



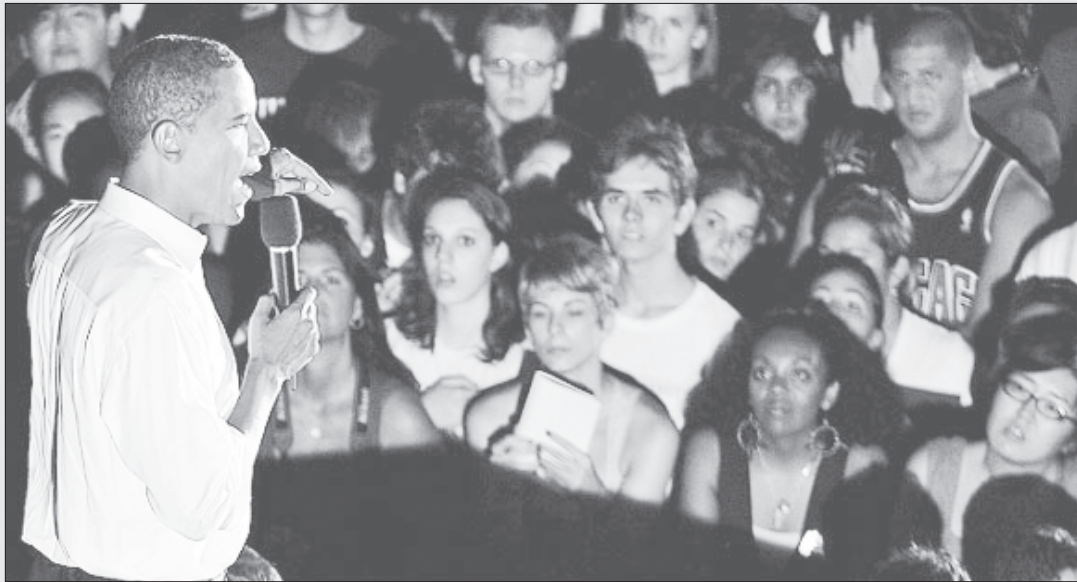
# THE COMMENTATOR

Vol. XLI, No. 3

The Student Newspaper of the New York University School of Law

October 11, 2007

## Obama Rallies NYU Students



Kathy Willens • Associated Press

Democratic presidential hopeful Barack Obama brought thousands – estimates put attendance as high as 24,000 – together in Washington Square Park on September 27. The rally was an attempt to make inroads against current democratic front-runner Hillary Clinton’s support in her adopted home state of New York.



Richard Perry • The New York Times

## JILP Symposium to Discuss African Crisis

By NICK ALEXIOU '08

The Journal of International Law and Politics (JILP) will be holding its annual symposium on a topic of international law on Monday, October 29, from 8:30am until 5:15pm in Vanderbilt Hall’s Greenberg Lounge. This year’s symposium is entitled, “The Future of a Continent: Law and Policy of Sub-Saharan African Children.”

A keynote address will be delivered by Professor Jeffrey Sachs, Director of The Earth Institute, Quetelet Professor of Sustainable Development, and Professor of Health Policy and Management at Columbia University.

There will be three panels throughout the day. The first panel, “Caught in the Crossfire: Children in African Conflicts,” will examine the profound effect of intrastate and interstate conflict on children. The second panel, “The Youngest Victims: Juvenile HIV/AIDS Crisis,” will examine the catastrophic toll that HIV/AIDS has inflicted on the

youngest segment of Africans and discuss what can be done to stem the tide. The third panel, “International Assistance: A Hollow Hope?,” will examine the current structure of the international aid system and whether that system can help pull African states out of poverty or will only serve to plunge them deeper into dependency and strife.

“We picked this [year’s symposium] topic because we felt that issues affecting Africa had been lost somewhat in the rush to solve the problems in the Middle East,” JILP Editor-in-Chief Jennifer Insley-Pruitt said. “The issues facing Africa are of equally pressing importance. We wanted to address the vacuum that we feel exists in the legal theory surrounding this portion of the world.”

