHA STEWART

CONT

enters the stock market, to make money, not to lose money. When trading, one always wants to minimize risk and reduce exposure to any losses. By completing the sale of her Imclone stock, MS avoided a loss of less than $60,000, which compared to her net worth is comparable to you and me losing the cost of a Starbucks venti latte. One knows when entering the stock market that those risks are there and that it is possible that losses might occur. Therefore, it was entirely plausible that MS and Peter Bogdonovitch previously discussed selling MS's Imclone stock when it reached a certain point. The National Association of Securilites Dealers (NASD) and the New York Stock Exchange (NYSE), have rules that require documentation of trades and orders to sell at a certain price and prohibit trading stocks based on information that the general public is unaware., Theoretically there should have been a record if an instruction to sell at a certain price ever existed. The prosecution established that PB had altered such a document to reflect the instruction to sell at $60. MS bought the stock at a certain price, hoping that it would increase in value, thereby making a profit. When it looked as if the stock was dropping in price, she sold. MS and PB said that when the stock started selling at $60, she wanted to sell to decrease her losses in her initial investment. This means that a record existed that had an order to sell the Imclone stock, but the price at which to sell did not exist until after the trade was made. According to the law, not having the notation about the price at which the stock should be sold is illegal, as is changing the record to reflect a trade after it was made if there was no prior documentation of the trade instructions. However, there are other "practices" in the financial services industry that sometimes occur. These are the practices that no one wants to discuss.

It is only in the Post-Enron era, that brokerage firms are being watched under a microscope. Now, industry insiders are much more careful in transacting business. Traders (buy and sell stocks for brokers or large institutions) and brokers (buy and sell stocks on behalf of their clients) share information with each other. Brokers share information with their clients. If someone has been your client for ten years, the level of trust between the broker and the client is high. That client believes that the broker understands the market, is able to make investment recommendations based on that knowledge and is in general working hard for the client in exchange for substantial fees (depending on the amount traded/invested in the account).

While it is true that a broker and client have a signed agreement stating what the broker is allowed to do as well as being prohibited from doing on the clients behalf, sometimes brokers do act outside of the agreement. Imagine this scenario: a broker has a friend who attended the same school. One day the friend comes to her and says that she would like to start investing in the stock market. The friend becomes a client of the broker and an account is established. Big changes in the client's portfolio do not happen often, but occasionally, because of market conditions, losses to the account occur. The broker, not wanting the friend to lose any money, "moves" the losses from the friend's account to her own. This is illegal. But, well it has happened. The client/friend was not consulted before the broker took this action. Do you think the friend minded that her broker/friend "looked out" for her interests? Does this scenario seem like it could actually happen or does it seem just like a fanciful tale? Based on how you answered the last question, you may "see" that it was possible that PB had an order to sell MS's Imclone stock when it dropped below a certain price and that the information recording the instruction was not written down.

A bigger issue here, ignored by the media and the public at large are the real industry practices as opposed to what the law says must occur. For the large part, there is compliance, but the government is not at the brokerage firm or the trading firm every day. The government and the various stock exchanges, rely on the industry to monitor itself and the actions of its employees. There is another culture at work here and no one talked about it before, during or after her trial. What really goes on the industry? Who are the brokers and who are the clients? Are all the "i's" dotted and all the "t's" crossed in every transaction – especially among friends? What do you think? If there are all these protective measures in place, how was the trade completed at all?

I highly doubt MS and PB are not the only ones that have been involved in a situation like this one. MS, being a highly recognizable person is a face people know and it made it that much easier for her to be prosecuted because of that "recognizability." She was "pre-tried" in the media. Had this situation involved an unknown person and her broker and the charges were the same and the prosecution's star witness was the trading assistant that did the trade, its probable that there would have been more reasonable doubt in the minds of the jury.

Speaking of the jury...a couple of days after the verdict was released, six members of the MS jury appeared on NBC's "Dateline." It was mentioned that the jurors had wanted to hear MS's version of events to contrast the framing of events presented by the prosecution. Additionally, some of the jurors felt that MS's own witness, her best friend (probably "ex-best friend" by now) said something damaging at the end of her testimony that was particularly damaging to MS and factored heavily in the jury's belief that MS was guilty on all four counts. There was one juror who just seemed "too eager." On "Dateline," he made a couple of statements that were extremely biased. He said "they thought they were so smart." He also said "it was a victory for the little guy." When I heard those statements in concert with his eager disposition, I had my doubts about his objectivity. I said to myself " this guy was on the jury?" and "he's saying all this on national television?" I could see was his hostility and though I could understand being hostile after having to be stuck deliberating with 11 other people, his hostility was unsettling in a "X-Files" sort of way. It just didn't add up.

