The Commentator

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Stevenson Recieves First NYU MLK Award

Nicholas Kant '06

"Justice isn't something you get; it's a constant struggle," said Bryan Stevenson, a Professor of Clinical Law at New York University School of Law.

Professor Stevenson was the inaugural recipient of the Martin Luther King, Jr. Humanitarian Award at NYU. He received the award Wednesday, January 18 at the marquee event for NYU's MLK Celebration Week. The event was titled, "Celebrating the Dream: A Tribute to Dr. Martin Luther King, Jr.," and it took place in the Eisner & Lubin Auditorium in NYU's Kimmel Center.

The event started with a reception followed by performances, speeches, and an essay reading.

Then, towards the end of the event, E. Frances White, NYU's Vice Provost for Faculty Affairs, introduced the award and Professor Stevenson. She described Stevenson's work as the director of the Equal Justice Initiative in Montgomery, Alabama. Each year Stevenson takes his students to Alabama to help people who have been wrongly convicted. They have been successful in overturning or reducing dozens of sentences.

"His commitment to those forgotten or overlooked by the legal establishment has an effect on the legal system and his students," White said. "Through his work as a teacher and lawyer, Professor Stevenson's work truly embodies the spirit of Dr. King's dream."

NYU Professor Bryan Stevenson

"I'm humbled and privileged to be the first recipient of this award," Stevenson said upon coming on stage to receive the award.

Stevenson said the he hoped celebrating the legacy of Dr. King's work would challenge people to rethink their own lives.

Stevenson told the story of how he met Rosa Parks. She asked him what he was going to do, and he told her he would represent those on death row. Rosa Parks responded by saying that it would make him "tired, tired, tired."

Stevenson told the audience "Mass incarceration is devastating communities of poverty and color. I guarantee it will continue to exist unless people are committed to being tired, tired, tired."

He shared an anecdote with the audience of his work in Alabama. He got tired of kids being charged as adults, so he filed a motion for one of his black clients to be tried as an older white man. The day came to argue motions for the case, and Professor Stevenson said he was tired, and he regretted making the motion. As he entered the courthouse, his mood was lifted somewhat by a black janitor who hugged him and thanked him for coming.

Professor Stevenson argued his motions, and it was a contentious day. During the break, the janitor came in. A deputy tried to kick the janitor out, but the janitor protested. He was there to support Professor Stevenson, and he told Professor Stevenson, "Keep your eyes on the prize, and hold on."

Professor Stevenson closed by citing the well-known maxim, "Thou shall not stand idly by."

Civ Pro Exam Confusion

Chris Moon '06

It appears that every couple of years, Civil Procedure examinations cause widespread chaos at New York University School of Law.

This year, as a result of the TWU transit strike, students in visiting professor Arthur Miller's Civil Procedure class were given the option of taking their exam at home or taking it at the law school. However, the two sets up students ended up taking different exams.

The exam that was posted on the Take Home Exam System (THES) earlier in the semester was actually the same exam that had accidentally been posted onto the Blackboard page of the course on NYUHome. The administration recognized the mistake quickly, as did students who noticed that the date on the "model" exam was the date the actual exam was scheduled to be given. The exam was taken down after less than an hour but in the brief time it was up, several students downloaded copies and circulated them to classmates, as they would do with any other model exam.

When Professor Miller was notified of the mistake he graciously decided to write another exam and attempted to ensure that the published exam was removed from campus.

Yet, somehow, that exam ended up on THES. Students who had looked at the exam when it was first posted noticed the accident, but given the time constraints and uncertainty, all completed the exam as provided. Meanwhile, students who took the exam at the law school received the new exam that Professor Miller had created (his third of the semester: the 'model' exam, the 'in-school' exam, and a Harvard exam – he commuted between Cambridge and New York all semester).

The administration reacted quickly. Vice Dean Clayton Gillette e-mailed students within an hour after the December 22nd exam had concluded to tell them that he knew of the problem. Gillette stated, "I am writing at this point to tell you that we are aware of the situation and are working with Professor Miller to reach as fair and equitable of a solution as possible." He also apologized for the error, and expressed the apologies of Professor Miller as well, while making clear that Professor Miller was in no way responsible for what had occurred.

