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DE NOVO

THE STUDENT NEWSPAPER OF THE NEW YORK LAW SCHOOL COMMUNITY

VOLUME 3 ISSUE 2

SPRING 2005

RACE IN PROFILE

Over the past several decades, in an effort to more readily identify individuals more likely to engage in certain crimes, law enforcement officers have frequently employed the use of "profiles," certain characteristics frequently seen in perpetrators of certain offenses. As the following debate suggests, the use of profiles frequently collides with constitutional concerns (e.g., equal protection, the right to privacy and the right to be left alone). The concern is that, for example, a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual based solely on the person's race, ethnic or national origin. What the Supreme Court has made fairly clear, in a series of cases involving drug courier profiles hijacker profiles, etc., is that if the agents in a particular case can articulate specific factors, in addition to the race or ethnic origin of the individual, sufficient to give rise to reasonable suspicion, then the use of a profile was is constitutionally irrelevant. The dispositive question is not whether the investigating officer used a profile, but whether the profile was rationally related to the suspected crime so as to be reasonable for purposes of the Fourth Amendment.

The present debate focuses on the use of profiles with respect to terrorism. There is no shortage of accounts of innocent persons being stopped, questioned, searched and sometimes held based solely on their race or nationality. This is clearly unconstitutional. The problem is proving that such police conduct was, in fact, based on no other articulable causes. It's usually impossible to disprove an agent or officer who claims that he stopped someone "based on the totality of the circumstances and my years of professional experience in detecting and preventing crime." Some argue, therefore, that the use of profiles should be banned entirely. The Supreme Court has already suggested that this will never happen, pointing to earlier cases, like *Terry v. Ohio*, 392 U.S. 1 (1968), which did not use "profiles," but which nonetheless, the Court said, engaged in constitutionally permissible profiling. The following debate suggests that a better answer is needed. - *Abe Froman*

On or about February 28, 2005, students in both the day and evening sections of Professor Nadine Strossen's Constitutional Law II classes were forwarded the following the entire body of the following e-mail.

-----OriginalMessage-----

From: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Sent: Wednesday, February 02, 2005 1:55 PM
To: nstrossen@xxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Subject: "UNJUSTIFIED" Profiling? I Think NOT!!!

Mr. Romero and Ms. Strossen:

I can't think of anyone who needs to read this more than the two of you — except for maybe Ted Kennedy and his "Club Left"!!!

xxxxxxxxxxxxxxxx

Note: Anthony Romero is the Executive Director of the American Civil Liberties Union(ACLU). Professor Strossen is the President of the ACLU

HISTORY TEST

Please pause a moment, reflect back, and take the following multiple-choice test. These are historical facts!

1. In 1968, Bobby Kennedy was shot and killed by:
 - a. Superman
 - b. Jay Lenno
 - c. Harry Potter
 - d. Muslim male extremist between the ages of 17 and 40
2. In 1972, at the Munich Olympics, athletes were kidnapped and massacred by:
 - a. Olga Corbett
 - b. Sitting Bull
 - c. Arnold Schwarzenegger
 - d. Muslim male extremists mostly between the ages of 17 and 40
3. In 1979, the US embassy in Iran was taken over by:
 - a. Lost Norwegians
 - b. Elvis
 - c. A tour bus full of 80-year-old women
 - d. Muslim male extremists mostly between the ages of 17 and 40

4. During the 1980's a number of Americans were kidnapped in Lebanon by:
 - a. John Dillinger
 - b. The King of Sweden
 - c. The Boy Scouts
 - d. Muslim male extremists mostly between the ages of 17 and 40
5. In 1983, the US Marine barracks in Beirut was blown up by:
 - a. A pizza delivery boy
 - b. Pee Wee Herman
 - c. Geraldo Rivera
 - d. Muslim male extremists mostly between the ages of 17 and 40
6. In 1985, the cruise ship Achille Lauro was hijacked and a 70-year-old American passenger was murdered and thrown overboard in his wheelchair by:
 - a. The Smurfs
 - b. Davy Jones
 - c. The Little Mermaid
 - d. Muslim male extremists mostly between the ages of 17 and 40
7. In 1985, TWA flight 847 was hijacked at Athens, and a US Navy diver trying to rescue passengers was murdered by:
 - a. Captain Kidd
 - b. Charles Lindberg
 - c. Mother Teresa
 - d. Muslim male extremists mostly between the ages of 17 and 40
8. In 1988, Pan Am Flight 103 was bombed by:
 - a. Scooby Doo
 - b. The Tooth Fairy
 - c. Butch Cassidy and The Sundance Kid
 - d. Muslim male extremists mostly between the ages of 17 and 40

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FROM THE EDITORS

WE HOPE YOU ENJOY READING
DE NOVO
BUT MORE IMPORTANTLY -
WE HOPE THAT YOU COMMENT,
CONTRIBUTE
AND CONTINUALLY SUPPORT
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DE NOVO

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DE NOVO

RACE IN PROFILE

CONT FROM P. 1.