Stewart's attorneys must have also felt that he should not have been on the jury, because they are requesting a new trial based on information about that juror which was discovered after the verdict was rendered. (They probably saw "Dateline" too!) Specifically, it was alleged that he lied on his jury questionnaire about incidents in his past. He certainly misled the court about his ability to be "impartial" during the proceedings based on the statements he made. One could argue that he perhaps became "indignant" during the trial after hearing the prosecution's evidence against MS. But it seemed that he took the MS case too personally, as if her actions were directed at him. It also seemed that he harbored resentment of the rich. This does not mean that some, like the "eager juror," who are in a lower tax bracket do not harbor some resentment against those in a higher tax bracket, but an attempt must be made to put that resentment aside when serving as an "impartial" jury member. It appears as if did the opposite. The swiftness and bitterness with which he uttered his post trial comments belie his objectivity, in essence preventing MS from having a fair, impartial trial.

If the court determines that MS did not have a fair and impartial jury, then she deserves a new trial.

I guess that question has been answered.

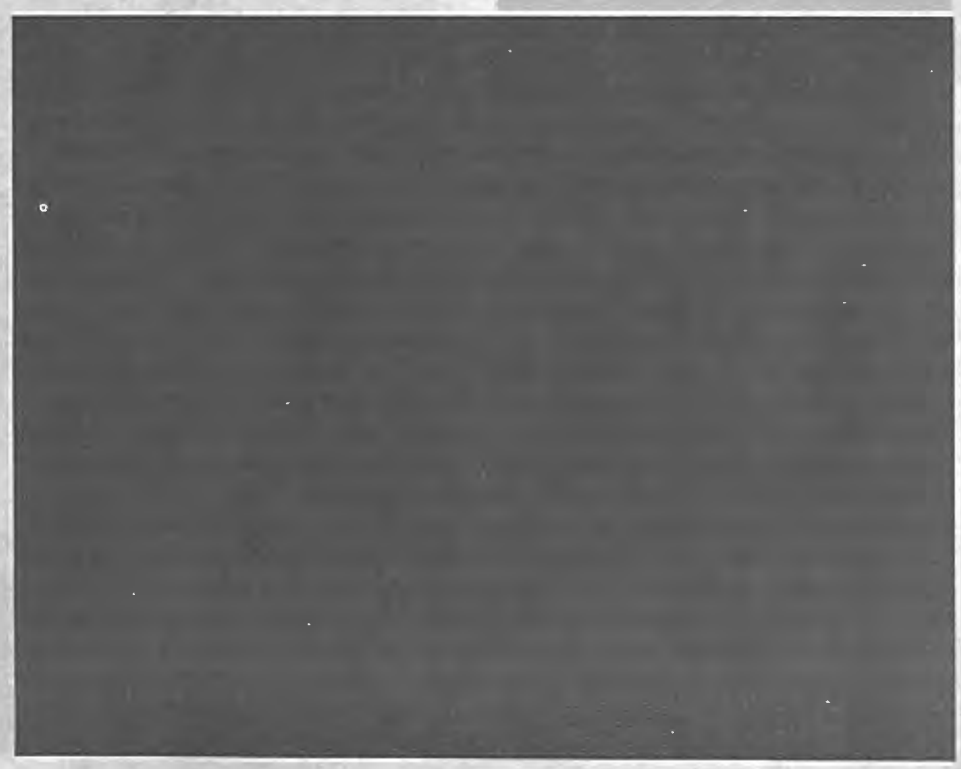
SO WHAT

by Asha Smith

When I first began to write this article about "same-sex marriage," I thought I would approach it from a legal standpoint. A year-long indoctrination of "what is the issue?" and stare decisis interfered with my straightforward opinion. Then I decided that since this matter is likely to be tied up in the courts for years to come, I could always discuss the issue on its legal merits at some point in the future. This article is a starting point for the future discussions.