The next day, Vice Dean Gillette attempted to gauge the damage done by the exam dissemination, asking the approximately 30 students who took the THES exam to answer a series of questions: "1. Did you see a copy of the "incorrect" examination questions prior to the time that you took the examination? 2. Did you use a copy of the "incorrect" examination questions to prepare for the final examination, such as by using the copy as a practice exam? 3. If you did use a copy of the "incorrect" examination questions to prepare for the final, did you prepare answers to that examination with others, such as by discussing the exam in a study group?"

A week later, on December 29, Gillette explained the solution to the problem. First, those who took the in-class exam (70% of the students) would be graded on that exam. Second, those who took the "incorrect" exam would have three options. One, they could take the class on a pass/fail basis. Two, they could be graded on the exam, but on a separate curve from the in-class exam. Third, they could take the "correct" final exam, assuming they had not done more than just glance at the correct exam.

Vice Dean Gillette also tried to assuage the fears of students who had never seen the "incorrect" exam before the final, indicating that about half of the students who took the exam had not seen it before, while several only took a cursory glance at it.

Nevertheless, it appears almost impossible to be completely fair in dealing with the aftermath of the debacle. Compelling all students to take the correct exam might have resulted in a fair single curve, but the original take-home students would have had another week to study and the benefit of hearing about the in-class exam. A third new exam, taken by all students, would be a burden on the quarter of the 1L class hoping to begin their second semester and put the first one behind them (and

Continued on page 2

Justice Albie Sachs Speaks of Struggles

Nicholas Kant '06

South Africa's security forces planted a car bomb in an effort to kill Albie Sachs in Mozambique. It was 1988, and Sachs, a South African lawyer, had been fighting for human rights and against apartheid in South Africa.

"I was in total darkness. I knew that something terrible had happened to me. I thought I had been kidnapped," said Sachs, who spoke on January 9 in Tishman Auditorium in Vanderbilt Hall.

After the car bombing, Sachs awoke to find himself in a hospital.

"I asked what happened. A woman said it was a car bomb. I fainted into a sense of joy because I knew I would live," Sachs said. "Every freedom fighter dreams of that decisive moment. Will I be strong, will I be courageous? That moment had come and I had prevailed."

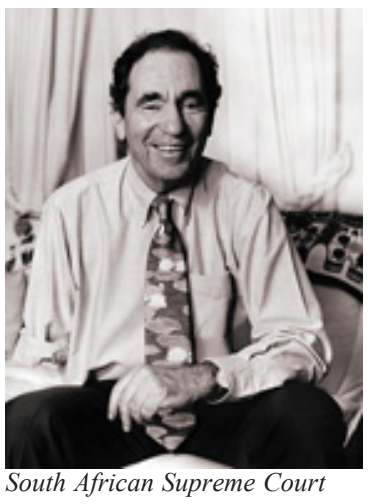
However, Sachs lost his right arm in the blast.

"I felt euphoric and joyous. It was only an arm," he said. "The magical part of it has continued to this day."

Sachs had to re-learn simple tasks like walking and tying his shoe.

"I came into the world naked, and I was re-born naked. (I was almost naked after the blast)," he said.

At a young age, Sachs went to law school in South Africa and began fighting for human rights. Because of his human rights work, prior to the car bomb incident, he was twice held in solitary confinement without a trial. In prison, he was also subjected to sleep deprivation.



South African Supreme Court Justice Albie Sachs

But Sachs prevailed. South Africa rejected apartheid, and he was asked to write the first draft of a new bill of rights. He told the crowd that he sat down with nothing but a pen and paper and started.

Nelson Mendela appointed him to South Africa's highest court, the Constitutional Court. Now he's Justice Albie Sachs.

In school, at age six, his teacher said, "Albert is a dreamy boy." Justice Sachs told the crowd that post-middle age, he still is.

Justice Sachs' life partner, Vanessa September, also spoke. September is an urban architect. She grew up in Cape Town, South Africa.

"I grew up in one of the most beautiful cities in the world. But I didn't really get to experience it the same way people with white skin did," September said.

Once a year, the day after Christmas, she went with her family for a picnic.

"We had to pass big beautiful beaches that were for white people only," she said.

September told the crowd that she could see a university, but it was for white people only. She dreamed of being an architect, and it remained a dream. She had to leave school to help support her family.

But soon, the Group Areas Act was repealed. The laws were changed, and September was able to go to the university. Now she is helping to re-shape Cape Town for the post-apartheid era.