9. In 1993, the World Trade Center was bombed the first time by:

- a. Richard Simmons
- b. Grandma Moses
- c. Michael Jordan
- d. Muslim male extremists mostly between the ages of 17 and 40

10. On 9/11/01, four airliners were hijacked; two were used as missiles to take out the World Trade Centers and of the remaining two, one crashed into the US Pentagon and the other was diverted and crashed by the passengers. Thousands of people were killed by:

- a. Bugs Bunny, Wiley E. Coyote, Daffy Duck and Elmer Fudd
- b. The Supreme Court of Florida
- c. Mr. Bean
- d. Muslim male extremists mostly between the ages of 17 and 40

Nope, I really don't see a pattern here to justify profiling, do you?

So, to ensure we Americans never offend anyone, particularly fanatics intent on killing us, airport security screeners will no longer be allowed to profile certain people. They must conduct random searches of 80-year-old women, little kids, airline pilots with proper identification, secret agents who are members of the President's security detail, 85-year old Congressmen with metal hips, and Medal of Honor winning and former Governor Joe Foss, but leave Muslim Males between the ages 17 and 40 alone because of profiling.

As the writer of the award-winning story "Forrest Gump" so aptly put it, "Stupid is as stupid does."

NOTE: The original "survey" comprised 13 questions. However, in the interest of space, 3 questions have been eliminated for publication.

On March 1, 2005, Professor Strossen sent the following message to her Con Law II classes:

Message from Prof. Strossen

Email critiquing opposition to post-911 profiling — I should explain a bit of the context for the EM... since you didn't yet have the benefit of my in-class discussion about it. It was sent by an angry member of the public to myself and Anthony Romero, the ACLU's Executive Director, objecting to the ACLU's opposition to demographic profiling — specifically, post-911, to the targeting of young Muslim men from the Middle East and South Asia. The ACLU and others have drawn parallels between the targeting of Japanese-Americans during WW2, which the Supreme Court upheld in the *Korematsu* case, and the targeting of the above-described demographic groups post-911 (of course, the deprivations of liberty in the WW2 situation were much greater in scale, but the principled issues are comparable — when should or may the government proceed on the basis of ethnic or other group-wide characteristics, rather than individualized suspicion?)...The US Government's official position now repudiates any such profiling, although many observers, including the Justice Department's own Inspector General — have concluded that federal officials have arrested, detained, and deported more than 1200 individuals based only on religion and national origin.

NOTE: The text of the original email has been edited slightly for publication.

On March 2, 2005, students in Professor Strossen's Con Law II classes received the following message:

Message from Prof. Strossen

Rahan Uddin, in my evening CL2 section, generously agreed to let me share with you his thoughtful reactions to the Email that had been sent to me, which I previously circulated to all of you, a propos our consideration of the *Korematsu* case and the issue of whether the government may treat individuals as national security threats based on demographic factors such as national origin.I also want to take this opportunity to stress that I would welcome *any* response that any of you might have — anonymous if you prefer — including any that would support the profiling approach... I want to receive — and circulate — ANY student comment on ANY issue, regardless of its viewpoint. As I hope you realize by now, I welcome and encourage a diversity of viewpoints on the challenging issues we are studying.

STOP PROFILING NOW!

BY RAHAN UDDIN

I am highly offended by the sentiments in this email, and am disturbed by the suggestion that this pattern means anything. I am a muslim male between 17 and 40. I am also an American citizen raised and lived in NYC for most of my life. I find it terribly frustrating and stressful to be singled out anywhere for the actions of fanatics who use the name of religion to justify their works.

I would ask the author of the email to look up the string of crimes committed by white males between 17 and 40; black males between 17 and 40; asian males between 17 and 40; christian males between 17 and 40; or any other group, and try to justify profiling that group because a string of those crimes can be attributed to persons who can in some way be characterized as belonging to that group.

It seems this country never learns from our mistakes. One hundred and fifty years ago, we said it was our destiny to take the lands of the Indians and expand west (while slaughtering and effectively eradicating a whole race). We 'feel bad' about it now. Our great country somehow justified dehumanizing a whole race of people for two hundred years by claiming they were not citizens of the country and therefore, did not have any rights that the Constitution granted to *people*. We are still trying to "undo" that harm. We managed to fight the world to expand democracy, equality, and fight for the oppressed, but we have a history of mistreating groups. It is frustrating that people still do not acknowledge this in this day and age.