I am very curious to know if people are opposed to the idea of marriage between same sex partners because in their mind marriage = man + woman. I have been reading news reports and watching various television reports on the subject and it seems that some people are opposed to "gay marriage" on that front. When asked if "marriage" between two members of the same sex were called a "civil union," and if such a union would provide the exact same benefits and privileges as "marriage" would there be any objection, some people say "no." Others say that they would still be opposed to such unions. That's the part that I can't figure out. If a "civil union" does the same thing as "marriage," that is, gives same sex partners the same rights as heterosexual married couples, but is called by another name, then there is essentially no problem. A problem does arise if "civil unions" do not do the same thing as "marriage" or rather, limits the rights of same sex partners in a legally sanctioned relationship. If that is the scenario, what we would be saying as a society is that "you are not the same/equal to (us) and therefore you are not entitled to the same rights.

Personally, I don't particularly care if it is called "marriage" or a "civil union." It seems weird to me to be calling it "gay marriage." It's like saying marriage between blacks should be called "black" marriage or marriage between whites should be called



MOST COMMON NAME IN THE WORLD IS MOHAMMED

SOCIAL REVOLUTION CONT.

microscope via its Border Coverage Program. The Border Coverage Program was a special unit of COINTELPRO formed to investigate communist party activity in Tijuana. Any individual or organization who participated, to any degree, in civil rights or anti-war activity or who was just simply thought to be part of a "communist front organization," was kept under the watchful eye of Hoover's COINTELPRO. Included were Columbia University, Malcolm X, Stokely Carmichael, Jane Fonda, Fred Hampton, Southern Christian Leadership Conference, Students for a Democratic Society, Students Nonviolent Coordinating Committee, Marilyn Monroe, Dr. Martin Luther King, Jr., National Lawyers Guild, Bobby Seale, H. "Rap" Brown, John Lennon, NAACP, Teamsters...

The Bureau attempted to dismantle these organizations and discredit their members through the use of spy-war techniques similar to those used against espionage agents. For example, they would often send anonymous letters to a member's spouse accusing their target of infidelity. They also sent fabricated stories about a particular target to newspaper gossip columnists who would cast the member as a traitor or as untrue to his cause. Organizations were infiltrated by use of informants who were sent to various meetings, raising issues of controversy in order to cause dissent. They also used the "snitch jacket" method where they would, usually by work of an informant, falsely label a group member as an informant so he would no longer be trusted. COINTELPRO generally incited tensions between any organizations they felt might unite to create a stronger presence in society. This was done in an attempt to create violent behavior that would ultimately end in an organization's destruction.

The tactics used by the FBI's COINTELPRO, to "disrupt" or "neutralize" groups who they deemed a threat to the country, were violations of First Amendment rights. They made great efforts to prevent communist speakers or others they felt had a negative attitude about the current political situation, from lecturing at college campuses, rallies and public meetings. Prevention of organizations' newsletters and pamphlets was a top priority, implemented to stop the spread of their philosophies and to deter recruitment of new members. Even more absurd, COINTELPRO targeted teachers because they believed educators were in a prime position to "plant the seeds of communism in the minds of unsuspecting youth."

Hoover's paranoia reached new heights when he declared that the Black Panther Party (BPP) was "the greatest threat to the internal security of the country." The BPP sought to establish a revolutionary social movement through mass organizing and community based initiatives. They achieved this at times by violent means, but many other times by non-violent means, such as by implementing outreach programs. Fred Hampton, leader of the Chicago chapter, began the Free Breakfast for School Children program, opened a free medical center, started door-to-door health services including testing for sickle cell anemia and encouraged blood drives at the Cook County Hospital. With information gathered through FBI informants, the police raided the Chicago Panther apartment, where 21 year-old Hampton met his untimely death by assassination - but this is a discussion for another article.

Between the social revolution of the 1960's and the end of the Cold War, society has changed tremendously. It is the rare group or individual who is *really* down for change and willing to take the type of risks taken by Hampton, Carmichael and the BPP. Maybe this is because many people believe the United States is a country of free speech, one that naturally embraces social justice and economic equality; a place where every citizen is treated the same in every bureaucratic institution. Hoover, serving in the FBI under eight consecutive presidents and feared even by some of them, would easily fall into this category. Others believe differently. George Orwell certainly wouldn't buy it. He predicted Big Brother in his classic novel "1984," where people would exist in a society governed by law that did not tolerate privacy.