There's a great song on the topic, "Group Areas Act" by Lucky Dube, who is also from South Africa. He sings about the end of the Group Areas Act and says, "If I'm dreaming, don't wake me up. If it's a lie, don't tell me the truth."

Infra

The Pirates! Adventures: Filled With Nonsense, Stupid, Yet Hilarious

Brigham Barnes '06

When I read the work of hot young wonder-writers who are tearing up the contemporary literature scene, writers like Dave Eggers and Jonathan Safran Foer, I get really jealous. I'm jealous of their talent and that they've written incredibly popular, relatively respected works... but it's not like I could have written *A Heartbreaking Work of Staggering Genius*, so my jealousy is sort of pointless. However, over winter break I discovered the *The Pirates! In an Adventure with…* books by Gideon DeFoe and I'm now also really jealous of Mr. DeFoe, not because he possesses a talent that towers over me and all those around him, but because, dang it, I could have written ridiculous pirate books as stupid as these and he beat me to it.

According to the jacket of DeFoe's first pirate book, *The Pirates! In an Adventure with Scientists*, Gideon DeFoe is twenty-eight (just like me!), lives in London, and wrote the book to "convince a woman to leave her boyfriend for him." She didn't. The jacket of DeFoe's second Pirates! Book (he's only written two so far), *The Pirates! In an Adventure with Ahab*, informs us that DeFoe, like all the English, lives with his butler in a castle and spends most of his time having jousts. The Pirates! stories are simple tales detailing the adventures of the Pirate Captain and his simple-minded crew. So far, the Pirate Captain and his crew have adventured with a young Charles Darwin and helped Ahab track down Moby Dick.

Oh, wait! Before I go on, I need to tell you that *The Pirates!* books aren't children's books. I'm not reviewing the *Series of Unfortunate* Events books here. Seriously, I have standards.

Anyway, as I was saying, DeFoe's *The Pirates!* adventures are simple, stupid tales of simple, stupid pirates adventuring along in a very British, Monty Pythony way. If

you can tolerate reading about the bored crew of a pirate ship gathering jellyfish to try to build a "bouncy castle", you might just enjoy The Pirates! Adventures… perhaps a little too much, even.

Consider this scene from the first book. The Pirate Captain is engaged in a game of poker against his pirate nemesis, Black Bellamy. At stake is a bunch of pigs (according to DeFoe, pirates love ham. I'll concede the point.) As we join these two gamblers, the Pirate Captain is doing quite poorly:

... The Pirate Captain's crew was starting to get worried, but then the Pirate Captain had a fantastic idea. He found himself with another useless hand but this time, instead of thumping the table and looking miserable, he gave a big grin, and whispered loudly to the pirate who wore a scarf, 'We'll be feasting on that forty head of hog, with this brilliant hand!'

Black Bellamy heard this, and decided to fold. The Pirate Captain shuffled the pile of doubloons into his pockets. Black Bellamy saw his cards and gasped.

'But... you had a terrible hand! Garbage!"

'Yes. But I knew that if I looked pleased with it, you would think it was a flush or something like that!'

'You're confounded clever!' roared Black Bellamy.

Dumb, right? But also pretty funny, right? DeFoe's two "novels" are filled with scene after scene of this sort of nonsense, and it's enough to make me wonder that if this guy could publish two books of hilarious yet stupid pirate adventures, what am *I* doing in law school? But, at the same time, there'd be no point to my dropping out of school right now to write ridiculous pirate novels because DeFoe has already done it.

So I really haven't any choice but to keep at this lawyer stuff while hoping that DeFoe publishes another book by spring break so I can read it then. And to strongly recommend that, if you're inclined to like dumb and funny things, you get your hands on *The Pirates! In an Adventure with Scientists* and *The Pirates! In an Adventure with Ahab!* and read them the next time you've got casual-reading time on your hands.

The Commentator

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Second year students with demonstrated commitment to work in civil liberties and civil rights and strong skills are invited to apply for 2006-2007 Fellowships in the Arthur Garfield Hays Program. Materials describing the Program and the selection process are available in VH 308. **APPLICATIONS ARE DUE BY NOON ON MONDAY, FEBRUARY 13.**

The current Hays Fellows will discuss their experiences in the Program and answer your questions on Monday, Jan. 30 in Furman Hall #316 from 4:00 p.m. to 5:00 p.m., and again on Tuesday, Jan. 31 in Vanderbilt Hall #208 from 4:00 p.m. to 5:00 p.m.

