



# the Commentator

The Student Newspaper of the New York University School of Law

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## Cunning Litigants SLAPs Sack Lunch Silly

BY MICHAEL MIX '11  
EDITOR-IN-CHIEF

After a slight delay, the Student Lawyer Athletic Program (SLAP) football season is finally over, as the upstart 1L team Cunning Litigants emerged victorious over the mighty 3L juggernaut Sack Lunch. The entirety of the playoffs was supposed to take place on Nov. 19. However, after Cunning Litigants beat The Cupcakes and Sack Lunch beat In re: Diculous in the semifinals, SLAP decided to postpone the final because of darkness (and making *The Commentator* unable to report the winner until now). As a result, the final was played two weeks after the semifinals, on Dec. 3, which helped Cunning Litigants.

"We definitely needed the layoff before the finals," said Jake Yormak '13, captain of the Litigants. "The team was banged up; it's a grueling season and the bye week allowed us to rest some key players."

The final game pitted the three and four seeds of the tournament. Cunning Litigants were one of three teams to finish the regular season undefeated (the other two were In re: Diculous and Prima Facial). The Litigants tied the team's first game of the season against Trespass on the Face, but rolled off six wins in a row after that, finishing the regular season at 6-0-1 with a point differential per game of 13.9.



Photo Courtesy of Jake Yormak

Cunning Litigants celebrate after beating Sack Lunch in the SLAP Football finals.

"We tied our first game of the year but won every week thereafter," Yormak said. "I guess you can say that we found our identity. We were like the Jets, great defense and a ball control offense. ... We just had a great time and by the end of the season, we knew how to play to each of our strengths."

Sack Lunch ended the regular season at 6-1-0, but had a point differential per game of 19.9, which was best in the league. Sack Lunch also tied Cade's Cadets for the most total points during the regular season with 214.

In the playoffs, the Cunning Litigants knocked off Back that Pass Off before topping

The Cupcakes to reach the title game while Sack Lunch had to get by Cade's Cadets and In re: Diculous to reach the final. Ultimately, Cunning Litigants credits its positive team attitude for ending up victorious.

"We took winning seriously, but win or lose, we made sure that our Fridays were, above all else, fun," Yormak said. "We played physical football, and we trash talked, but it was always with a smile, and because we were all about enjoying ourselves, the same group of 10 or so players showed up every single week. By the time we played Sack Lunch, we just had the best team dynamic out there."

## Let the Numbers Lie: Job Stats Can Mislead

BY JOSEPH JEROME '11  
MANAGING EDITOR

While, in some respects, David Segal's two-week-old article in the *New York Times* questioning the value of a legal education is yet another in a string of stories revealing the bleak legal job market, the article has generated much discussion about the validity — and transparency — of law school employment statistics. In the most recent set of *U.S. News* rankings, over 93 percent of law graduates were reported as employed nine months after graduation, a substantial jump from the 84 percent employment rate when the category was first reported over a decade ago. NYU Law beats both numbers, publicly reporting that 97 percent of the class of 2009 secured their first- or second-choice jobs.

The Office of Career Services states that its numbers are accurate. Getting numbers, rather than manipulating them, is the real difficulty.

"We do a lot of outreach," said Moon Kim, Associate Director of Counseling and Career Development. By the time OCS is done tracking down employment information from graduates, whether voluntarily from students or extracted from Facebook and even the occasional parent, OCS says it reaches nearly every graduate. "Our goal is to do the best thing for the school," said Assistant Dean Irene Dorzback, "and the best thing is the best data."

Dorzback maintains that the rankings methodology, particularly the *U.S. News* rankings, strongly incentivizes NYU Law to get accurate information from as many graduates as possible. According to *U.S. News*, 25 percent of "unknown" graduates are considered as unemployed. While OCS suggests that this may benefit lower-ranked schools by allowing them to disguise the unemployed behind "unknowns," just a few "unknowns" amidst NYU graduates can adversely affect NYU Law's employment statistics. OCS believes part of the problem is students' reluctance to provide the school with their employment information.