If Hoover thought the BPP to be " the greatest threat to international security of the country," what would he say about Al Queada? How would he have handled the terrorist attacks of 9/11? Are Bush and the current FBI Director, Robert Muller III dealing with these "evil doers" any differently than Hoover? Who are the "evil doers?". Does this government label include anyone who is of Middle Eastern decent, people who have participated in anti-war rallies, or who have browsed websites that discuss terrorist organizations, ranging from CNN or Reuters to Counterpunch.org? About one year ago, approximately 180,000 personnel from 22 various government organizations became part of the new Department of Homeland Security, making it the largest government reorganization since the beginning of the Cold War. Their mission is to make the U.S. more secure. Coupled with the Patriot Act, which is aimed to "deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes," America is now well equipped to combat the "axis of evil," whoever that includes...is Osama Bin Laden still on the list, or just the average internet-surfer?,

So don't sleep people!!! Hoover's ghost is alive and kicking. The steel frames of his COINTELPRO were never dismantled; the façade has merely been revamped with a new name, but everything inside remains the same. Truly a case of the same shit, different ay...

REDS AND FEDS: HOW MUCH HAS REALLY CHANGED?

by ALICE KING

I must admit that until I saw the colorful flyers picturing a dour-faced, bespectacled woman advertising the Justice Action Center presentation "Scenes from the Trials of Emma Goldman," I had never heard of Emma Goldman. A Russian immigrant, Goldman (1869-1940) was an influential and well-known anarchist, journalist, author, and lecturer. After learning more about her, I was amazed that her name had never come up in previous history or government classes. She was an early advocate of free speech, birth control, women's equality, and union organization and an opponent of compulsory military service.

Although controversial, it seems that Emma Goldman's role in early 20th Century American politics should have earned her at least a mention in high school history books. I had an American History professor in college who loved controversial figures. I remember his vivid re-enactment of the famed duel between Aaron Burr and Alexander Hamilton, complete with props and a dangerously-executed flying leap onto the desk. Yet, no Emma Goldman. I also took courses in Women's Studies, an academic area where it would seem that someone like Emma Goldman would have earned heroine status. Still, the name Emma Goldman was never mentioned. Why, as a first year law student, am I hearing about Emma Goldman for the first time? Although I don't know the answer to that question, I am thankful to Professor Lenni Benson for so creatively introducing me to Emma Goldman.

On March 2, 2004, Professor Benson and some of her students presented dramatic scenes from the trials of Emma Goldman in the Stiefel Reading Room. Professor Benson authored the dramatic readings with portions adapted from trial transcripts, actual speeches, and contemporary news accounts. The highlights of Goldman's "rap sheet" include being convicted of inciting a riot, accused of inspiring the assassination of President McKinley, stripped of U.S. citizenship without notice, and being convicted for distributing leaflets opposing conscription.

Goldman intently followed the events that unfolded during the 1886 Haymarket Affair. Convicted on thin evidence, the judge at the trials declared "Not because you caused the Haymarket bomb, but because you are Anarchists, you are on trial." The convictions and executions of anarchists led Goldman to become a revolutionary.

In 1919, in a secret hearing, Goldman was deported for her political beliefs. In one of his earliest crusades against "radicals and left-wing organizations," J. Edgar Hoover personally supervised Goldman's deportation case, and was present for the 5:00 a.m. sailing of the ship that would take Goldman back to Russia.

In 1925, she married a Welsh miner giving her British Nationality and more importantly, a British passport. Although she was monitored closely by Hoover and the FBI for the remainder of her life, in 1934 she was allowed to give a lecture tour in the United States. In a twist of irony, Goldman was buried in Chicago, not far from the anarchists of the Haymarket Affair.

By the time she made the speech that led to her first criminal conviction, Goldman was already a marked woman because of her earlier involvement in an unsuccessful plot to assassinate Henry Clay Frick. Frick was responsible for bringing in armed guards to quell strikes at a Pennsylvania factory. Goldman addressed a rally of thousands of unemployed workers in Union Square in 1893. She called the police on the scene "well-fed representatives of the others" and urged the workers to "go forth into the streets where the rich dwell" and "take bread." As Professor Benson points out, it is unlikely that those words would have her arrested today; but in those days, the rights of free speech were much less established.

Goldman was arrested and convicted for inciting a riot and for unlawful assembly. In giving Goldman the full sentence of one year in the penitentiary, the judge called Goldman "depraved" and "dangerous." He said that Goldman and "those who entertain the same ideas should be met at the portal...that they should not be allowed to enter here."

