

NIGHTSTAGE
Best Nightclub
— Boston Magazine

Maxine Tortelt
Fri., Dec. 2 • 8:00 & 11:00
"the legendary"
MAX CREEK

Sat., Dec. 3 • 8:00 & 11:00
the triumphant return of
SHADOWFAX

CONCEALS
Sun., Dec. 4 • 1 show 8:00
By Corder's back up vocals
BOBBY KING & TERRY EVANS

Wed., Dec. 7 • 1 show 8:00
back on the scene
ADVENTURE SET
ULTRA BLUE
featuring Robert Holmes
from his residency
also WATERWORLD

Thurs., Dec. 8 • 8:00 & 11:00
SUN RA
& his Jazz & Live
Dissonian Orchestra Arkestra

Fri., Dec. 9 • 8:00 & 11:00
ska dance party
featuring the originators of ska
THE SKATELITES
& from New York
THE TOASTERS

Sat., Dec. 10 • 8:00 & 11:00
from Texas

THE TAILGATORS
also

BARENCE WHITFIELD & THE SAVAGES
and WIDEWORLD FUNK

Mon., Dec. 12 • 8:00 & 10:30
"Confidence Man"
THE JEFF HEALY BAND
SAM PHILLIPS

Tues., Dec. 13 • 1 show 8:00
Blues X-Mas featuring
WYMOND BAKER BLUES BAND
SHIRLEY LEWIS & THE MOVERS
and **THE BOBBY WATSON BAND**

Wed., Dec. 14 • 8:00 & 10:00
Brazil Premier Talent
GILBERTO GIL

Thurs., Dec. 15 • 8:00 & 11:00
Island recording artist

DEFUNKT

Fri., Dec. 16 • 8:00 & 11:00
ECK-A-MOUSE SHINE HEAD

Sat., Dec. 17 • 8:00 & 11:00
blues spectacular featuring
DR. JOHN, THE LEGENDARY BLUES BAND, & THE TOM PINOPATO BAND

Thurs., Dec. 22 • 8:00 & 11:00
back by popular demand
IRMA THOMAS

Fri., Dec. 23 • 8:00 & 11:00
NRBQ

Thurs., Dec. 29 • 8:00 & 11:00
a Quince celebration!
direct from Nigeria
SONNY OKOSUNS & THE OZZI BAND

Fri., Dec. 30 • 8:00 & 11:00
weekly blues festival!
O.J. EKEMODE
MUSICALS II

823 Main St.
Cambridge, Mass. 02142-8200
Tickets available at Nightstage Bar
Olive, Dedden, Strawberry Fields,
Out of Town, Harvard St., Cambridge
Charge 467-1118, Telephone 720-3428
Valid Parking Available

BRIEF CASES

A pardonable sin?

BY HARVEY SILVERGLATE

My editor has asked me to do a series of "Brief Cases" columns concerning the Iran-contra trial, scheduled to begin next month in the United States District Court in Washington, DC. Because the trials of retired lieutenant colonel Oliver North, Rear Admiral John Poindexter, arms dealer Albert Hakim, and former major general Richard V. Secord have been severed from one another, it is likely that North, the "lead" defendant, will be tried first on the charges of conspiracy to defraud the United States for his role in the Iranamok imbroglio. It should be an interesting and exciting trial, but were I a wagering man, I'd put my money on the likelihood that not many columns about *The United States of America v. Oliver North* will see the light of day, since the lame duck in the White House is almost certain to grant a full and unconditional pardon to his national "hero" before turning over the reins to his understudy, George Bush.

The possibility of a pardon has, of course, existed ever since Ronald Reagan professed to being unable to understand what North did that was wrong, much less illegal. It became more probable when Reagan dubbed North a hero. And it became the odds-on favorite outcome of the case recently when the trial judge, District Judge Gerhard Gesell, took the following two actions.

First, Gesell announced that the trial, which was initially scheduled to commence in the early fall, would instead not begin until January — that is, after the November presidential election. And last week Gesell made headlines when he seemed to challenge Reagan to pardon North before much more time, energy, and money were spent preparing a case for trial that might be terminated by a pardon issued sometime before Reagan leaves office, on January 20. The unusual move by Gesell occurred during one of the many hearings concerning the question of how much confidential information and how many classified documents the judge would allow North's lawyers to place before the jury over the government's objection that national security would be compromised by the disclosure of any such information. Gesell stated from the bench that he was inclined to give witnesses broad latitude in referring to secret matters during their testimony in order to protect North's constitutional right to present evidence in his defense. If the national security is threatened, warned Gesell, it is the president, and not the court, who has the main responsibility for terminating the proceedings — an apparent reference to the pardon power as well as the president's authority simply to order the government not to prosecute the charges. Stated Gesell, "If on analysis this imminent prospect [of the disclosure of secrets during the trial] gives ground for presidential action to protect any perceived threat to the foreign-policy obligations which the president has, or the intelligence needs of the country, the Constitution and the statutes provide various courses of action he may take."