"Once students have jobs, they seem to think they're done with us," Kim said. Ideally, OCS hopes to stay informed as students and graduates employment situation changes for better — or worse. Most prob-

lematic for Dorzback is the students who do not seek assistance. "If we don't know about you, we cannot help you," she said.

Part of the thrust of Segal's criticism, however, has been propping up employment statistics by including all sorts of part-time or non-legal work, which OCS concedes.

"How we gather statistics is determined by how NALP, the ABA, and U.S. News guides us," Dorzback said.

Thus, internships can count. Part-time work in a legal field can count. Full-time work outside the law, even at McDonald's, can count. In 28 years at NYU Law, however, Dorzback believes the number of students who actively sought employment but who did not have law-related jobs nine months after graduation could be counted on one hand.

With the NALP reporting deadline looming on Feb. 15, Segal reported that some top schools, citing Georgetown, hire their own graduates to boost their numbers.

"NYU has never hired grads to work for us," Dorzback said. "With the exception of employment with our centers, we have no policy of hiring a bunch of research assistants to work for us."

Dorzback is concerned about transparency. She also thinks some of the impetus behind the numbers can be misleading.

"Having an at-graduation employment figure sells magazines," she said, but "for schools with a strong emphasis on public service, like us, the reality is that these things can take time." OCS emphasized the post-graduate grants the school provides and its willingness to help graduates long after graduation. Dorzback believes part of the problem with the current methodology is that it is not fully explained to outsiders.

"*U.S. News* relies on consumers to be incredibly sophisticated to understand what its numbers mean," she said. "Admitted students want to know as much as they can."

As for the state of the legal job market, OCS remains bullish.

"The business climate is better," Dorzback said. "The truth is that fall of 2009 was the toughest year for EIW, but, thankfully, people are still finding things, even in Big Law."

In the meantime, OCS is moving to gather data on the last set of graduates, the class of 2010, before its Feb. 15 deadline. As for the current crop of 3Ls, OCS implores them to "let us know your status and needs" when it sends them employment questionnaires later this spring.

## NYU Law Soccer Team Wins University-Wide League Championship for Second Year in a Row



Stavan Desai



## Tragedy Shouldn't Become Talking Points

BY: ERIKA ANDERSON '11  
STAFF WRITER

Unless you have been living under a rock, you know that on Jan. 8 Jared Loughner killed six people and wounded 14 others (including Congresswoman Gabrielle Giffords) at a political event in a parking lot in Tucson, Ariz. You would have to be quite as far under that rock not to also have noticed the tenacity (dare I call it glee?) with which the media has grabbed onto this tragedy, or that some seem to feel it has provided an excellent platform for them to air out their favorite talking points.

Certainly it is natural to ask "why?" It is natural to question what would make someone commit a crime like this. It is natural to want to know what his reasons were, who his victims were. I do not question any of this. I do question, however, whether some of the commentary coming down my news feed is composed less of these types of questions, and more of finger-pointing, jeering, and leaping onto tangentially related soap boxes.

Many blame heated rhetoric, at least in part, for creating

an environment in which this kind of thing could happen. I find this vaguely ridiculous on a number of levels. I seem to recall that some deplored the "tone" in politics before the shooting, but it is only after it happened that I have noticed people referring to the "new tone of civility." Really? Six people have to die before we all realize we are grown-ups and we should treat each other with basic respect?

Not, of course, that everyone agrees that we should all play nice now. Sarah Palin, loath to let her conflict machinery fall silent for a few days, waded in. She claimed she had been accused as an accessory, displaying either a rich sense of the ironic or an astonishing ignorance by misusing "blood libel" in the process. But really the fact that she felt the need to say anything at all is, to repeat myself, vaguely ridiculous. Sure many people, myself included, have a problem with the thinly veiled violence of her rhetoric, but no one credibly thinks she actually encouraged murder, whatever they may have tweeted. She could have turned the other cheek; she could have taken the opportunity to rise above. She did not. Instead she

took the opportunity to make this about her, to focus the lens on her agenda.