After her prison sentence, Goldman's fame grew. On speaking tours, she was sometimes arrested before she could even begin to speak. The charges were usually dropped as she was escorted out of town. Goldman became internationally famous after the assassination of President McKinley. As one headline proclaims, "Czolgosz Declares Emma Goldman's Words Drove Him to Murder." Goldman was arrested but never formally charged as there was no evidence that she directly participated in the assassination. As a result of the McKinley assassination, Congress amended the immigration laws to exclude the admission of new anarchists even though the assassin, Leon Czolgosz, was born in America. In a case of history repeating itself, Professor Benson points out that Congress passed another anti-terrorism immigration law in 1996 on the anniversary of the bombing of the Federal Building in Oklahoma City even though those 'terrorists' were American citizens.

Professor Benson describes Goldman as "a woman impossible to reduce to her occupations, achievements, or public reputation as the 'most dangerous woman in America.'" Although Goldman later re-assessed her views, in her early years, she actively promoted violent overthrow of the government. One of the reasons Professor Benson finds Goldman such an important figure in immigration law is that many of today's immigration laws were directly inspired by Goldman and her colleagues. Goldman's deportation was based on the 1917 Immigration Act, which authorized the

ALL OF THE CLOCKS IN THE MOVIE PULP FICTION ARE STUCK ON 4:20.

deportation of anarchists and others who advocated violent overthrow of the U.S. government. The immigration laws also contain provisions aimed at radical speech or members of communist organizations.

In a post-911 iteration of immigration laws, a person can be deported if the government proves he or she is a terrorist. Under the statutory definition, a terrorist could be someone who supports a terrorist organization, raises money for a terrorist cause, or advocates acts of terror. Current laws also authorize secret evidence to support deportations. Interestingly, Goldman used the term 'terrorist' in her criticism of the Russian Revolution: "I know that in the past, every great political and social change necessitated violence....Yet it is one thing to employ violence in combat as a means of defense. It is quite another thing to make a principle of *terrorism*, to institutionalize it, to assign it the most vital place in the social struggle. Such *terrorism* begets counter-revolution and in turn itself becomes counter-revolutionary." What is terrorism? Who is a terrorist? Is the answer, like beauty, in the eye of the beholder?

Although thousands of suspected 'terrorists' were arrested after September 11, in most cases, the government charged these noncitizens with only technical violations such as overstaying an authorized entry, failure to maintain student status, or working without authorization. According to Professor Benson, by avoiding high profile issues like speech and political activity, the government has been able to make the issue of the deportations fairly boring, like routine enforcement of the immigration laws.

In another chain of events, Army Captain James Yee, a Muslim serving as chaplain for detainees at Guatanamo Bay, was first accused of espionage in September 2003. The formal charges were subsequently reduced to mishandling classified information along with minor charges involving adultery and pornography. No evidence was ever introduced and Army prosecutors delayed Yee's preliminary hearing five times. "Citing national security concerns that would arise from the release of the evidence," the charges were recently dropped.

A close look reveals clear similarities between laws that allowed Goldman to be deported for her political beliefs, recent 'terrorists' to be deported for minor infractions unrelated to any terrorist activity, and Captain Yee to spend six months in jail on what appear to be flimsy charges. The similarities raise many questions. How far will we (or must we) go to protect ourselves from terrorist assault? How many freedoms will be pre-empted in the name of security? How quickly do we deteriorate into an Orwellian society where some are more equal (free) than others?

In Goldman's words: "Mother liberty caresses with generous affections...(those) who...have grasped that the freedom of each is rooted in the freedom of all." To be honest, I don't know right now if I should be more afraid of those who would attack my freedom or those who would protect it.

When They Become Us: Legal Jobs Going Overseas

by Alice King

Lawyers and future lawyers: Beware. First, it was the garment industry – low skill, low wage jobs – that went overseas. Then, it was manufacturing. More recently, $35,000-a-year customer service jobs and $50,000-a-year technical support positions have been exported to countries like India, Australia, New Zealand, and the Phillipines, where English speaking workers are hired for a fraction of the cost of American workers. Now, there is a growing trend toward outsourcing legal work overseas.

The practice of sending American jobs overseas, where labor is cheaper, doesn't bother most people until their own jobs are in danger. After all, overseas outsourcing saves money. And saving money increases profits and shareholder wealth. And, if investors are happy, it must be good for the economy, right? Well, anyway, that's the version told by those in favor of the growing trend towards overseas outsourcing.

A study by the McKinsey Global Institute reports that the United States economy receives at least two-thirds of the benefit from offshore outsourcing compared to one-third gained by the low-wage countries receiving the jobs. Exactly who benefits and how is not clear. According to McKinsey: "The U.S. has the world's most dynamic economy and is fully able to generate new jobs. While still receiving services that employees were previously engaged in, the economy will now generate additional input (and thus income) when these workers take new jobs."