I know a man who lived and worked hard in this country for 30 years running his own restaurant business. After giving up his business, he fed a family of six by doing hard manual labor, but refused to go on welfare because as a Muslim he believed it was his duty to feed his family and not the government's responsibility to do so. He is one of the most upstanding and principled man as I have met in my life. About a year after 9/11 attacks, federal agents burst into his house with guns and rifles drawn in front of his children ages, 16, 12, 4, 2. Do you know what their reason was? His name was "Mohammed."

For every ONE terrorist who claims to be a Muslim, there are MILLIONS of Muslims who are people of peace. We live in a society that should be much more tolerant and understanding. I would ask the author of this email, or anyone else who shares this opinion, to imagine belonging to a group of nearly a billion people around the world, and look at the prospect of being harassed for the actions of 1 or even 1000 who claim to belong to that same group.

I want to take a moment to thank you for heading an organization that is undeterred in defending those that are rendered defenseless by such actions where the government can claim "national security" to basically do whatever they wish, and continuing to pursue your mission in the face of such public resistance against your work.

NOTE: The text of the original email has been edited slightly for publication.

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IN DEFENSE OF RACIAL PROFILING

by ANONYMOUS

On March 7, 2005, students in Professor Stroessen's Con Law II classes were forwarded the following email message she received in response to Rahan Uddin's email. The student wished to remain anonymous.

This is in response to Mr. Uddin's thoughts on the subject of racial profiling, which I do respect and understand.

First off, I do not condone racial profiling at all. However, I do believe that when a crime occurs, whether it be traditional or terroristic in nature, all factors including the race of the perpetrators should be factored into the investigation by the investigators. It just doesn't make good investigative (nor common) sense to disregard the facts that are presently available.

Professor Stroessen's e-mail with the questionnaire was tailored for terrorists who were Muslim or Arab. (It is important to note that not all Arabs are Muslim nor are all Muslims Arab.) In this specific case, it appears the questions were geared toward those terrorists who targeted and attacked the U.S. during the 9/11 tragedy.

Mr. Uddin's counters the format of this questionnaire by asking "the author of this e-mail to look up the string of crimes committed by white males between 17 and 40; black males between 17 and 40; Asian males between 17 and 40" and so forth..."to try to justify profiling that group for similar type of crimes because a similar type of those crimes can be attributed to persons ...as belonging to that group." On one hand, Mr. Uddin's reasoning is absolutely on point as there are certain patterns of criminal activity (although not absolute) that can be attributed to any group. However, in the case at hand, the (actual, not alleged) terrorists that were directly involved in the execution of the 9/11 tragedy fit a "profile" that the investigators (or for that matter, any agency involved in the enforcement of the laws of the U.S. or in its security) could not ignore in the early aftermath of 9/11. I do not believe for one moment that the American public already reeling from the tragedy, and demanding answers on the failures of various agencies to prevent it, would have accepted investigators ignoring the following facts: that several of the hijackers were Saudi Nationals who were aligned with Al Qaeda and practiced a radical form of Islam, Wahhabi Sect (Brief, not all inclusive), because the investigators were afraid to target an individual whose conduct led them to believe that he/she was involved (because they did not want to get accused of racial profiling for targeting an Arab Muslim). Although, I do agree with Mr. Uddin that the questionnaire's suggestive nature is quite disdainful, since it appears to focus on race and not conduct.

As for Mr. Uddin's comments about being an American citizen, who is a Muslim male within the ages of 17 and 40, raised in NYC for most of his life and finding it "terribly frustrating to be singled out."

Let me say this, I too am an American citizen, who was born and raised in NYC, who has been singled out because of who I am. It happened to my friends as well as myself as a young person who would get stopped by Police Officers for nothing more than walking through

an area that was not known for their minority representation or is it gentrification. As I got older, I have been pulled over while driving a few times only to be released once they saw my law enforcement identification. In fact, I specifically questioned one officer why he pulled me over and he just said "you could go now..." I am not naive to believe that it won't happen again.... and it's not right, but will it happen again. Probably!