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Join Moot Court

Sign up in Golding from Jan 30th to Feb 2nd and Feb 6th to Feb 9th, 10AM-4PM

Civ Pro Exam Confusion

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Professor Miller might not relish the opportunity to write a fourth exam). Assigning pass/fail grades seems reasonable to many, but others were hoping for a strong grade in Civil Procedure and might feel penalized.

In any event, only a handful of students elected to take the exam again, with most students who had taken the exam opting for a grade.

The situation is similar in some respects to what happened in Professor Larry Kramer's Civil Procedure class in 2002. The major difference though, is that Professor Miller had nothing to do with the exam snafu.

Three years ago Professor Larry Kramer, current Dean of Stanford Law School, used an exam question from his previous year of teaching, believing that students would be unable to get a copy of the exam, since he visited the previous year at Columbia. Several resourceful students were able to procure a copy of the exam. Eventually, the exam was graded without the offending question, but it caused lots of worry for those students who had never seen the Columbia exam before taking their final.

Strike Issues: Civil Procedure students weren't the only ones who were inconvenienced by the TWU strike. Several students who live off-campus, many in the large Professional Responsibility class, stayed in the apartments of friends in the Mercer and D'Agostino Residences.

It isn't often that NYU Law Students have sleepovers with their buddies during the school year, but the prospect of reaching the law school by 9 A.M. was too daunting for many commuters.

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chrismoon@nyu.edu

Professional Responsibility Course Fatally Flawed

Chris Moon '06

Throughout my three years here at New York University School of Law, I have been in a wide variety of classes. Some classes were more interesting than others. Some professors were more effective than others. I liked some professors better than others.

I have never in my three years felt as though the Law School was neglecting its duties in running a class. Certain classes, like an appellate advocacy seminar and my Lawyering class, were incredible learning experiences. However, the same cannot be said about this past semester's Professional Responsibility class taught by Professor Gillers. This particular class was horribly crafted. I dare say, ironically, that the Law School was neglecting its own professional responsibility as an elite academic institution by forcing students to take a class that was so poorly put-together.

Up front, though, let me make it clear that criticism of the class is for the most part NOT criticism of Professor Gillers. He seemed to have been thrown into an almost impossible situation, trying to make a suitable learning environment in a large auditorium. I must also praise Professor Gillers for one of the best textbooks that I have read. The issues in the textbook, such as the fall-out from President Clinton's deception of a grand jury, are interesting and excellently presented.

So why was Professional Responsibility an abject failure?

Three Hours: This is a small gripe, so I'll put it first. I can't stand classes that go longer than two hours. Luckily, I've been able to avoid the marathon sessions, but in the case of Professional Responsibility, I could not.

Unavoidable: What? Unavoidable? Yep, that's right, for hundreds of 3L students, this class was unavoidable. After not securing a spot in two, maybe three, spring courses that would satisfy the professional responsibility requirement, all 3L students were told that they would need to sign-up for the class or they wouldn't be able to graduate. This came after wide-spread pleas for another section conducted, either in the fall or the spring, in a more traditional manner.

Prime Real Estate: There is a reason why a studio apartment in the Village goes for more than the mortgage payments for most of the nation's houses: location, location, location. The same holds true in a learning environment. Maybe I don't need every class to be held in one of Furman's plush seminar rooms, but I never expected to take a class in an auditorium full of disgruntled students.

Maybe it actually hurts my learning in class to have wireless connectivity, so I didn't mind my lack of internet access, but how is it possible to go an entire semester without addressing the lack of electric sockets to plug in a computer. Luckily, I had a friend who brought his own strip to class, enabling our entire row to keep our computers on the entire three hours. It seemed as though half of the students in class put away their laptops the last 30 minutes every class, and I think that has more to do with Dell's batteries lasting about 2.5 hours than the fact that Gillers suddenly became less interesting.

Apparently I'm 18 Again: The entire class was, for lack of a less loaded word, demeaning. I felt more like a freshman at a public university than a 3L at an elite law school. First, the size of the class was enormous. For those of you who come from public universities, picture your first year introductions to various subjects. I think I took Introduction to Architecture my first year to satisfy art requirements. At least they showed us pretty slides in that class. All we got in this class were PowerPoints and a clip from L.A. Law one week. Call me a dreamer, but I feel like I deserve more from my education when it is one of the most expensive in the country than to feel like I'm paying in-state tuition waiting to choose a major.