Pardon me if I don't find that argument convincing. Where exactly are these new jobs coming from? How long will it take? And what are displaced workers to do in the meantime? Forrester Research, a trend-analysis consulting firm, has estimated that 400,000 jobs have already moved offshore and another 3.3 million jobs will be transferred offshore between now and 2015. 2 million of these jobs will be white-collar positions. It is estimated that about 8% of all lawyer jobs will go abroad by 2015.

The economic advantages of outsourcing are too attractive to ignore. Nick Wreden, a marketing and customer loyalty expert says: "It makes no difference how skilled, educated, and talented you are, or how long you've been in business, or even how much your clients love you. When it comes to paying someone $60 an hour ... vs. $6 an hour for the same task, outsourcing is not a difficult decision in executive suites."

The cost factor is also driving the increase in outsourcing of legal services overseas. Patent filing is one example. The average cost of a relatively complex patent application is $11,000 if prepared by an American firm but only $4,000 to $5,000 when drafted by Indian lawyers.

Corporate America has led the charge in offshore legal work. Dupont, Cisco, Borg Warner, and General Electric are just a few of the mega-corporations sending legal work abroad. GE relies on 9 lawyers and 10 paralegals in its office in India to write basic contracts. Borg Warner has engaged the services of Mindcrest, Inc., a legal outsourcing company with six lawyers in Bombay, for basic legal research and initial contract review. Laurene Horiszny, the general counsel of Borg Warner said she was satisfied with the results, and the work was "much less expensive than going to outside firms." According to Dennis Archer, the president of the American Bar Association, "The need to cut costs reaches across many departments, so it should be no surprise that it goes to the legal department as well."

What *is* surprising, perhaps, is the role being played by some large law firms in overseas outsourcing. Mindcrest was established by Ganesh Natarajan and George Heffernan, former partners in the Chicago office of McGuire Woods. According to legal entrepreneurs such as Mr. Natarajan and Mr. Heffernan, corporate clients are no longer willing to pay law firms "$200 an hour for simple work." Intellivate, another legal outsourcing firm offshore work to India, is majority owned by "shareholder attorneys at Schwegman Lundberg Woessner & Kluth, a 55-lawyer firm in Minneapolis."

West Group, the legal publishing firm and online legal network, is also testing the use of lawyers in India for some of its publishing operations. In an article in the Minneapolis-St. Paul Star Tribune, Neal St. Anthony reports that West has a "half-dozen or so" Indian lawyers at a pilot office in Bombay who are doing online interpretation and legal classification of state and lower court unpublished decisions. Currently, West employs over 150 editor-lawyers in Eagan, MN who make up to a $100,000 a year. These editor-lawyers continue to do the published opinion work and also edit the work of the Indian lawyers, but their futures are far from safe.

Mindcrest reports that business is booming for basic research and "low-rung" work usually done by paralegals and junior lawyers. According to Mr. Natarajan, "younger associates don't want to do this work because they want more challenging work." Given the choice of "low-rung" work or no work, I wager that recent law school graduates and other junior lawyers won't mind cutting their teeth on the routine, less challenging work.

Brad Hildenbrandt, a law firm consultant based in New Jersey, believes that overseas outsourcing will primarily affect the paralegal level. David Heleniak, a senior partner at Shearson & Sterling, and other top lawyers say the impact of outsourcing is likely to affect rates for junior associates and paralegals rather than the rates charged by senior lawyers, which can exceed $600 an hour.

So, while Mr. Heleniak and other top lawyers and senior partners are not worried about the impact of offshore, junior lawyers and law students should be very worried. Why isn't here more of an outcry from the legal profession? Maybe, because law students and junior associates are "*they*" to most of the legal profession. Why worry about *them*? We didn't worry about the garment industry jobs that went overseas, or the manufacturing jobs, or the customer service and technology jobs. As long as our $600-an-hour fees are safe, we don't need to worry. "They" are the ones who should worry, not "us." I just hope that some of "us" will worry because there's no telling how soon "they" will become "us."

Stewardesses is the longest word typed using only the left hand.

SO WHAT

CONT.

"white" marriage. That would be entirely ridiculous. It's a pitiful symbol of the ignorance that still exists in our country that marriage between those of different "races" is called "interracial marriage" because there is only one "race," the human race. That ignorance surfaces again with the use of the title "gay marriage."

