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Pilon Argues For Expansive View of Freedom of Association in Solomon Amendment Talk at NYU Law

BY NICHOLAS KANT '06

At a recent event sponsored by the Federalist Society of New York University School of Law, Roger Pilon advocated a unique view of the infamous "Solomon Amendment."

The Solomon Amendment allows the United States government to cut funds to universities that exclude military recruiters from campus. On December 6, the Supreme Court will decide whether the law is constitutional.

However, Pilon, the Cato Institute's Vice President for Legal Affairs, argued for a different distinction than the Law School versus Military argument. Instead of either cutting funds to any university that excludes military recruiters, or letting every university do as it chooses, Pilon argued that, "private entities should be free to discriminate in any way they wish, for public entities, just the opposite," he said.

NYU Law's Federalist Society sponsored Pilon's discussion on the Solomon Amendment. He spoke Thursday, November 3, to a crowd of about 30 in Vanderbilt Hall 216.

The Cato Institute is a Washington, D.C. based libertarian think-tank. Pilon is also the di-

Of course, the public schools discriminate heavily.

rector of the Cato Institute's Center for Constitutional Studies and a graduate of the George Washington University School of Law.

In 2003, the Forum for Academic and Institutional Rights (FAIR), a group of law schools and law school faculties, sued the Department of Defense. FAIR wanted a preliminary injunction preventing enforcement of the Solomon Amendment. The Solomon Amendment, as most are aware, conditions federal funding for universities on allowing military recruiting on campus to all schools in the university, such as the Law School at New York University.

As an aside, the law is called "Solomon" for Republican Gerald Solomon, the New York representative who introduced it, not the ancient king.

In litigation, The district court denied the injunction, with

The government cannot force [someone] to give up constitutional rights in return for money he is otherwise entitled to

the Third Circuit Court of Appeals reversing and granting the injunction. The Supreme Court granted certiorari in what is now one of the most anticipated cases on the docket this year.

The law schools wanted to exclude military recruiters, saying that the military discriminates on the basis of sexual orientation with its "don't ask, don't tell" policy. Other schools not part of FAIR have also tried opposing the Solomon Amendment. For instance, Harvard Law School is not a part of FAIR, but the school did try to take a stand against the Solomon Amendment. However, it caved after the Pentagon threatened to cut over \$400 million in federal funds.

New York University School of Law is part of the FAIR litigation, and would not allow military recruiters on campus if it were not for the threat of losing funds for the entire university through the Solomon Amendment.

Pilon said the Cato Institute has argued for what he called a moderate course, discrimination in turn. "That means if you discriminate on 'don't ask, don't tell,' the law schools can also discriminate," he said.

The Constitutional right of freedom of association is central to the case. "The idea is that this right of freedom of association is one that ought to be protected in the private sector. But the law does not work that way," said Pilon.

There are many grounds upon which private entities are not allowed to discriminate. Pilon argued that if you are free to associate with whomever you want, that also means you should be free to not associate with whomever you want.

Public schools should not be able to discriminate, according to Pilon, because they are "public." But if a school is "private," that

school should be able to receive government money while still enjoying freedom of association, which also means freedom to discriminate, Pilon said.

"If the government will engage in a program whereby it funds activities, it must be equal. The government can't force [someone] to give up constitutional rights in return for money he is otherwise entitled to," Pilon said.

But if two schools are both receiving government money, how do you know which one is private and which one is public? That distinction is of paramount importance, as it dictates which school can discriminate. Pilon said you can look at a school's history and charter to find out. "I don't care how much money NYU gets from the government, it could be gobs of money, it's still a private entity," he said.

Roger Pilon argued on November 3rd that private entities should be allowed to discriminate in accord with their Constitutional Freedom of Association



But if private schools can discriminate on any basis, does that mean public schools can't discriminate on any basis at all? Of course public schools discriminate heavily on the basis of grades and test scores.

"You're in a second-best

world. To discriminate is to choose, and you choose on the basis of reasons. We speak of a 'discriminating person,' someone who makes good choices. Doesn't the kid who doesn't make it, who doesn't even come close, pay taxes too?" Pilon asked.