Palin is not alone in this. Rachel Maddow, whose show I watch (and enjoy) regularly and whom I generally find both funny and intelligent, turned her show into a nightly plea for gun regulation for an entire week after the massacre. Does she have a point? Probably. Do I agree? Partly. But neither of those things means that now is really the time for this onslaught. After one show last week, I felt informed. After the second, I noticed Maddow repeating herself. After the third, I began to get rather irritated. Yes, Loughner used an extended magazine; if he had not had one, things might have been different. But the plea for stricter gun regulation stands (or fails to stand, depending on your personal thoughts on the subject) on its own. It does not need this most recent massacre to reinforce the point or to make it relevant, and Maddow ought, out of sensitivity, to find another, more appropriate time to stand on this particular soap box.

See **TRAGEDY** page 4

## Country Corporate?

BY: JENNIFER RODRIGUEZ '11  
STAFF WRITER

Take a ride with me into my so-called head, OK?

Yesterday, I was sitting at my desk in Mercer. My laptop was in front of me, and I was waiting for Facebook to load. My eyes wandered over the things on my shelves: my soft-glowing Ikea lamp, my stack of DVD's, my Christmas plant, novels, novels, *GQ Magazine*, novels, framed postcards and finally my law textbooks. My eyes landed on the glossy black spine of *Corporate Finance*, focused in on the red publisher's logo, and that's when I noticed something unexpected: it was published by McGraw-Hill, themselves.

Well, well, this gift just won't stop giving, will it? *Is my Corporate Finance book really published by Tim McGraw and Faith Hill??? That is so COOL!!!* Those, absolutely, were my thoughts — quickly followed by the tune to Taylor Swift's "Tim McGraw." I don't have to be familiar with the stars' top singles to know that country music's most famous

couple having published my *Corporate Finance* textbook would be amazing. I had to investigate.

First, I Googled "Faith Hill Finance." This yielded a link to Faith Hill Farm, an enterprise located in East Greenwich, R.I. It is the proud home of the University of Rhode Island's Equestrian Team. Not helpful.

So I tried "Tim McGraw Finance" and got a link to supercoolstuff.com. Because I would also call my *Corporate Finance* textbook "super cool," I thought I was on the right track. It turns out that although the heading of the page said "Finance," what the site actually provided was a video and lyrics to Tim McGraw's, "Don't Take the Girl." It's a melancholy song about an ornery little boy who doesn't want a girl to come along on a fishing trip. With time, he falls in love with that girl, marries her, and has a baby with her before it all ends tragically.

It seemed it would be impossible to establish whether

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## 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 2011-2012 Fellowships in the Arthur Garfield Hays Program. The Program provides 3L students with fellowship support as they complete two substantial internships engaged in impact litigation, policy work, or direct services related to civil rights and civil liberties. Specific areas of focus range from First Amendment freedoms to immigrants' rights to criminal and racial justice issues and include everything in between. Materials describing the Program and the selection process further are available in VH room 308. **APPLICATIONS ARE DUE BY NOON ON WEDNESDAY, FEBRUARY 9, 2011 IN VH ROOM 308.**

The current Hays Fellows will discuss their experiences in the Program and answer your questions in the West Wing of Golding Lounge from 4:00 p.m. to 5:00 p.m. on Monday, Jan. 24 and again on Tuesday, Jan. 25 and show a video of the Hays program. Please feel free to contact any of us if you have questions about the program or the application process.

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# Fiction Versus Fact: Is Our Democracy Actually Working?