Making these distinction so obvious is the part of the ostracism isn't it? Think about this: We communicate with each other through a shared language. That language is developed in an attempt to communicate the thoughts that we want to convey. By calling a legally sanctioned relationship between those of "different races" or same sex partners as something different than just plain marriage, we are separating them psychically from the rest of society. The use of the term "civil union" as opposed to "marriage" accomplishes this task as well. Sometimes, I wonder if people consciously stop and think about this before they use these words or when they promulgate their usage.

On another note, there have been comparisons between the current situation surrounding the permissibility of same sex partners joining legally and the civil rights movement. While I see some comparisons, I do not believe that the situations are exactly the same. Pre-civil rights movement, an entire group of people was prevented from obtaining the same educational and economic benefits of being an American because of their race. The situation is different here because no one is telling gay people that they cannot get an education anywhere they want, that they cannot obtain certain jobs, or that they have to sit in the back of the bus or stand while white people do not. The current debate is whether or not same sex partners can legally marry. I was watching television and a gay male said that disallowing marriage with his male partner was like whites not being allowed to marry blacks in the past. Not quite. I disagree with the comparison because it minimizes the complete societal degradation of black people. Who they were or were not allowed to marry was not the main concern.

In an attempt to make this society a just and equal place, the government enacted the Civil Rights Act. Now the President of the United States and various members of Congress are proposing a constitutional amendment to deny rights to an entire group of people. It does not make sense. Knowing the state of affairs in this country less than 50 years ago, and assuming that the rest of the country realizes this as well, I cannot fathom how some members of society could be sanctioning such blatant discrimination.

Recognizing that the country is sharply divided on this issue, the following *hypothetical* wording of the proposed Constitutional amendment on "marriage" would be tolerable if it were to say something like this: that (1) same sex partners who wanted to be joined in a legal union had a legal right and constitutional right to do so was legal;(2) the same rights and privileges granted to heterosexual partnerships (now called marriage), would be granted to same sex legalized partners joined in a legal union; (3)for clarification purposes and not for discrimination purposes and in an effort to soothe the qualms of the "marriage" purists, that (3) "marriage" refers to "legal heterosexual relationships and "civil union" refers to legal same sex relationships *only as a matter of definition*, with each relationship to be equally legally binding, recognized and respected by every state in the United States of America.

In its current incarnation, which would prevent same sex partners from ever having the same rights as heterosexual couples, the proposed amendment should be rendered unconstitutional on its face. (Okay, I'm getting a bit too legal here, although I'm trying to restrain myself!) This subject is so important because it defines who we are as a society. But by adding such an amendment to our Constitution, we would be saying to the members of our society and to the world at large that "liberty and justice for all" really means "liberty and justice" for some...to be continued.

THE SILENT THIEVES

by NERISSA COAN

Despite the protections of the 1963 Equal Pay Act and Title VII of the 1964 Civil rights Act, there is still a significant gap between the incomes of men and women.

In the forty-years since the passing of these anti-discrimination laws, we have seen the elimination of gender specific job postings and the rise of women's wages (relative to men's) from 59% to 81.5%. We have seen a female Presidential running mate and a female Presidential nominee, a former first-lady elected to a US Senate seat, and two female Supreme Court justices.

Despite these advances, women, overall, continue to receive lower pay than their male counterparts. There are many elements that contribute to the gap between the income of males and females. Among them is the fact that women remain predominantly responsible for child raising. Another element is that it is customarily the female that is relied on to care for family members.

The Family and Medical Leave Act (FMLA) was enacted to combat this imbalance. Its purpose was to enable men and women both to temporarily leave their job to care for a family member without having to worry that they would be replaced. After ten years, the overwhelming majority of leaves taken under the FMLA are still taken by women. The result is that employers continue to view women as more costly - and therefore less desirable - as employees, because employers expect that women will take more leave than men.

Both of these gender-typed responsibilities, child raising and family care, result in increased and extended absences from work, which result in lower pay. Women in the workforce are less likely to work a full-time schedule and are more likely to leave the labor force for longer than men, further suppressing their wages. These differing work patterns lead to an even larger earning gap between men and women, suggesting that working women are penalized for their dual roles as wage earners and family caretakers.