Although the judge's challenge to Reagan was apparently a plea to issue a pardon or dismiss the indictment sooner rather than later if he were inclined to do so at all, it is likely to have the presumably unintended result of giving Reagan a tailor-made opportunity for letting North off the hook without having the pardon go down in the history books as a black mark against Reagan's name. In short, Reagan was given an opportunity to get himself off the hook as well.

After all, during the latter years of the Reagan presidency, it has been widely reported in the news media that the First Lady has been pressing her Best Man to avoid taking the advice of some of his right-most handlers in order to ensure that history will look down more kindly on her husband than he otherwise would have a right to expect. Indeed, this may be part of the reason behind Reagan's acceptance of an arms-control accord with the party that he had earlier dubbed the "Evil Empire." It may well be that Nancy has been advising Ron that, hero



There won't be any testifyin' if Reagan pardons North.

or not, to pardon Oliver North is to risk the opprobrium of posterity, not to mention lingering suspicions as to Reagan's real motives. Was it, the historians might ask, part of a deal that Reagan would pardon North and Poindexter if they made it clear in their congressional testimony and elsewhere that they'd never told their commander-in-chief about the diversion of Iranian-arms-sales profits to the contras? After all, neither posterity nor the voters were very kind to Gerald Ford over his pardon of Richard Nixon for Watergate-related crimes. Would Nancy allow this blot on her husband's reputation?

Now Judge Gesell has just made it easier for Ron, as well as Nancy, to swallow a pardon. He has stated that he does not intend to be solely responsible for protecting the national security during the trial. North has given notice of an intention to use thousands of pages of supposedly sensitive, confidential, and even classified documents that his lawyers claim they are going to have to show to the jury and, consequently, to the eyes of the news media and the world. Gesell has taken note of this "graymail," the name ascribed to a defense attorney's threatening in a criminal case that if the government insists on going forward with the charges, the defendant will be forced to defend himself by disclosing documents whose release would possibly do damage to national security (or, more likely, to the ability of the CIA and others to operate in the shadows and keep the American people, as well as the Russkies, from knowing what's going on). In some instances, the government has been known to dismiss voluntarily (or forgo even bringing) criminal charges just to avoid such a calamity.

The Classified Information Procedures Act (CIPA) is the main mechanism provided by the law for striking a reasonable balance between the government's desire to protect national security (or to protect the government's reputation, depending upon how cynical one is about what's really at stake in these "national security" matters) and the constitutional right of a defendant to defend himself with all the relevant evidence at hand. CIPA provides a method for the court's private review of all such confidential documents in advance of the trial. If a document is found that is relevant to the defense but too hot to be disclosed publicly, a cleansed version or summary of the document may be created for use at the trial. If the government is unhappy with the alterna-

tive version of the document, and if the judge still determines that the material is relevant to the defense, the government has the choice of either living with the disclosure or dismissing the charge or charges to which the evidence is relevant. In Gesell's challenge to Reagan, the implication seems to be that if the judge were to err, he might well err on the side of protecting North's rights rather than the government's secrecy interests.

On earlier occasions, Gesell's fulminations from the bench have indicated that he himself might take action to avoid a trial. At several points he has hinted that if the Justice Department were not more cooperative in providing information, or if independent counsel Lawrence Walsh were not more expeditious in processing the document review and declassification procedures mandated by CIPA, the court would consider dismissing the charges. (Of course to threaten the Reagan administration with dismissal of the North charges as "punishment" for its failure to cooperate with Walsh would be somewhat akin to threatening to throw Br'er Rabbit into the briar patch.) Yet Gesell and the lawyers for both sides have managed thus far to muddle through the thicker of problems with the charges still standing but with major questions remaining as to whether the case can really be tried, or whether Judge Gesell, who is 78 years old, really has the stamina and the will to proceed to trial.

Gesell's latest salvo gives Reagan a convenient excuse to terminate the trial by pardoning North. The reason given for the pardon would not be that North is a national hero and would not be that a trial would likely do damage not only to Reagan's reputation but also to his successor's "honeymoon" period in the White House — a period that already may be quite short as a result of the anger aroused over the nasty campaign waged against the Democratic standard-bearer Michael Dukakis. Rather, the president could simply point out that Judge Gesell warned that he could not or would not guarantee that national security would emerge unscathed from a full-blown trial and that he made clear that the president has a special duty to take into account, first and foremost, the well-being of the nation.

Thus would the teston president yet again emerge unscathed from a tight spot that would probably destroy a less lucky man.

(Andrew Zervigon assisted in the preparation of this article.)