Attorney for Lynne Stewart, Attorney Convicted of Aiding Terrorist, Speaks

NICHOLAS KANT '06

There is nothing that prosecutors in the Southern District of New York would rather do than prosecute lawyers, according to a speaker brought to New York University School of Law by law school's chapter of the ACLU.

And in light of that, the issue becomes how zealously defense lawyers will represent their clients, and how much defense lawyers will decide to censor themselves, argued the speaker, Susan Tipograph.

Susan Tipograph is the attorney for Lynne Stewart. Stewart recently made international headlines when she was indicted for helping convicted terrorist Sheikh Omar Abdel-Rahman send messages from his jail cell.

Stewart has since been convicted, and on October 25, U.S. District Court Judge John Koeltl upheld the conviction, finding that, "The First Amendment lends no protection to participation in a conspiracy." Stewart is scheduled to be sentenced by Koeltl on December 22. She faces up to 30 years in prison.

Tipograph spoke and answered questions for a crowd of about 30 students at lunchtime on Thursday, November 10, in Golding West. Tipograph spoke about Stewart and issues of criminal defense in America today.

"We live in a climate, and most of you know this, if you read the newspapers, watch television, use the internet, you know that there are thousands of people

who are jailed, held by the United States authorities in this country and around the world, who have been denied the benefit of counsel," she said.

Tipograph referenced the discussion to her own experiences. "I had the opportunity to be appointed by the court in the Southern District of New York to represent Jose Padilla's mother. Jose Padilla was the American citizen arrested in O'Hare Airport and has been held essentially incommunicado for the last three or four years. He has some access to counsel, but he has not been charged with a crime and he has never been convicted of a crime. And when we would talk to people about that case, people would say 'Well, but he was coming to the United States



Attorney Lynne Stewart

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Commie Opinions: "Killer Coke" Campaign Most Misguided Move of the Semester

BY CHRIS MOON '06
EDITOR IN CHIEF

In the last couple of weeks New York University has been the epicenter of labor controversy regarding Coca-Cola. The Students Senate's decision to ban coke is a severely misguided approach to this controversy.

Coca-Cola is accused of labor violations by its bottlers in Colombia. Judged in its most persuasive light, apparently, Coca-Cola has a controlling interest in the ownership of their independent bottlers, knew of human rights violations going on in Colombia, and should have pressured its bottlers to stop these labor violations. But make no mistake about it, Coke is accused of much more than statutory labor violations such as promising benefits to your employees for rejecting unionization.

Indeed, the campaign to stop "Killer Coke" at <http://killercoke.org> claims that they are "seeking your help to stop a gruesome cycle of murders, kidnappings, and torture of union leaders and organizers" in Colombia. These are very serious charges, and if proven true would lead me to reconsider my support of refreshing Coke Zero and Sprite Zero. Hello, Diet Pepsi! Ah, refreshing Sierra Mist!

However, NYU's Student Senate has voted to ban Coke from campus not specifically because of these charges, but because Coke refuses to allow an "independent" investigation into these actions in Colombia by the Worker Rights Consortium (WRC), an or-

ganization whose purpose, in their own words on their website, "is to assist in the enforcement of manufacturing Codes of Conduct adopted by colleges and universities; these Codes are designed to ensure that factories producing clothing and other goods bearing college and university names respect the basic rights of workers."



You may be wondering, as I was, what Coca-Cola labor relations has to do with clothing manufacturing in third world countries. Well, there really isn't an answer to that question. Near as I can tell, the Consortium feels like expanding its reach to take on any big company that has any relationship with the universities that are represented by the WRC, including NYU.

Not to simplify matters, but what began as an attempt to extract concessions from Nike has now turned into an attack on other corporations that have nothing to do with manufacturing of goods with university names on them. I hear Dell outsources lots of their work, so watch out Dell, you're next.

More frightening than the expansion into disputes unrelated to school logo merchandise is the sheer audacity of the Student Senate's and the Consortium's demand that they be allowed to investigate this incident. We aren't dealing with labor conditions in a factory that oftentimes are difficult to regulate, we are dealing with charges of *murder, torture, and kidnappings*. If they happened, and if Coca-Cola knew about it and did nothing, then the argument could be made that at least morally they should have done something to prevent it. But it isn't the place of the WRC or of NYU to figure out if Coke is guilty.

