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our truths in any determinate way, so long as we are in agreement and they work for us. But this process approach to truth cannot be divorced from the material conditions under which dialogue occurs, any more than can be the process and substance of law-making. For those material conditions will influence the dialogue's outcome. If dialogue occurs under conditions of great inequality, the outcome will favor the more powerful and what appears as consensus will be domination in disguise. Thus liberal thinkers hypothesize paradigmatic conditions of neutral dialogue, such as Rawls' veil of ignorance and Ackerman's spaceship; while

critical thinkers such as Habermas speak of "an ideal situation of discourse."

Given its commitment to individual and collective self-determination as a first premise the critical movement's reluctance to advance, in Kelman's words, "grand theories of society", and its deference to dialogue and consensus, are understandable. Yet there is no escaping the circular interrelationship between dialogue as a means of establishing a theory of society and the need for a theory of the societal conditions under which genuine dialogue, itself an aspect of a theory of society, is possible. Moreover, since the inequalities of the existing social order are inimi-

cal to genuine dialogue, and since those in power never cede power voluntarily, there is no escaping the necessity for struggle, even to the point of revolution, as prerequisite to and a concomitant of genuine dialogue, and therefore as an aspect of the search for truth in this foundationless world.

"Take a Stand"

If you think you're right, then be positive;

Or that I'm wrong, then be negative.

If both are right, then be relative.

But for goodness sake, don't be tentative.



**FROM DAVID KENNEDY
Harvard Law School**

My first experience as a professional witness began when a woman telephoned to relate, somewhat routinely I thought, how she and six other Christians had entered a local nuclear missile factory, poured out their blood from baby bottles, hammered on equipment and hung a poster "indicting" the corporation and its employees for war crimes, all "on our own behalf and on behalf of our 37 children and 24 grandchildren." They had been charged with trespass and malicious destruction of property. My job, as an "expert in international law," would be to

retell their story in the language of admissible evidence and acceptable legal theory. She even foresaw reintroducing her blood in court as a "sociological symbol" with a lengthy expert pedigree.

As civil disobedients, the group had gone to the margins of our political culture and experienced something of the power of witness in American politics. Now they would bring their action into the world of law, pleading that their action was legally justified: either "necessary" to avoid the greater harm of nuclear war or privileged under international law to

avoid complicity in ongoing war crimes. Having first turned to the church, they would return the church to policy, as Christian witness to nuclear strategy, trespassers for God.

Being a professional witness in such a case brings home the fastidiousness of American law and politics, for our public culture is remarkably resistant to the suggestion that the power of the sensual, the chaotic or the faithful be anything but marginal. No legal maneuver seemed remotely up to the facts: grandmothers had spilled their blood right here in my neighborhood. Their commitment,

their faith and the power of their blood seemed unreachably remote from the realms of nuclear policy and law.

Standing in the courtroom, I wondered about the usefulness, even the sanity, of people who seemed almost eager to render themselves marginal. At first startled by their audacious commitment, I think we regain our complacency when reassured by their marginality. And naive or noble, our grandmothers find themselves soon enough on late night television, talking passionately about rights and evidence and international law. Once there, if they had seemed calm in Christian witness, they make befuddled witnesses, uncertain about their recounting and the politics of re-engagement, for they know little about throw-weight ratios and targeting secrets.

At the same time, however, I began to wonder about the enormous cultural effort directed to their trivialization, for the law did not welcome their return. Insistent on their trespass, the law closes ranks against them, not to punish or oppose them but to expel them from the culture of political choice. Viewed through the optic of public law, when all is said and done, their witness is merely a trespass, punished or forgiven and hastily forgotten. Indeed, it proved difficult to get the bloody documents admitted into evidence, let alone testimony about the dangers of nuclear war or the "sociological

symbology of blood," as if a mere sociology could recapture their bloody baby bottles.