Members of JILP expect academics, practitioners interested in CLE credit, and individuals interested in Africa to attend. Students and professors are also encouraged to stop by for panels that interest them.

## SBA Keeps Active, Gets Down to Business

By TAREK KHANACHET '08

Now that orientation, early interview week and the clerkship process are winding down, everyone should have a little more time to enjoy the fall, and possibly get involved with all that the Student Bar Association (SBA) has been working on. A number of things are coming down the pipeline.

This semester the SBA has begun working on several areas of student concern. Firstly they have been working closely with the Deans on the selection of a new Dean of Student Affairs. Many qualified candidates applied, and many students met with them at lunches and submitted their thoughts to Dean Revesz. The process is still ongoing; however, a new Dean should be selected very soon.

The SBA has also been working on the issue of the student offices in Mercer. The offices in the Mercer basement were renovated two years ago and are a great resource for student groups. They are working now to make sure that every group that needs office space will be able to have access to the basement.

The SBA wholeheartedly encourages the formation of new stu-

dent groups; active and vibrant student groups add to the intellectual discourse of the law school and are a great way to get to know other law students outside of the classroom. Anyone interested in forming a group should contact Student Senator Carly Leinheiser at [cleinheiser@nyu.edu](mailto:cleinheiser@nyu.edu).

Over the last few weeks, the SBA has focused its parties around the neighborhood. Now get ready for some exciting new party locales in the West Village, the Lower East Side, and the East Village. There are some particularly interesting events coming up over the next two weeks. A law school mixer with Columbia and Fordham has been planned for next week (keep your eyes peeled for details in the weekly email from the SBA President), and get ready for the Law School’s Annual Fall Ball on November 1.

Lastly, the SBA will be announcing the election process for 1L representatives very soon. Being a 1L rep is a great way to get involved at the law school, and it allows you to be a part of student governance, work with the administration, and be a part of everything the SBA does. An information packet shortly will be emailed out soon, and everyone is encouraged to run.

## Dinh Delivers Annual Lecture Hosted by Journal of Law & Liberty



[www.gmfus.org/brusselsforum/images/photo/VietDinh.jpg](http://www.gmfus.org/brusselsforum/images/photo/VietDinh.jpg)

The NYU Journal of Law & Liberty held its third annual Friedrich A. von Hayek Lecture on the evening of Tuesday, October 8. The Friedrich A. von Hayek lecture focuses on the analysis of law from a classical liberal perspective. This year’s lecture was given by Professor Viet Dinh (left), Georgetown University Law Center Professor of Law and co-director of the Asian Law and Policy Studies Program. Professor Dinh’s lecture, “‘Fixing’ International Law with Lessons from Constitutional and Corporate Governance,” analyzed the lessons that familiar legal structures teach us in dealing with international legal problems.

### Infra

DADT policy draws fire. page 2

Troy McKenzie gets some attention. page 4

## DADT Change Requires Action from Within the Ranks

TO THE EDITORS:

I applaud NYU Law's public rejection of the Don't Ask, Don't Tell (DADT) policy, and I certainly think that we hold the moral high ground over those who argue against welcoming people of all orientations into military service. Isn't it obvious, though, that having more NYU graduates in the military's officer corps would be a step in the right direction if we were really interested in ending DADT?

DADT is not some arbitrary moral line-in-the-sand set down by bigoted Chiefs of Staff. It reflects the reality of widespread homophobia in today's military. Policy shifts and culture shifts go hand in hand, but I would argue – as a veteran – that homophobic military culture needs to change at least marginally before an equal opportunity policy could be successfully implemented.

I would also argue that the main reason military culture is so socially conservative is that privileged, educated, and progressive kids are turned off to service by the official disapproval and disdain shown the military by elite schools such as ours. I don't mean to imply that the sentiments of esteem that Dean Revesz expressed in his email are insincere, but he can't argue that an official ban on recruiting wouldn't send a powerful message to students. Think about it: NYU students wouldn't even be asked to consider service. And yet, the students attending the progressive universities that ban, or would like to ban, recruiting are the very students the military needs most in its officer corps if DADT is to someday be overturned.