BY LEIGHTON DELLINGER '12  
STAFF WRITER

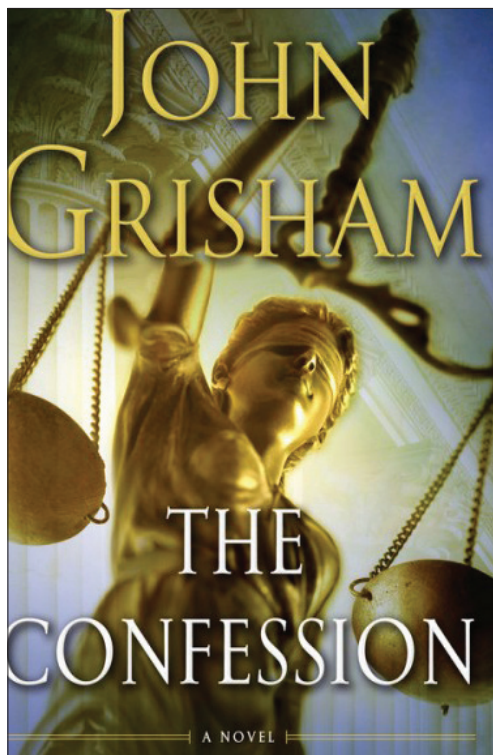
## The Confession

When I was a kid I was forbidden to read my mother's John Grisham books. *The Client's* graphic suicide, *The Firm's* deceit and beachfront fellatio, *A Time to Kill's* violent Southern racism — these were too mature, too adult for a young lady of only 11. I secretly read them anyway, on our rooftop in the summertime, huddled in our pantry in the winter. They achieved their dreaded purpose; they affected me, albeit in an unexpected way. I ordered grits and black coffee for breakfast throughout junior high, I exaggerated my (already dreadful) Texas accent, and I became, in my own mind, a lawyer-to-be.

Looking back, I can't imagine that was Grisham's purpose. His courtroom thrillers of the 1990s were stories of corruption and gumption within the legal system. They were entertaining and exciting — but they were only stories, the excited musings of a creative former lawyer who imagined the fantastic.

*The Confession* is different than the Grisham I grew up loving. The language and style are the same, plain and clear in a way that implies careful craftsmanship, but *The Confession's* agenda transcends simple storytelling. The plot is once again of a radical young lawyer in the south fighting injustice. This permutation is based in fictional Slone, Texas, home of Nicole Yarber, a white teenager abducted in 1998, Dante Drumm, her black classmate wrongly incarcerated 10 years for the crime and Robbie Flak, a young-cuss attorney with the moral conviction to fight to keep an innocent kid off death row.

Flak has help from an Oklahoma preacher and one of his confessors — a released convict who claims full responsibility for Yarber's kidnap, rape and murder.



Grisham's fans will find his signature thrill as the plot and the Texas appellate system unfolds. Can Flak get Drumm's execution delayed by a panel of judges? Will the governor grant a stay? How could the state justify executing an innocent man who was only a boy in 1998?

*The Confession*, unlike the Grisham novels of the 1990s, has a clear agenda. The author spends 418 pages highlighting the inequity of capital punishment. Manipulative police, corrupt prosecutors and judges, inadequate counsel, lying witnesses, a selfish governor with a political agenda — the system works against innocent Drumm, the now 27-year-old kid who keeps waiting for this mistake to be reversed.

Opponents of the death penalty will find this a difficult read. The story builds to its sad crescendo and highlights the pitfalls of our legal system along the way. People who support capital punishment, or are undecided, should find its exceptionally flawed version of justice even more difficult to accept. The small Texas town

was able to get away with murder (pun intended) without retribution, while an innocent man spends 10 years awaiting his execution. Grisham uses his popularity and his compelling medium to convert his readers. The injustice of *The Confession* will not surprise a student of NYU Law or Bryan Stevenson, but an 11-year-old tucked in her pantry would be convinced, converted by the latest edition of Grisham thrillers.

## Making Our Democracy Work

Justice Stephen Breyer's new book, *Making Our Democracy Work: A Judge's View*, is not a book intended for law students. For lawyers, perhaps, as a quick-and-dirty review of constitutional and administrative law, but not for students immersed in their complex study, and certainly not for students who relish the more subtle points Roderick Hills makes while curiously suspended above his class. It is, however, an interesting, clear, and relatively short (only about 220 pages) presentation of the Supreme Court's role in implementation of democracy.