After 9/11, a U.S. Air Force Colonel and myself (I am a reserve U.S. Air Force Officer —though not a Colonel) were going through an airport in Tennessee in our full dress service uniforms, where we were stopped by TSA and asked questions. At their request, we removed several articles of clothing, as military uniforms are not lacking in metallic knick-knacks, while they confirmed our military identifications (by the way, the Colonel I was with was Caucasian). I will never forget him saying, "How much has changed in his lifetime.... How no one had ever stopped him anywhere for anything!" We, and I say this to reflect upon all of us in this nation, have all had to change our lives for the actions of a few fanatics on that one tragic day. That does not say that you, yourself, have not suffered more so than the rest.

Mr. Uddin's makes his point by stating that "we have a history of mistreating groups -its frustrating people are so careless to still not acknowledge this." He cites the treatment of Native Americans and the abuses they suffer. (If anyone is interested, the book "Fly Boys" has a very detailed, albeit brief, look at the atrocities committed upon the Native American by American Cavalry Soldiers and a detailed, although violently graphic portrayal of the atrocities committed by Japanese Soldiers in China.) Furthermore, he points to the fact that "we managed to fight the world to expand democracy, equality and fight for the oppressed." I definitely agree with him that our nation's history is one rife with the mistreatment of specific groups of people within our country. Although that is true, that can be said of many countries whose histories are well recorded with the mistreatment of others.

A lot has happened in the past 50 years to unify the people of this nation as one...and a lot more needs to be done. But the activism, the struggles, and the battles that were waged on the streets of our cities were crucial to where we are as a nation and a people today.

As for Mr. Uddin's acquaintance, let me start by saying this.... I do not doubt the facts that you have given as an example of abuse of governmental power. However, in my experience, as an U.S. Special Agent, I am aware that sometimes perception is reality. In essence, you perceive an injustice occurred on the part of the federal agents in this matter, as you were aware of the facts

from the perspective of one party. In fact, you stated their reason was his name was "Mohammed." If a search was conducted, a search warrant would have been produced and search warrants aren't always easy to get from a federal magistrate and the U.S. Attorney's Office. The right people ask questions and they want the agents not only to articulate facts, but provide support for what they are alleging to be there to execute the search. I highly doubt the magistrate would have issued a search warrant just because the agents had the name "Mohammed." If so, then that would be a new experience. I am not saying that it can't happen. I am always of the belief that anything is possible. But if there was no warrant, then a consent search was authorized by your acquaintance. If either of the above scenarios did not occur, something's amiss. In addition, as for the guns and rifles drawn by the agents, there are multitudes of procedures that cover that area, especially with children in the house (we do try to find out ahead of time what we will encounter — it's a safety thing, agents have families, friends, and personal lives they want to return to). Again, there are more facts than that are made known. I will say that wrong houses get targeted, we have all seen that in the news - but to just overwhelm a house and "burst into a house with guns and rifles drawn" alludes to other facts that are not presently known, nor could be known except for those present on the scene.

As for Islam, I find it to be what Mr. Uddin claims it to be, a peaceful and tolerant religion. I don't practice it, but I understand it, not as well as those who follow the teachings, but enough to know that when I read an article or watch a news story, whether the facts are right or wrong. I have taken courses on Islam, Terrorism, and the Middle East, while at the Air Force's Special Operations School where I learned from Saudi & Egyptian Nationals, as well as other American Military Officers. In addition, I have also spent time in Morocco and Israel (where I found out that there are Arab Jews and that the Torah is just as fascinating) and learned from those who lived and worked there. (It is my opinion, that to know the Middle East, you have to study Israel's history as well, and vice versa. In fact, you have to understand European history and culture as well.) Mr. Uddin is on point when he states there are those individuals who do use the teachings (Lesser/Greater Jihad) of the Koran for their own agenda. Mr. Uddin is also right about the large majority as being peaceful, as for the numbers of practicing Muslims who are peaceful are in the millions (the fastest growing religion in the world) as opposed to those in terrorist groups who practice

Continued on next page

IN DEFENSE OF PROFILING

(con't from page 5)

Islam. (Remember there are domestic groups and individuals living in the United States who engage in acts of terror as well.) (By the way, if you are interested, I was fortunate enough to take Islamic Law & Middle East Legal Institutions with Prof. Moghrabi. It was a great experience!)