Nor do the bans exert sufficient pressure on the government to change the policy. State university graduates can lead platoons just as well as NYU grads can. In fact, many soldiers see our policy as simply exemplifying the judgmental snobbishness of the urban elite. They're just as happy to keep our liberal students out of the officer corps as they are to keep homosexuals out of the ranks. NYU administrators' policies are working out well for the bigoted wing of the military. Virginia Tech ROTC commissioned 49 lieutenants this year. The eighteen largest colleges in New York City graduated exactly eighteen. Yes, NYU undergraduates can participate in ROTC – at Fordham. I probably wouldn't have gone, either. No big deal for the Army; they'd just make another scholarship available for some student at the University of Southern Redneck. I'm painting with a wide brush here, but the red state army officers I knew were mostly talented leaders and mostly homophobes.

DADT is a big problem. The solution is not to actively discourage NYU graduates from becoming officers. Recruiting bans and refusals to host ROTC programs simply solidify and legalize the cultural divide which is the foundation of the military's discriminatory policy. Even if the university wasn't hooked on the government's money, we shouldn't discourage our students from serving. Morality is better served by working to end injustice than by simply condemning it.

GAVIN KOVITE '10

## DADT: A Self-Fulfilling Prophecy

BY ANDREW GEHRING '09

On September 28, Dean Revesz sent an email (that was strikingly similar to one he had sent the year before) to the Law School community, addressing military recruiting on campus. The feeling conveyed by the letter is that, while firmly opposed to letting the military – and all employers that don't agree to a non-discrimination policy – come on to campus to recruit, the Law School has been backed into a corner by the expansive interpretation given the Solomon Amendment (which denies federal funds to schools that don't allow military recruiters on campus) by the Department of Defense and upheld by the Supreme Court. And so the school must, for fiscal reasons, allow the intrusion to occur. While the Law School's position is widely understood and appreciated among the student body, few are able to similarly appreciate the merits of the military's "Don't Ask, Don't Tell" (DADT) policy.

DADT is the common term used to refer to the implementation of 10 USC § 654, the "Policy concerning homosexuality in the armed forces." The section holds that "[t]he presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability." For that reason, any member of the military "shall be separated from the armed forces" if he or she has done any of a number of things to suggest that he or she might be homosexual.

The policy would seem to be based – at least in part – on the belief that current members of the military, presumably het-

erosexual, would be discomfited by the presence of homosexuals in their unit. The knowledge of such a state would putatively endanger morale and the general functioning of the soldiers. I'll assume for the sake of argument that the military believes these effects would actually occur, though it isn't clear to me exactly why it's the case, or if there's any evidence to back up the assertion. Two things seem in tension with the DADT policy, even granting its rationale.

First, exposure to a frightening or uncomfortable stimulus lessens a person's negative reactions to it. Behavioral psychologists have long had arachnophobes expose themselves to spiders – slowly at first, building up both duration and proximity, culminating in handling the creatures – in order to overcome their fear of the creepy little things. (I don't mean to distract from the main point here by comparing gays and lesbians to spiders, but it was the handiest example available. Rest assured, I believe the commonalities between gay people and arachnids to end with the fact that people are irrationally scared of them. That, and they're both capable of producing silk of incredible tensile strength.)

The situation is perhaps similar in some respects to the state of America's schools before the Civil Rights movement. Keeping the races segregated allowed misconceptions about the "other" to fester and proliferate unchecked. I don't want to contend that integration ended all racism in America, or even that it was solely responsible for any increase in tolerance that has come about, but it's hard to imagine that desegregation played no part in the rise of a wiser, more tolerant America.

Second, as evidenced by the Department of Defense expanding its interpretation of the scope of the Solomon Amendment to financially strong-arm more schools into allowing military recruiters on campus, the government believes that graduates from these schools

could benefit the armed forces. (The aim of the expansion was likely to affect wealthier schools that were able to resist the effects of the Amendment's first incarnation, rather than schools in general.) But wealthier schools – and schools that would resist military recruiters coming on campus – generally produce students with a liberal bent. (I won't go into the issue of causation here – whether liberal students tend to go to these schools in greater numbers than do conservative students, or whether the schools tend to turn students to a liberal way of thinking – but the phenomenon has been well documented, regardless of why.) And liberal students seem unlikely to patronize groups that persist in discriminating against people because of sexual orientation. I believe, then, that a more effective recruitment technique – rather than the military forcing themselves on campus and raising the hackles of the student body – would be to eliminate the policy that engenders vitriol directed at them in the first place.