Breyer has two objectives: first, to explain why the public accepts and honors the decisions of the Supreme Court and second, to explain how the Court carries out its constitutional responsibility and its pragmatic approaches

to interpreting the law. The first question lays the foundation for his argument in the second: the public will legitimize decisions of a practical, progressive Court.

In Part I: The People's Trust, Breyer takes his reader through an abbreviated history of the Supreme Court. He recaps *Marbury v. Madison*, *Dred Scott*, *Brown v. Board* and *Bush v. Gore*. Not in a Jeffrey

ulm familiar to Admin students: originalism, purposivism, canons of construction, federalism and *Chevron* deference. Again, the text neatly summarizes these complex doctrines without oversimplification. Breyer goes on to advocate a practical system of judgment that would allow the Justices pragmatic discretion; citing *Miranda* and *Citizens United*, he argues that a flexible judiciary is the most effective. I think it is safe to say that as a 1L I was subjected to more academic minutiae than Breyer considers strictly relevant. Or perhaps transcription of classroom discussions at NYU (despite

their appeal to an admittedly nerdy student body, see, e.g., *The Commentator's* summary of SLAP flag football stats) are simply not going to get Breyer on the best-seller list.

In Part II: Decisions That Work, Breyer ventures into curric-

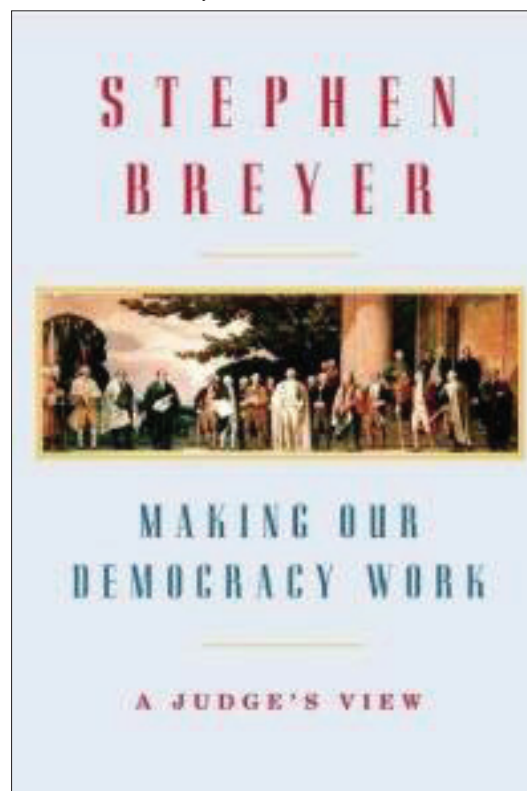
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In all, *Making Our Democracy Work* is the perfect book to give a curious aunt who asks what you're learning in law school and who is thoroughly dissatisfied with your joking answer about the practice of overbilling.

## Comment

### The Eager Reader



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# Black Eyed Peas Set to Disappoint at 2011 Super Bowl Halftime Show

By MICHAEL MIX '11  
EDITOR-IN-CHIEF

The past two years, I have written a column in *The Commentator* in which I use law school related arguments to predict the winner of the Super Bowl. Two years ago, I argued both sides of why the Cardinals and Steelers could win, then I correctly picked the Steelers to win by four, which is possibly my greatest prediction ever (three issues later I wrote about how Jay Leno would be a huge hit at 10:00, which is possibly my worst prediction ever). Last year I wrote a mock law school class, complete with a Socratic Method dialogue about how the Colts or Saints could win. Unfortunately I picked the wrong victorious team and wrong margin of victory (serves me right for picking Peyton Manning in a big spot). This year, I was going to write my third straight Super Bowl preview, but regrettably, this issue of *The Commentator* went to print before the two conference championship games and the next issue comes out after the Super Bowl. What is a boy to do? How are you going to cope if you can't read my surely correct margin of victory?