The signing-in and signing-out each class was similarly silly. Even the administration recognized that the chaos of the first week, with students waiting 30 minutes to sign in and out, was unworkable and unfair, with a three hour class turning into a four hour commitment. As a replacement, we were left with a simple to cheat system of people dropping their attendance sheets into a box at the beginning and end of each class. Apparently, the explanation was that the University could not certify that we had attended the required amount of classes without these sheets. Of course, this is ridiculous, as other professional responsibility classes have not had this requirement. If the requirement is a result of the size of the class, the easiest solution is to make the class size more manageable. However, even in a class of 100 students, it is unlikely that a professor could tell if a student had only come for half of the classes. Remember, attendance at 80% of classes is a requirement for all law school classes, not just this one. Only in this class, though, did we need to fill out an attendance sheet.

Can NYU Law students not be trusted? I certainly hope that isn't the case. I attended 9 of the 10 classes myself, but that wouldn't have changed if the entrance lacked boxes. Just like our attendance is just expected in all our other classes, I would have liked them to expect our attendance in this class. In fact, the sign-up boxes constitute an almost implicit admission that the class structure was so flawed that they can't trust the students to feel as though class was worth attending.

The Final Straw: The straw that broke the proverbial camel's back was the final examination. The first major problem was that it occurred over a month after the final class, at the end of the exam period. There was already an extra Tuesday set aside for a make-up session. Why couldn't the final exam have been held on the Tuesday the week after class ended?

The strike, which caused problems for students the day of the exam, was an unavoidable issue that only added to the stress for students. But the strike never should have been an issue. When a class ends early, the examination shouldn't occur late.

I won't even get into the exam structure, but I've heard several complaints about the exam length (two hours) compared to the number of questions (143).

Conclusion: If I could channel Craig Winters and his anti-corporate stance for just one minute, should it surprise anyone that the administration put together an entire class designed to show students how little they care about "professional responsibility?" Our entire textbook was filled with instances of Biglaw firms getting sued for unethical behavior. Many of us will start out at the same law firms that are accused of such behavior. It seems clear that, although knowing the rules makes it easier to walk the line, the less one knows about her ethical obligations, the better off she'll be at a Biglaw firm.

I Hate the New Gatorade Machines

Brigham Barnes '06

This isn't just an Opinion, it's a cautionary tale and a call to action. It's a true life story about something that affects all of us here at NYU Law. It has a moral. And I'll tell you the moral right now: Don't Just Sit There and Let Other People Make Decisions for You About Things That Are Important to You. Yes, that's sort of a long moral with spotty capitalization, but I'm trying to get a point across here, I'm trying to lay a little gravitas on you.

Here's the deal: It's my first week back at school after winter break, I'm in Golding and I'm thirsty so I walk over to the Coke machine to buy myself a beverage... but it isn't a Coke machine anymore, it's a *Gatorade* machine! For a second I'm like, "Gatorade? What's this?" but then I remember many emails that I ignored with the subject "Killer Coke" and Washington Square News articles that I didn't read about Coca Cola and how they did something, somewhere, and it was bad . . . and because of this bad thing (I'm guessing from the 'Killer Coke' headlines that it had to do with killing, which makes sense, because they're a soda company) that they did, somewhere (I'm guessing it was a country that is poor and far away, because I think I would have heard about mass executions at Coca Cola bottling plants in Colorado), some people at NYU (who I'm *really* hoping were just overenthusiastic freshman who thought (correctly, apparently) that they could make a change because I'd like to believe that as serious law students we're all too disillusioned to get worked up over whether Coca Cola is a bunch of villains or not) managed to pull off some piece school legislation banning Coca Cola products from our campus.