That's what governments are for. Last time I looked, there have been two investigations into these actions in Colombia, one by their version of a grand jury, and another by the Colombian Attorney General's office. While obviously Colombia's government has had problems over the years, it is a functioning democracy whose governmental decisions should be accorded respect and deference. Neither one of these investigations turned up any wrongdoing on the part of Coca-Cola. In addition, Coke was sued here in the United States for some of these alleged acts. They were dismissed from the lawsuit.

I find Coke's position to be imminently reasonable. The WRC was created to pressure big business into labor reform. Why should Coke have to agree to an investigation by an organization like this into murders? All they have to do is point to all of the already concluded investigations to prove their innocence.

I knew even before I came to law school that you were innocent until proven guilty. Sadly, the NYU Student Senate never learned that simple lesson. In the end, it turns out Coke is guilty, not of murder, but of refusing to understand that a Consortium feels that it knows better than the law.

Flag Football Report

BY CONOR FRENCH '06

Neither new venues nor artificial lights nor colder temperatures could deter this SLAP flag football season from propelling itself further toward a fiery finish. Patrolling the sidelines (which I was not), you would notice how the blithe veneer of beginning-of-the-semester law students has been supplanted by the steely gaze of people nudged closer and closer to some unseen breaking point. The field now resembles a mildly-formatted Fight Club with players taunting and clashing against one another. The post-game handshake serves to remind the players that they all roam the same hallways and endure the same cold-calls.

The conclusions of the Less Contact League's season witnessed a classic case of youth prevailing over experience. Perhaps worn down by a full season's play and creaky joints from two-and-one-half years of legal curricula, mainstay 3L teams such as Jang and Just the Tip limped to decisive Week Ten defeats at the hands of surging 1L teams Gans & Co. (some girls) and Pass/Fail. Three nights later, however, Gans & Co. (still some girls), having earned the number one seed in the Less Contact League playoff bracket, itself fell victim to LHJ. Just the Tip, jolted by injuries and ill-timed jaunts to the Midwest, lost to Pass/Fail in a close repeat of their Week Ten match-up. After the game, a distraught Jesse Shumaker ('06) raged against the dying of Just the Tip's final season: "I vow to return as a 4L to crush these people." So simple and so direct.

Over on the Full Contact League side, the Sunday Night contests whittled the Full competition down to four teams - Malicious Prostitution, Gans & Co. (no girls), People's Army, and Tim Meyer's Team. That being

said, no prognosticator, pundit, or soothsayer could have ever forecasted the precipitous demise of the Minimum Contact's season. A downward spiral that commenced with a loss to Malicious Prostitution four weeks earlier concluded with a playoff defeat at the hands of an unsung Tim Meyer's Team. Anticipating playing the Minimum Contacts later in the playoffs, Malicious Prostitution team captain, Clark Wohlferd ('06), looked visibly disappointed that his outfit had played their main rival for the last time. "What was the point of that?" he continued to mutter about their season-ending loss.

With ten weeks of play and one week of playoffs under everyone's belts, the final week of flag football looms this Friday. Championships will be decided and everyone will retire to Mercer Pub for final some final moments of post-gridiron revelry. I think a quote from our dear friend Craig Winters ('06) aptly distills the intensity of this Friday for many NYU students. Responding to early reports that he would miss the playoffs due to an inconveniently scheduled conference, Winters shouted back, "We're winning the championship Friday. I'll be there for both games. We've been waiting three years to molest the goddamn trophy. Conference be damned."

You should all come out and watch and cheer and yell this Friday and, if you come to Mercer Pub, bring your goggles because I can promise you that someone is definitely getting doused with champagne. Let's put this season in the books in dominating fashion. What time is it? Game Time.

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Stewart's Attorney Speaks

Continued from page 1

with a dirty bomb and wouldn't we want to have him in jail for ever and ever without any due process?" And the answer to that is 'no.' The answer to that question is 'no' for lots of reasons. The answer is 'no' because frankly he has never been convicted of a crime," said Tipograph.