My grandmothers share much with others who challenge the and tenses public with the Hart and Doug Ginsburg, all pushed to the margin of public culture. Donna moved offstage fast—expelled from front page news to the erogenous haze of the people columns, faded because we, like Gary Hart, wanted to focus on the "issues." Doug, beacon of a shamed and shaming sensibility, was lost to our earnest desire for a return to "the merits." Yet, as I remember it, we had invented Ginsburg precisely because Bork's "merits" had been so agonizing—had seemed to corrupt the law with politics and politics with his own peculiarly formal personality. If Bork collapsed into his philosophy, his history, Ginsburg was reduced to his errors, no longer a man, but a mistake. If the grandmothers left the stage less willingly, less sheepishly, if they stood aggressively outside political culture, heightening the contradiction between "grandmother" and "blood," writing opposition with their presence, their passage to the margin was every bit as firm.

All these figures suggest a



politics of ritual cleansing, repeatedly raising the specter of corruption only to repel it, returning us relentlessly to the issues-which-are-not-Donna and the merits-which-are-not-Doug. And yet they remain specters at the window, helping us remember that our public dialog is meritorious, however tedious. It is hard to forget the image of grandmothers bloody or imprisoned, however peripheral to debate about arms control. Momentarily famous, Ms. Rice, like some Warhol Monroe, has become an exuberantly frozen newsprint image, standing strangely centered in our political life, insisting that she be forgotten.

Our fastidious insistence on the trivial centrality of Hart's adultery or the grandmother's Christian passion fits within a more comprehensive public cleansing. Our law and state seem anxious to differ from sex, if only because they are public and eros private, because they are clean, and sex dirty. The state is most overt in separating itself from religion, ("Congress," after all, "shall make no law respecting" religion), but we also give violence a clean and public face. Rather than soiled sadism or steamy revenge we see calculation: about deterring criminals, sending messages to terrorists, and of course, off balancing evil empires. And once violence lurks only in the terrifying margins, nothing could be more unseemly for the king's body,

the corporate corpus, than "state-sponsored terrorism" where the ruler consorts with the perverse and unruly.

It is a technocratic politics which cleans itself so. That our polity has a puritanical tick is commonplace. But we're not simply upright. Indeed, we remain fascinated by things erotic, chaotic and scared, even as we push them to the margins of public life, displaced in a technocratic jumble of figures and trends. The dollar rises, the deficit falls, the stock market crashes and the yen recovers. The Public as a vast numerical hydraulics. Or, when relationships are considered, an airy and rhythmic pneumatics of mergers, consolidations and deregulations. Relations without sex, takeovers without violence. "Stocks shrug off Libya and Go Up" announced the New York Times after the bombing. Disney was up, Northrop down.

However electrifying its language, the technocratic arena, even in the noblest of constitutional guises, remains boring. Culture cleanly impoverished: pornography reduced to speech, even information, faith restricted to a set of disestablished practices. At the center of law's fascination with sacrifice, redemption and the sacred we find courtroom disputes about moments of pedagogic silence and financing for a public creche. But having expelled faith and eros to the margins, public life finds itself preoccupied with the trivial—pumped

up into issues of principle, purpose or policy and transformed into a clash of rights.

Gary Hart, benefactor of Donna's fading marginality, is dogged not by adultery, but by the conflict between a "right to know" and a "right to privacy." Yet this battle of abstractions simply restates in a less interesting key the line between power and attraction which aroused and penalized his sexuality. Abortion, reduced to a rivalry of rights, coronated battlefield for "choice" and "life," both arouses passions our debates cannot capture or quell and loses its determined specificity. If choice or life are the issues, might not circumcision or colostomy serve us as well?

In the end, public order comes to seem a vast concatenation of trivialities in drag, parasitic for interest on the facts it excludes. When our enthusiastic cultural homophobia reached the Supreme Court, it did so transformed into a principled conflict between an "interested" state sodomy statute and an "issue" of privacy. The case had been launched by curious police witness to the unspeakable crime, a witness we can now share, dimly, through the veil of our public law.