There are many people who work in the government and live in this country that who will not allow the government to rubber-stamp everything as "national security" to overcome racial profiling. These brave people, who have integrity and courage, such as FBI Special Agent Colleen Rawley, Esq., make a difference by standing up for what is right, even at the risk of their careers and reputations, and even in the face of great political pressure. Racial profiling alone should not be used at all! However, the conduct and information that identifies an individual's race should be used. It wasn't that long ago, when a group of passengers on a flight subdued a man (two of whom were doctors who injected him with sedative drugs) who was trying to light his sneaker afire for attempting to destroy a passenger airliner by igniting explosives hidden in his shoes. That person Richard Colvin Reid, also known as the "shoe bomber," was later found to have plastic explosives within the lining of his shoes. They were able to identify a threat to the lives of all those on-board based on minimal information. If they were wrong, sure they should be held accountable, however they were right and they should be recognized for taking the right course of action. Due their actions, on January 30, 2003, he was found guilty on terrorism charges at a federal court in Boston, Massachusetts and sentenced to life in prison. During the sentencing hearing he openly stated that he was "an Islamic fundamentalist and declared himself an enemy of the United States."

Again, I want to state that I do not condone the use racial profiling alone as a tool for Law Enforcement. Racial profiling has happened to me and I despise it and the clothing that it is sometimes shrouded in. To be quite honest, it always amazes me how the person reacts when they find out that I am a federal agent...and then I think, in my own little world, that maybe the next time that person will think twice before acting.

EDITORIAL

Students v. Career Services

by Kimberli Swain

Employment is a major factor that guides many law students' decision-making process when it comes to their career path. The choice to go to law school or not is based on employment goals, therefore prospects of finding a job during and after law school is a major concern of most law students. It is true that we are all here in law school because we seek to advance our education and knowledge, but we are also here to learn a skill and trade that will allow us to find the job that may help to pave the path to our ultimate goals in life.

One factor indicating that Career Services is important is that the quality and effectiveness of a school's career services is a factor that publishers use in ranking schools. There is also the argument that if an increasing number of students from a particular school are getting prestigious or well-paying jobs, then Career Services "must be doing something right." Adding to the pressure on Career Services is the fact that the service the office provides is often a major battle ground between the administration and the students.

There will always be the unhappy and unemployed students and the overworked and stressed career advisors. This conflict often stems from students' dissatisfaction with Career Services and its "inability to do what they are here for, to get us jobs!" Many students think that Career Services do not cater to the majority of the student body. A common perception is that more attention is paid to students who are at the top of the class, and this causes the rest of the student body to often feel left out and disgruntled with Career Services. It is frustrating enough to know that your prospects of getting that higher paying job are a diminished because you are not at the top of the class. When you hear about the services those ranked in the top 10% of each class receives from Career Services, students wonder if they are attending the same law school because they are not offered the same services. It is not insane to argue that Career Services are often more needed by those students who may not have the credentials or high grade point average to get them in the door. Students think "What is the main function of Career Services other than to assist students in finding a job to pay back the loans they took out for tuition -which includes the salary of career services advisors?"

On the other hand, Career Services can only work with what is given to them. If the ratio of students to advisors is high, it is safe to say that it is not something that career services wish for. If the qualifications of the students are not what the dream employers are looking for, then there is really nothing that career services can do or should do. The stress and complaints from disgruntled students do not help the tension.

Career Services can only provide support so students can achieve their goals. The Center cannot achieve the goal for the students or get them a job. To name just a few factors, experience, strong interviewing techniques, knowledge and hard work of the student that will get them the job, not Career Services.

So who is responsible for this battle? It is a conflict that has existed before our entrance into law school and will probably continue for many more. The perpetuating cycle of disgruntled and unappreciated feelings can be broken if each side takes a step back and consider how they may go about to improve things. Students need to realize that Career Services does not provide miracles. The office exists as a service to assist students in the employment process. Career Services should examine where their services and resources are needed most. But, students need to take the effort and the responsibility to request any services that Career Services does not currently provide and use the office as much as possible.

An effective and influential mediator in this process is the law school administration. More resources need to be devoted to this important service, because ultimately, students' experiences with Career Services have a large effect on the school's reputation. Students also need to voice their opinions to the administration. If the administration is unaware of the problems, which we all know exist then how can it be resolved? Students need to take the courageous step and voice their opinions - now!

DO YOU HAVE SOMETHING TO SAY?

Drop us a line at denovoeditors@nyls.edu

EDITORIAL

Innovation, Diversity, and a Commitment to Social Justice: Playing Hide and Seek with the Philosophy of New York Law School

by TERESA LOKEN

According to its 2004-2005 catalogue, New York Law School is founded upon a commitment to justice and serving society. However, like the majority of other ABA-approved law schools, NYLS succumbs to systematic flaws that frustrate the school's achievement of its own philosophy, that "law is a tool to accomplish real-world outcomes for clients, for society, for justice" (NYLS, 7). These flaws, inherent in the legal-education institution as a whole, include minimal diversity among students, unfair academic policies, and teaching methods that tend to dehumanize, depress, and degrade students in their attempts to succeed.