Tipograph then stated that there is a belief in this country that people shouldn't be held unless they are charged with a crime, and convicted of a crime. Tipograph continued by commenting on the handling of terrorists and suspected terrorists.

"The other thing I get is 'Well, it would never happen to me because I would never do something like that.' The answer to that question, sadly, for lawyers is that it will happen to you. I'm not trying to tell you all that you will be swept up off the streets, and

locked away, because they have been after me for many years," Tipograph said.

She expounded what, from her perspective, the real issue would be: "It's not going to be an issue of getting swept up, it will be an issue of how zealously you will advocate for your clients."

Tipograph and a video shown before she spoke made sure to point out that Stewart's only transgression was a statement to the press that Abdel-Rahman was withdrawing his support for a cease-fire in Egypt.

While the statement, and Stewart's criminal culpability for releasing it can possibly be interpreted in many ways, Tipograph had one rock-solid statement of her own.

"Do I wish Lynne had not issued the press statement? Yes, I really wish Lynne had not issued the press statement."

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Superstars Dominate On Different Levels, Depending On The Sport.

Which Sport Can One Player Influence the Most? The Obscure Answer May Surprise.

BY CHRIS MOON '06

This article is brought on by two wildly different, but inter-related sports events that I watched this past week. The first, a game involving my favorite team, the Utah Jazz, as they took on the New Jersey Nets in the Meadowlands. The second, the Super Bowl of Major League Soccer between the Los Angeles Galaxy and the New England Revolution.

The most pressing question about these four teams is how they can survive with such esoteric nicknames. But that might be a little too murky for a law school newspaper. I was also intrigued by the way that one player could make such a difference in both games, both for good and bad. The Jazz came into the game led in scoring by Mehmet Okur, averaging over 20 points a game. Okur apparently would have rather been home in Istanbul than in New Jersey, and he scored two points in only fifteen minutes. Of course, the Jazz had little chance with their top scorer mailing it in and lost by about ten points.

The Galaxy entered the playoffs as the number 4 seed in the Western Conference, and with the superiority of the Eastern Conference were basically the ninth best

team in MLS this season. However, the Galaxy had something else that nobody else in MLS had, a bonafide superstar. Taylor Twellman may have been the MVP of MLS, but a true superstar would also be able to solidify a spot on the national team. Landon Donovan, on the other hand, is the leader of the U.S. national team (with apologies to Kasey Keller and Claudio Reyna) and has excelled in MLS, leading San Jose to two championships. Led by Donovan, the Galaxy won the game 1-0, although Donovan did not score the lone goal.

So, in what team sports can the best player in the game take over and dominate, carrying his team to victory. Let's look at the contenders.

Hockey/Soccer: We'll combine these two sports because I bet kicking a ball while on ice skates would get better TV ratings. I already mentioned the import that one player can have in soccer. Both games make dominant players important because there is not a lot of scoring. When most games end 1-0, it only takes one moment to change the entire complexion of the game.

Basketball: This seems like

a no-brainer. First, there are only five players on the court, less than the other popular team games. Empirically, the team success of the Chicago Bulls would tend to validate the importance of one transcendent player.

However, with the addition of zone defenses to the NBA, it is easier than ever to nullify the greatness of one player. The Detroit Pistons are a classic example, winning a championship last year despite the L.A. Lakers having the two best players on the court and coming within one game of repeating, again with the Spurs having the top two players on the court all series.

Football: Peyton Manning is a better quarterback than Tom Brady. The only argument for Brady is that he has rings, and Manning doesn't. However, until this year the Patriots consistently owned the Colts. Only now that the Colts have added a defense are they able to complement the best player on the field. Especially considering the best player doesn't play half the game in football, it makes it even more likely that team play is more important than having one great player.

Baseball: Alex Rodriguez just won his second MVP on Monday. His first one came when he showed just how valuable he was by carrying his team to a last place finish. Luckily for Alex he had \$200 million worth of teammates to barely win his division and get crushed in the playoffs. One player does not a baseball team make, although Barry Bonds almost is the exception to that rule.

One further exception is that a dominant pitcher can frequently make the rest of the players irrelevant. However, because a starting pitcher can only play once every four or five games, he can't single-handedly lead a team to a championship.