Now, if Coke actually did something really, really awful somewhere then I guess it's not such a big deal if we, as a community, take a stand and boycott their products. I'm not so much bemoaning the fact that I can't buy a Coke in Golding anymore (as one classmate said as he walked away from the Gatorade machine with a Pepsi in his hand, "Whatever, caffeine is caffeine") but offended that now, instead of being able to pick between a Coke, Sprite, Fanta (it was so great that that drink was making a total comeback), or maybe a Barqs rootbeer I now have to pick between Pepsi, a few flavors of Gatorade, and a few flavors of Snapple. First of all, call me a victim of marketing, but I associate Gatorade with athletic exertion and I feel silly sipping from a bottle of the bright yellow stuff as I do my Art Law reading. Second of all, Snapple is all well and good, but if we're in the middle of a struggle to get the vendors here at school to offer us sandwiches that cost less than $6 a piece is it too much to try to get drinks in our vending machines that don't cost around $2? Sure, we're all on our way to being sophisticated big-shot lawyers, but I want to be able to buy a stupid little soda (preferably a Sprite, to be honest) between classes . . . at least the Desani was replaced with other "normal" bottled water and not Pellegrino.

So, if you're like me, and sort of don't care about whether or not Coca Cola is Satan (and from what I think I heard about this debate the evidence wasn't exactly conclusive that it is) as long as their drinks are what you're used to, it looks like it's a little too late to stand up for the beverages we believe in and now we're stuck with an utterly bizarre array of drinking options because we all slept on this debate and let underclassmen run the show for us. And, yes, I realize this Opinion is based primarily on uninformed guesses about things I haven't bothered to research at all, but still... seriously, we're expected to drink Gatorade and like it now. This, to me, is unacceptable. But it's too late to do anything about it. And this is what happens when we don't pay attention to what's going on in the world around us and don't think that our voices can make a difference. So stay on point, or else they might be replacing our M&Ms with Cliff Bars next.

Wiretaps: Illegal and Ineffective

Meredith Johnston '06

The Bush administration launched a media blitzkrieg this week in an attempt to defend its policy of unauthorized wiretaps. It argues that these wiretaps are necessary to catch terrorists and make America safer. Many Americans appear willing to give up some of their civil liberties in exchange for greater security. In doing so, these people assume that they have nothing to hide and that the government can really catch terrorists this way. Both assumptions are wrong. Limitations on government collection of information, like warrant requirements, both protect people from misuse of their private information and provide minimal assurances that the information is relevant to a specific criminal activity.

The NSA wiretaps present two main problems: they have the potential to be overly broad, and no one knows what happens to the information after it is collected. Several members of the administration, including the former head of the NSA, General Mike Hayden, assure us that wiretaps were only conducted on communications by people with known contacts with Al Qaeda. However, there is no way to verify this guarantee, because no court reviewed the wiretaps, and no records have been released to Congress. General Hayden explained that the main reason the NSA avoided going through the courts is that without the courts, wiretaps could be authorized on a "reasonable basis" standard, rather than a higher "probable cause" standard. Yet "probable cause" is not a particularly rigorous standard, and the number of warrant applications that are denied is incredibly small. The more likely explanation is that the government engaged in blanket wiretaps, or monitored communications of people with only minimal connections to suspected terrorists. Again, it is impossible to know the truth, as the records are secret. General Hayden stated that the NSA did not cast a "driftnet" over Dearborn, but it is likely that the wiretaps extended to a broader range of people than even the flexible "probable cause" standard would allow.

Even if the wiretaps were only used on a few people, most searches probably provided no useful information for preventing terrorist attacks or capturing terrorists. This is simply a reflection of probabilities – only a percentage of all searches will turn up anything relevant. But in the process the government has gained access to huge amounts of private information. It also has no obligation to purge this information from its records. As America learned during Hoover's time at the FBI, the

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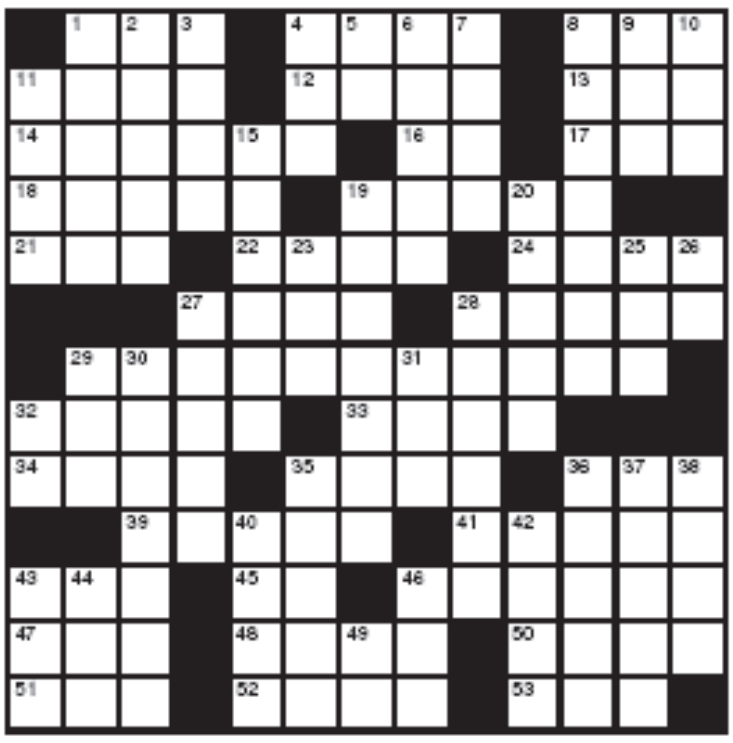
Crossword by Jessica Gonzales '06