I chose to attend New York Law School because I believed, ever so naively, that the school was different from other schools. I believed that NYLS took no part in the perpetration of social hierarchies and inequities. I now know I was mistaken in my belief. Although NYLS claims to be an independent law school challenging existing social and legal precepts, it is a stickler for traditions and policies that seem inconsistent with justice (NYLS, 7).

The most notorious of these traditions is the Socratic method. Not only does the Socratic method fail in effectively teaching students important legal skills, it also has psychological effects that can result in students feeling humiliated, dehumanized and disconnected from others (Mertz, 95). Says Professor Duncan Kennedy of Harvard Law School:

It is almost never anything like as bad as *The Paper Chase* or *One-L*, but it is still humiliating to be frightened and unsure of oneself, especially when what renders one unsure is a classroom arrangement that suggests at once the patriarchal family and a Kafka-like riddle state.(3)

While there are always exceptions, my experience at NYLS has been consistent with Professor Kennedy's "Kafka-like riddle state." In class, we are called on in random order and are required to perform robotic functions such as spitting out the facts or identifying the parties of each case. We are admonished for failing to remembering the minutest details, even if those details have no bearing on our understanding of the case or the legal principles involved.

Although, as future lawyers, many of us will someday face a barrage of questions from scowling judges, I see no need to create an atmosphere of fear and intimidation, especially in first-year classes. This atmosphere stifles intellectual creativity because it prevents many students from offering answers that are not included in the neat little methodological boxes of traditional legal thought. Accordingly, the Socratic method seems to reward students for conforming to a strict set of rules and procedures instead of having creativity and intellect. The law school classroom more often resembles a TV game show than a site for education and academic discussion.

It is understandable why some students adhere so easily to the dry "call and answer" sessions we call the Socratic method. The method, along with IRAC note-taking and outlining, are some of the only things explained clearly in a manner accessible to all first-year students. Everything else, including relevant legal skills and principles, seem not to be actually taught, but obfuscated. Returning again to Professor Kennedy's "Kafka-like riddle" state,

...the teaching of skills in the mystified context of legal reasoning about utterly unconnected legal problems means that skills are taught badly, unselfconsciously, to be absorbed by osmosis as one picks up the knack of 'thinking like a lawyer.' (17)

This should ring true for many first-year students at NYLS. How many of us go to class somewhat confident in our grasp of the lecture materials but leave in a state of utter confusion? How many of us are still trying to figure out how to get a "VG" in Legal Writing, even after already receiving one? How many of us are amazed because we never fail to receive a "G" on our Contracts memos, whether we spend one week working on them or two hours? Like mystical law school teaching

methods, the system of grading seems equally obscure. Time and time again, I have heard students speak the same phrase: subjective grading.

Given this mysterious nature of law school pedagogy, the strict academic policies maintained by NYLS and most law schools, seem grossly unfair. Furthermore, unbending academic policies seem to endorse existing social inequalities (Clydesdale). Under the NYLS Academic and Administrative Rules and Regulations, "After the end of his or her first semester, a full-time student whose GPA is below 1.750 shall be dismissed." It can be argued that such a policy works in the best interests of each student. Students who do not do well the first semester, whether or not they want to try again the next semester, should not be allowed to try again because their performance in the first semester demonstrates their inability to succeed. It is highly unlikely that students who do not succeed in law school will pass the bar and therefore, continuing their legal education is a waste of both time and money. But such a belief fails to consider several factors that affect each student's ability to adapt to law school. These include individual personal factors such as work, extracurricular activities, and family life, and social factors such as race, sex, economic background and disabilities.

In 1991, the Law School Admissions Council (LSAC), began a national study of 27,478 entering law students, the Bar Passage Study (BPS) (Clydesdale, 712). Timothy T. Clydesdale, in his article "A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Other Related Gaps in Law School Performance and Bar Passage," analyzed the resulting data. His analysis sets forth an illustration of law school as a forked river. The results (of the BPS)...demonstrate that no single river carries law students of varying ages, races, personal characteristics, and social origins from start to finish. A better analogy is a forked river, with one side offering a challenging and often dangerous white-water rapids course, the other side a swift but smooth current, and an entry gate that variously restricts access to the river. All minority law students are made to ride the former, and they are often joined by older law students, law students with physical or learning disabilities, and law student from disadvantaged socioeconomic origins.(712)

Overall, Clydesdale found that law schools "enlarge entering academic differences across race, age, disability, and socioeconomic origins rather than reduce them..." (712)