Success in bringing more liberal, well educated people into the armed forces would also likely mitigate the purported damage to morale and cohesiveness caused by allowing homosexuals into the military. These more liberal individuals would presumably be more comfortable with the presence of gays in their units than would those (as implied by the reasoning underpinning DADT) less acculturated folks who currently make up the American military. And over time, as exposure to gays in a traditionally heterosexual-dominated environment increased, any decline in esprit de corps would level off entirely. The situation is one where eliminating the DADT policy would also help eliminate the problems that it's designed to cure.

## THE COMMENTATOR

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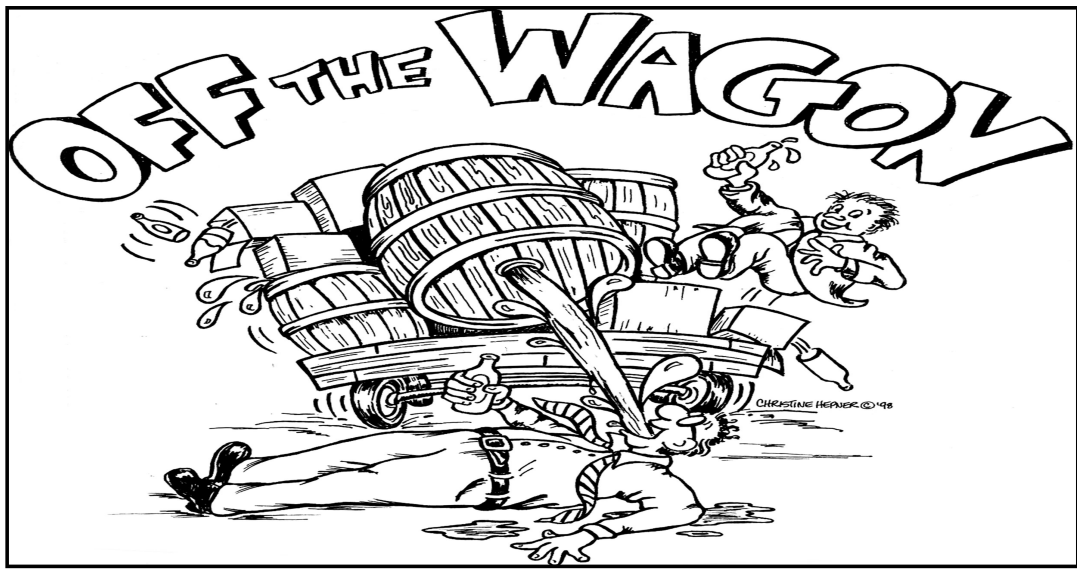
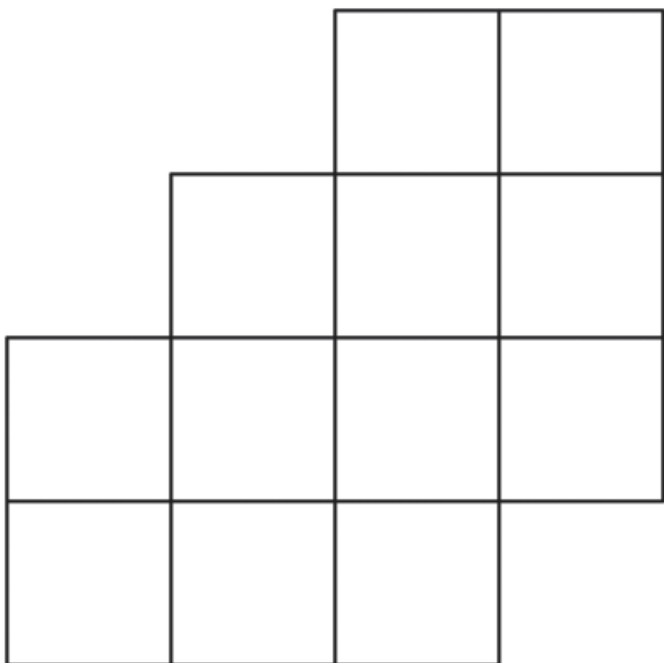
## LSAT-Style Fun