In the fabulous collective repression of public law and culture, we can see the echo of eros only dimly. However much the Iran-contra connection's betrayal reminds us of adultery, we can be sure it is not adultery.

The regulation of corporate "insider trading" or "self dealing" reminds us only vaguely, tantalizingly, of incest and masturbation. Sometimes we can recapture the memory of our public drives only by encountering the strange and insistent mechanisms for their denial.

Take AIDS. If AIDS presents an exuberant cultural cornucopia, linking perversion, death and addiction, public policy will know only risk management, research, hygiene, discrimination and public health. Even the testing of captive populations proceeds soberly. We hesitate to give needles to addicts and condoms to teenagers because, we seem sure, however soberly designed, such programs would contaminate the public, not with needles and brochures, but by corrupting the state. We won't give needles to addicts because we fear we could not stop—soon we would be giving them drugs, dispensing sexuality, trafficking in the forbidden.

We may fear AIDS, fear for its victims, but not nearly as much as we fear for the cleanliness of our collective body, for once tempted, once tasted, lines could not be drawn, the repression might dissolve and eros would run rampant across our public culture. We fear an addiction of the public body should we relax our vigilance against the marginally sexual for a moment, even in the name of the most compelling public policy.

We, collected as a state, stand like proudly reformed alcoholics, reminding ourselves daily of an addiction we have placed behind us, outside our circle, at the margin. And we reproduce this margin, as woman, addict, pervert—as Donna or Doug or even as a bloodied grandmother—constant reminders of our emptied passions. Against the backdrop

of these images we are fearful for our state, worried about a relapse, and we trust ourselves to traffic together only in secret, by ballot, and to converse only in the numerology of technocracy.

Many have dreamed a more passionate politics. Falwell, Robertson or Jackson, all want to redeem the lush, unstable and sacred in our public life. But

perhaps only King, grounded in a passionate faith, could still dream without irony. I dream about a public culture of the margins, of palimpsests and peccadillos. As I see it, someday, in some campaign Hart will embrace Donna and say “adultery is important to my candidacy, in some ways a strength, in others a hazard...” Then I will know how to vote.

CLS PUBLIC OUTREACH

Some of our members are experimenting with ways to reach a broader audience than the usual consumers of law reviews. Here are two examples of such efforts. The first is an essay that Guyora Binder sent to the Buffalo Evening News, which published it as a guest editorial. The second is Peter Gabel's attempt to revive the political spirit of the 60's in the context of the twentieth reunion of the Class of 1968: EDS

**EDITORIAL:
NICARAGUA NO
DICTATORSHIP, DESPITE
WHAT REAGAN SAYS**

by Guyora Binder

President Reagan's initiative to the Nicaraguan government cannot possibly lead to a negotiated settlement of the region's problems for a very simple reason. President Reagan makes his proposed cease-fire and peace talks conditional upon “free and fair elections” in Nicaragua. There's just one problem with this: the present government of Nicaragua, however unpopular at the White House, was elected freely and fairly.

The impression prevails among Americans that the

Nicaraguan government is a dictatorship, rubber-stamped by a Soviet-style “election” in which only one party runs and in which reluctant voters are coerced to vote. The reports of neutral observers indicate that this impression is completely untrue.

The Nicaraguan government is better characterized as a European style parliamentary government in which a number of parties of different political hues are represented in the ruling coalition and a number of opposition parties are represented in parliament. These parties include liberal and centrist parties opposed to Marxism and socialism. Observers of the Nicaraguan elections reported that voters

were not coerced and that several additional parties, including quite conservative ones, were invited to participate in the elections, but pulled out when it was clear they had little support.

The principle complaint of these parties was that members of the Sandinista party were using their government positions to publicize their campaigns. However, this regrettable phenomenon is present in our own political system as well.

Nicaragua is one of the only societies in Latin America that has shown a real commitment to grass roots democracy. It recently drafted and ratified a new constitution by means of a nationwide network of town