Applying Clydesdale's analysis to NYLS is a difficult task, as diversity in the student body (at least in my section) is already at a minimum. However, I believe it is an important task, since at the beginning of the spring semester, I observed that over 1/3 of the all the black students in Section A did not return. Out of concern and curiosity, I went to Academic Affairs to ask if I could get stats on what students were dismissed for failure to obtain the minimum GPA. Of course, I was not given any of this information and consequently, I cannot confirm whether these students were dismissed or left voluntarily. (I would like to make clear that because I do not have access to the figures, I can only give my own estimation of how many black students in my section did not return after the fall semester.) But, for whatever reasons, the fact that these students are now my ex-colleagues makes me wonder whether Clydesdale's conclusion that the present process of legal education exacerbates the entering educational gaps of minority law students is true even for law schools that claim to be innovative, and committed to justice and diversity.

In addition to flawed teaching methods and unfair academic policies, I would like to discuss another aspect of law school that seems out of step with a NYLS's commitments to innovation, diversity and justice. That is, the general dehumanization of both

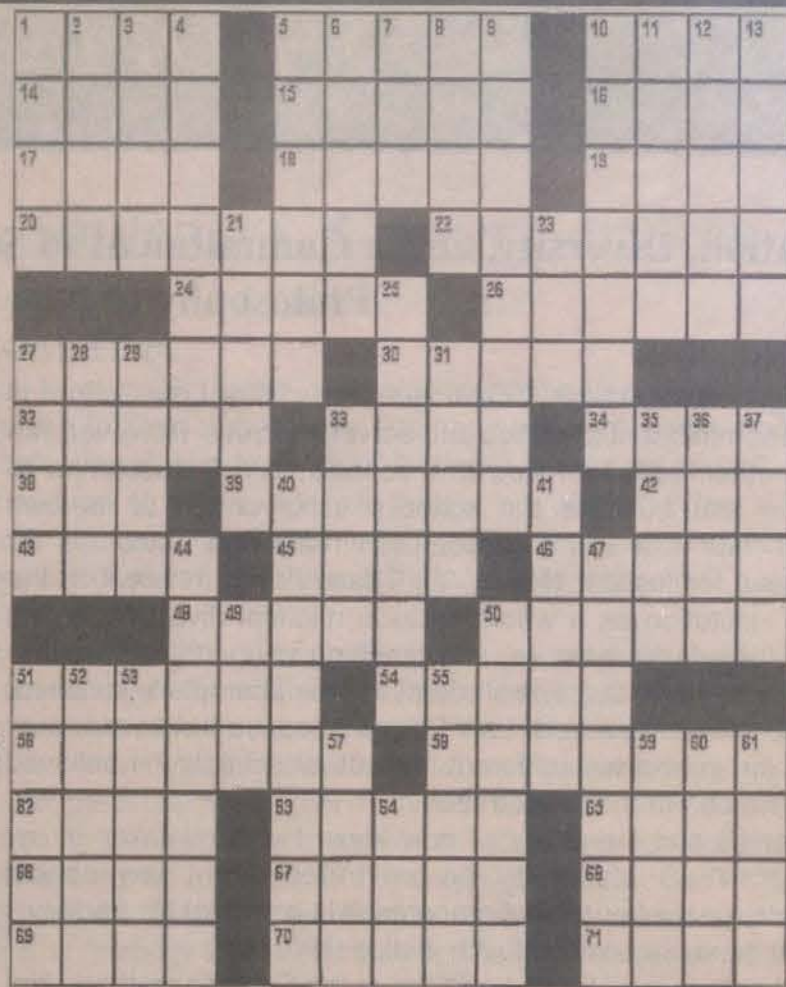
continued on page 11

Across

1- Festive occasion; 5- Shatter; 10- Monkeys; 14- Image; 15- Main artery; 16- Lake or pond; 17- Discharge of a firearm; 18- Country bumpkin; 19- Excellent; 20- Inflammation of the colon; 22- General bodily weakness; 24- Fungal infection; 26- Participant in a bowling game; 27- Curvature of the legs; 30- Lake in the Sierra Nevada; 32- Farewell; 33- Bone of the forearm; 34- Jump lightly; 38- Rocky pinnacle; 39- Predatory South American fish; 42- Revised form of Esperanto; 43- Woody plant; 45- US space agency; 46- Valleys; 48- Scoop; 50- Throat abscess; 51- Inhabitant of Yemen; 54- Timber prop in a mine; 56- Recluse; 58- Rolled oats; 62- Small particle; 63- Angry; 65- Fencing sword; 66- Paradise; 67- Republic in NW Africa; 68- Inert gaseous element; 69- Resting place; 70- Aphorism; 71- Portable shelter;

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Answer on page 11

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CONGRATULATIONS ALICE!