Across
1. explosive
4. attend alone, with "go"
8. golf expert
11. Superman's sweetie
12. hip-heavy dance
13. line of objects
14. 12/07/41 will live in it
16. King's clown
17. unagi at Nobu
18. subway
19. water vapor
21. be nosy
22. addictive video game
24. verbal filler, for Valley girls
27. Magic energy
28. the novelisation of The Terminator, e.g. (2 wds)
29. It overruled Plessy v. Ferguson
32. quick, like a walk
33. really long time
34. roof edge
35. toot your own horn
36. fall behind
39. loan interest, archaically
41. habit
43. black gold
45. Bond Dr.
46. ___-___ bowling
47. were, presently
48. father, in baby-talk
50. Man or Wight
51. ___ Offensive
52. aroma
53. result of drinking too much

Down
1. printer need
2. "neat!"
3. a Russian king
4. timid
5. you, in Seville
6. O'Connor's replacement?
7. entrance
8. movie opening
9. caviar
10. wise animal?
11. flaccid
15. punk hair-do
19. Civil War issue
20. Garner's show
23. Coulter or Landers
25. young goat
26. __ route
27. Biblical prophet
28. unusual piercing location
29. demi or sports, for example
30. small brook
31. jungle squeezer
32. exist
35. wide
36. expire
37. nimble
38. hereditary unit
40. bring to ruin
42. cut
43. grain
44. anger
46. ___ Heel
49. M.D. alternative

Wiretaps: Illegal and Ineffective

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government may keep incriminating information, obtained under the auspices of fighting subversive forces, for years. This information can then be used to harass individuals, often through criminal prosecutions for unrelated crimes, like tax evasion, illegal gambling, or drug possession. It can also be considered when someone is applying for a job with the government or for security authorization when they want to visit their clients accused of terrorism. While these potential problems exist any time the government conducts a search (nothing bars the government from prosecuting Al Capone for tax evasion when they got the warrant for criminal syndication), the combination of lack of independent oversight of the process and the secrecy of the information creates a greater potential for abuse. A person who supports the human rights of detainees could find himself being audited by the IRS, never knowing that he was suspected of ties to terrorism, subject to a wiretap, and then investigated on the basis of private conversations unrelated to his human rights work.

Of course, most Americans are not human rights activists and never make an international phone call that could be tapped. These people should still be concerned because the wiretaps are not making them any safer. Again, the administration asserts, without citing specific examples, that the wiretaps have produced valuable, actionable information. Yet even General Hayden admits that more and more important information is coming to the NSA through taps authorized by FISA warrants. The infringements on civil liberties may not even be necessary, given the apparent efficacy of the existing FISA system. Additionally, more information is not necessarily better information. As the 9/11 Commission discovered, federal law enforcement agents possessed plenty of information from monitored communications that could have been relevant to preventing the attacks of 2001. The problem lay in sifting through this information and connecting it to other facts. The probable cause requirement imposes a minimal assurance that there is some connection between the person being searched and the suspected criminal activity. By complying with this requirement, the government may actually obtain better information.

While many Americans are willing to sacrifice some civil liberties in exchange for more security, the NSA wiretaps do not offer this trade off. They infringe on the rights of an unknown number of people, for broadly-defined reasons, and with potentially dangerous consequences. At the same time, they do not guarantee better information, but rather perpetuate the same mistakes that have marked the post-9/11 intelligence reorganization. Warrants protect both the people and the government from these mistakes.