Perhaps this analysis of pitching means that the game where one player can dominate the most is women's softball. A dominant pitcher in softball can play every day because the pitching motion does not tire the arm as much as a baseball motion.

So there you have it, while one player can usually make a bad team better, only in women's softball can one player make the other 17 extraneous.



What do these two have in common? Not much.



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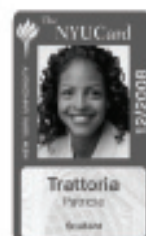
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Art Brut Play Rock That is Either Smart, Stupid, or Both at Concert.

BY BRIGHAM BARNES '06

When Art Brut took the stage late last Thursday night at the Mercury Lounge, their guitarist started the night out with the familiar opening chords of AC/DC's "Back in Black" before the band launched into their first song, "We Formed a Band." Now, the question that crossed my mind when I heard "Back in Black" is a question which encapsulates the entire Art Brut experience: Is this band serious? Is the band playing "Back in Black" with their tongues in cheek, intending for the crowd of Lower East Side amassed at the Mercury Lounge that night to wink right back at them—or is Art Brut starting off with a little "Back in Black" because those are, quite frankly, some of rock n roll's most potent opening chords?

Art Brut is another in a long line of British hype-bombs making one of it's first ever US appearances after accumulating massive amounts of attention at home in the UK and having been written-up in every self-respecting cutting-edge-of-cool music blog from Stereogum to Brooklyn Vegan.

The five-piece outfit consists of a lead singer who dresses and behaves like a cross between Jack White, Oscar Wilde, Snidely Whiplash, and a washed-up Vegas lounge singer; a guitarist who resembles Sid Vicious at a healthy weight; a second bassist right

along the lines of the skinny British rockers that inspire the works of painter Elizabeth Peyton; an unenthusiastic but robotically consistent drummer who plays standing up; and a maroon-haired female bassist.

Every move and every song suggests that they could be motivated by an agenda to subvert the norms of what we expect from cool rock n roll—or maybe they're sincere, but self-aware, and their so-simple-that-maybe-they're-jokes

the band is sincere, yet calculating—which is certainly refreshing in this world where rock can only be sincere or calculated but never both.

sort of rock songs are really direct representations of exactly what Art Brut wants to be rocking out about.

What am I talking about? Let me try to explain...

One of the stand out tracks from their debut album, "Bang

Bang Rock n Roll," is a song called "Modern Art," a driven anthem in which the lead singer, Eddie Argos, narrates situations in which he has been overcome by certain pieces of modern art in certain galleries throughout Europe, his speaking voice traded off against a shout-along inspiring chorus of "Modern Art! Makes Me! Want To Rock Out!"

It should be noted at this point that, in general, all Art Brut songs can consist of nearly-spoken narratives by Argos trading off against shout-along choruses. But the question is, does modern art really make Argos want to rock out? Or is this a joke of a song playing with the notion of the contemporary art scene as forum for rock star and rock show behavior and attitude?

I just don't know, but I'm leaning towards thinking the band is sincere, yet calculating—which is certainly refreshing in this world where rock can only be sincere (consider Bloc Party, for example) or calculated (the Darkness) but never both. Art Brut isn't afraid to infuse their music with a sense of humor, but that doesn't mean they intend to be taken as a joke.

While the seriousness of their seemingly silly songs is almost completely lost in recorded form, watching Art Brut live reveals that Argos is certainly emo-



As can be seen, Art Brut toes the line between serious and tongue-in-cheek

tionally caught up in songs like "Good Weekend" (a meditation on the elation which comes with finding oneself in a new romantic relationship) or "Rusted Guns of Milan" (a darkly-comic remembrance of romantic shortcomings which seemed to have Argos near tears by its end).

The fact that I've written about six-hundred words so far about the possible motivations of this band (without even touching on the fact that "art brut" is the

French term for "outsider art" and all that that implies) instead of the fact that they put on an absolutely great, high-energy show last week might be the ultimate testament to the internal conflict Art Brut can inspire in those inclined to over-analyze things (that would be us, my fellow students of the law).

So, if you can, try listening to "Bang Bang Rock n Roll" or catching an Art Brut show with your brain turned off, and you'll like it just fine.



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