De Novo would like to congratulate one of its own – Associate Editor, Alice King, who won Best Oral Advocate of the North East Region at the Frederick Douglass Moot Court Competition in February 2005. It was Alice's first time competing in the moot court competition which drew 36 competitive teams from the North East Region of the United States. Keep up the good work Alice!

Other school publications feature news updates on the Faculty, but we'd like to hear what YOU, our fellow students have been doing. So send us news of anything happening in your lives that you'd like to share with the larger community. Jobs, births, weddings, awards, honors - anything at all that will allow us all to be more of a community and less of an institution.

-- DE NOVO EDITORS

Summer 2004 Bar Exam Pass Rate

<p>New York Law School Overall Pass Rate: (227 of 334 Passed)</p>	<p>68%</p>
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<p>New York Law Students Supplementing With PMBR: (209 of 250 Passed)</p>	<p>84%</p>
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Innovation

(con't from page 7)

diversity and justice. That is, the general dehumanization of both law students and the legal practice. As mentioned earlier, we are called on in class to perform seemingly robotic functions. And when we are called on, it is by our last names, a system which recalls P.E. class in grade school. While some professors are very personable, others, upon passing them in the halls, stare back at you blankly in response to your uttered hello. This makes us feel not as students and humans, but as numbers and robots that must merely be trained to recite facts and laws on command.

We are also taught that the legal system itself, and consequentially, the legal practice, must contain no human element. Says Robert P. Schuwerk in his article "The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?"

Law students are taught, over and over again, that "thinking like a lawyer" makes how they "feel" about a legal problem at best utterly irrelevant. Feelings get in the way of "sound legal analysis," and, for that reason, are to be suppressed, if not discarded outright. Moreover, overt displays of feelings—at least negative ones—are bad, because once your adversary—and there always seems to be an adversary—sees that you are in trouble, they will exploit that weakness to inflict even more harm on you and your client than they have already done (772).

The branding of emotions as irrelevant to legal reasoning, seriously dangers students' morale. Furthermore, "The suppression of feelings leads to isolation and a generalized decrease in the ability to communicate with others in meaningful ways" (Schuwerk, 776).

The dehumanization of legal reasoning and the legal practice seems entirely out of step with a commitment to justice. A commitment to justice means a commitment to some person's definition to justice and some person's interests. In order to serve the interests of people, lawyers must have a grasp of human interests, emotions, wants and desires. Furthermore, by defining what is right and what is wrong, the law is necessarily tied to what people think is right or wrong. Thus, if law is to be used as a tool for justice, an understanding of human nature, including human feelings, is requisite.

The ideas expressed in this article are not new. In fact, academics and practitioners have criticized the American legal system and legal education in various different ways since the 1920s (Gordon, 641). Still, New York Law School, while maintaining that it embraces innovation and a commitment to justice, holds on dearly to various traditional pedagogical methods and academic policies that seem inconsistent with the school's philosophy.

This article is not meant to be a New York Law School bashing session or a long-winded rant about my unhappiness with the school. After having completed only one semester at NYLS, I have no doubt that the school strives for excellence. However, I am still searching for NYLS' commitments to innovation, justice and diversity, which I read about in the school catalogue before enrolling. I am still looking for signals that these commitments do exist and ways for me to contribute to these commitments. Perhaps I will discover them in my second year, but for now it seems we are playing a game of hide and seek.

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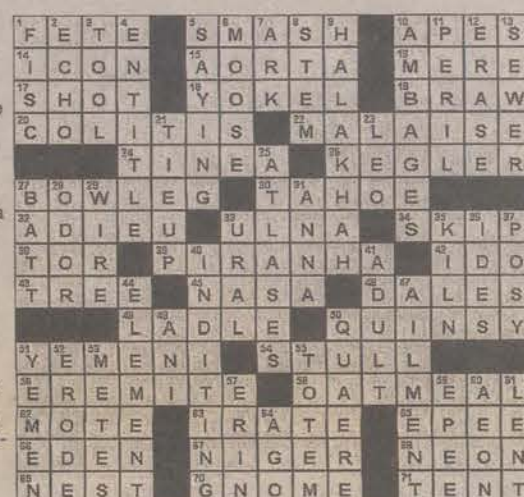
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ANSWERS TO CROSSWORD PUZZLE ON PAGE 8



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3L/MBA WINNER LEE & DEAN ALTAGRACIA LEVAT

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