Additional elements of the wage gap are the Glass Elevator and the Glass Ceiling. The Glass Elevator model describes the relative infrequency with which women are promoted to higher paying jobs. The Glass Elevator is the model used to describe the pattern of women remaining in low paying positions while their male counterparts are promoted up and out. The Glass Ceiling describes the phenomenon that women, if promoted, are only promoted to intermediate level management, which results in 95-97% of top U.S. executives being male.

This difference in pay increases over a woman's lifetime in the job market. To get a glimpse of how this discrimination effects you, look at the gender ratio in New York City law schools, and compare this to the gender ratio in the City's top law firms. The ratio of males to females in NYC law schools is 1:1, while the ratio of males to females among partners in NYC firms is 5:1, and up.

If you don't like numbers, don't fret. An examination of the numbers is not really necessary here. Just look at the gender split in your very own office, school, post office, or wherever you happen to be reading this article. Let me describe what you see. There are lots of women performing the low-paying jobs, probably with women supervising those women, and from there up, it's men. I don't deny there are variations of this pattern, but this is the norm.

Despite the abundance of evidence to the contrary, many claim there is no wage gap at all, or that it can be explained away by differences in age, occupation, education, experience, and time in the workforce. unfortunately, when these variables are accounted for, a pay difference remains. Women make less money than men, no matter what variables are in play.

Recent studies indicate that over the past decade the wage gap between women and men has grown rather than shrunk. The National Association for Female Executives documents average salary disparities of $10,000 per year between men and women with identical jobs and experience across fields. This is true even in teaching, nursing, and other fields historically dominated by women. The study also calculates the financial impact of lower earnings for women over a life time: if invested at an interest rate of 10% over a 40-year career, that $10,000 in earnings per year could accrue to over $4 million.

The bottom line is that women are doing the same work as men, but getting less money for it. This problem is improving, slightly, with each passing decade, and economists predict wage equity by the year 2050. In the meantime, women continue to work at a discounted rate.

When a system of inequity continues to thrive, the reason for its success is that there is a party that is benefiting from the inequity. Who benefits from the current inequity in pay? That is a very complex question that has several answers. Obviously, employers are economically benefited by hiring equivalent labor at discounted rates. Male employees benefit when females command a smaller portion of the payroll. The world economy is benefited by the cheap labor provided by women everywhere.

When everyone has their hand in the pot, it is difficult to undo a discriminatory practice that makes so many people wealthy. For example, Nike would not survive were it not for the underpaid women who put their health in danger to produce Nike's overpriced sneakers. So many people are benefiting from their ability to keep costs down that there is a reluctance to correct the inequity that causes Nike's financial success. Human rights are never a sufficient incentive to pay more for labor, which explains human being's penchant for slave labor, regardless of the dehumanization it causes. Because an appeal to human compassion and fairness is never a real competition for big bucks, only an analysis of how this pay inequity hurts its beneficiaries will be effective.

The only way to effect a change in the pay disparity between men and women is to shine a light on the negative effects of pay inequity. It may appear that men (employers, CEO's, business owners, and coworkers) benefit from the cheap labor of women, but the contrary is actually true. For example, the continuing refusal to acknowledge women equal to men has actually brought down the potential earning power of American corporations, and as a result, American CEOs, and the US economy.

J.B. Rosener, author of *America's competitive secret: Utilizing women as a management strategy*, argues that the need to place women in top management is not only a matter of equity, but also economics. She describes American working women as an untapped pool of well-educated professionals that will give America a competitive edge in today's fast-changing service-oriented world of business. Rosener is not denying a difference in management style between women and men. She is merely suggesting these difference should be embraced, instead of penalized.

A thorough investigation of the history of pay inequity may illuminate possible methods to undo this discriminatory practice, but the first step is acknowledging that the inequity exists. I have offered a simple test that can be performed anywhere, just look around. Although the proof is right in our faces, we don't want to see it. The next time you are surrounded by human beings working, regardless of the employment environment, ask yourself, why are all the bosses men?

The Wage Gap...

it's not just about women anymore!

The wage gap isn't just a women's issue. Equal pay for women raises family income, and the whole family benefits.

In 2002, women earned 77 cents for every dollar men received. That's $23 less to spend on groceries, housing, child care and all other expenses for every $100 worth of work done. Nationwide, working families lose $200 billion of income annually to the wage gap. At the current rate, equal pay won't be realized until 2050.

The wage gap is even worse for most women of color. Latinas earn 56 cents and African American women earn 68 cents for every dollar men earn, while Asian American and Pacific Islander women earn 80 cents.*

*CPS, 2004

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