By MADELINE ZAMOYSKI '08

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- ) , \$ , ( go in the same column
- + , ! , % go in the same row
- & touches four other boxes
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- @ , \* , % are in the same column
- + touches the bottom wall of ~
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## New Kid on the Block: An Imagined Interview with Professor Troy McKenzie

By JULIAN DAYAL '08

There's a new prof on the Civ Pro block, a scholar and a lawyer – and the word on the street is that he isn't too crazy 'bout making kids read Neff and Pennoyer. (Note: I am a poet, now you know it.) At first glance, Professor Troy McKenzie doesn't look like your typical Civil Procedure professor. For instance, his blazer doesn't have any of those inexplicable elbow pads. (Professors Neuborne, Issacharoff, et al: are you guys rollerblading to work, what are those things?!) And his office is reasonably neat. And he's 32. Enough said.

I imagined what it would be like to sit down with Professor McKenzie in his reasonably neat office to find out more about him. I think it would be something like the below.

M: Professor McKenzie – thanks for taking the time to meet with me.  
T: It's my pleasure. You know I graduated from here in 2000; it's good to see *The Commentator* is still around.

M: Yes, we easily fill close to four pages every other week.

T: Impressive.

M: You can say that again.

T: I'd rather not.

M: No pressure. So, who is Troy McKenzie?

T: Well, there's actually a little write up about me in the Law School Magazine.

M: Don't patronize me.

T: Huh?

M: I'm not familiar with the Law

School Magazine. Let's continue. So what brought you to NYU?

T: I can walk out of my office and be at a falafel stand in two minutes.

M: Let's go.

...

M: Delicious.

T: Yeah, you can't do this at Columbia.

M: You can say that again.

T: Is that just something you say when you can't think of anything else?

M: So, bankruptcy law. You're an expert in bankruptcy law. That must make you very popular with the ladies?

[satisfied snicker]

T: It's actually an enormously interesting and underrated field.

M: Don't bullshit me.

T: What?

M: I've tipped a lot of cows in my day, and I can smell bullshit a mile away.

T: This is getting weird.

M: You can say... do you have anything to drink?

T: No. But as I was saying, bankruptcy law lives at the crossroads of litigation and transactional law, and because of the myriad issues that come up in bankruptcy it's the true liberal arts of legal practice. It's also the quickest way for junior lawyers at big firms to get into court and before a judge. I encourage anyone with an interest in the field to come talk to me.



M: I wouldn't hold your breath.

T: You're very charming – did you do EIW? You must interview phenomenally well.

M: You have no idea. So how's your Civil Procedure class going?

T: Great. I'm really happy with it. This is my first time teaching it so there's a lot of preparation to do for each class, but teaching 1Ls is a lot fun.

M: They're always well prepared and very eager and seeing the lightbulbs go off is really exciting.

M: Sounds like me on a date. So just how old is Justice Stevens?

T: Well I had the privilege of clerking for Justice Stevens over two terms, and so I got to know him pretty well. And I can tell you he's as sharp and vibrant as men half his age.

M: And those men would be like, what, 60?

T: Clerking was a tremendous experience and I highly recommend it.

M: Right. Ever heard of the ACS [American Constitution Society]?

T: No.

M: Do you love the Constitution? [wink]

T: No.

M: Hmm. Well, how do you feel about doing a speaking event for the hottest student group on campus?

T: What do you mean by "hottest"?

M: "Best looking."

T: It's getting weird again.

M: Great, we'll set up a date, book a room, and order some food. It'll be fun.

T: Can't wait

M: One last question, you were born in Jamaica right?

T: Yeah.

M: "No Woman, No Cry" – what does that mean?

T: [sigh]



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