I initially thought about writing a preview with all four conference championship teams, but since this issue doesn't hit the shelves until after the conference championships, my analysis could be moot. I then considered analyzing the game without any specific team names or players, utilizing my time as a college newspaper sports journalist to

write ambiguous, generic, clichéd analysis. Ultimately, I scrapped that idea and decided to instead examine one of the most important parts of the game that has already been decided — the halftime act, which this year features the Black Eyed Peas.

“Happiness Is” and “A Musical America.” While I am a fervent proponent of pro teams utilizing pep or marching bands (I dare you to watch Barry Levinson's fantastic documentary *The Band That Wouldn't Die* and disagree with me), having random college kids play “Hey Baby” and “The Final Countdown” doesn't bring in the ratings, and I understand why the NFL changed its theme (such as “Rockin' Country Sunday in 1994), but by the 2000s, the acts seemed to consist of random popular performers cobbled together. In 2000, for example, someone decided that the performers should include the odd foursome of Phil Collins, Christina Aguilera, Enrique Iglesias and Toni Braxton.

After the infamous Janet Jackson breast-bearing incident in 2004, the NFL and the networks predictably overreacted. For six years, the halftime act consisted of only one artist or band of all males (I'm not counting Patti Scialfa here) of the classic rock variety. I like the idea of only one performer instead of four or five, but I guess the embarrassingly bad show by the way-over-the-hill The Who last year forced the NFL's hand, and now enough time has passed since Janet Jackson that it can include younger, more risqué performers.

I am all for that, but of all the artists on earth, why the overexposed and overrated The Black Eyed Peas? I am not really sure who they appeal to. Anyone over the age of 35 probably has not heard of them, and many younger people are not fans. Maybe the NFL is trying to draw in teenagers who normally don't watch football, but that does not

excuse hiring such a polarizing band which many people dislike. Furthermore, their songs don't have lasting power; when was the last time you wanted to hear “My Humps?”

Instead, I can think of a number of talented bands that would be welcomed (or at least tolerated) by the vast majority of audiences, male or female, young or old, such as the Red Hot Chili Peppers, Radiohead, R.E.M., Jay-Z, Green Day and Bon Jovi. These bands and artists all have their detractors, but they are not nearly as polarizing as many of the actual acts of the past 20 years.

More importantly, it boggles my mind that the NFL has not invited U2 back to perform since their awe-inspiring performance at the 2002 Super Bowl — the first after Sept. 11 — which is by far the best halftime show ever. U2's oeuvre spans three decades, but they are not old enough where you feel embarrassed for them (unlike The Who last year). In addition, their sound is bombastic, one of the few bands that could easily pull off a show in football stadiums. In my opinion, it is a no brainer to bring them back to perform once or even several years in a row. Besides, what is more American than football and the world's greatest Irish band?

## Comment

### The Guy Behind The Guy Behind the Guy

In order to fully appreciate my frustration with this year's selection, it is helpful to look back at the history of Super Bowl halftime shows, where there have been definite patterns. For many years, college marching bands

In the 1980s, halftime shows were a smorgasbord of marching bands, dance teams, random celebrities (Mickey Rooney!?) and a nonprofit group of young singers called Up With People, which amazingly performed four times between 1976 and 1986. Some of the halftime shows sound especially abysmal. The 1989 performance sounded like it was masterminded by Gob Bluth — the theme was “Be Bop Bamboozled in 3D” (and was broadcast in 3D using glasses one purchased at convenience stores) and it featured an Elvis impersonator/magician named Elvis Presto who performed a “card trick” with the entire audience. I only wish I was making all this up.



from around the country played at halftime, sometimes with bland themes such as “America Thanks,”

After Michael Jackson's 1993 performance received huge TV ratings, the powers that be decided to focus more on popular music acts and less on Elvis impersonators. Subsequently, the mid to late 1990s featured huge musical acts linked together by a

## MCGRAW: Celebrity Casebook Publishers or Country Stars?

Continued from page 2

Faith Hill and Tim McGraw had begun a finance textbook publishing house, whether out of a belief in higher education, a side interest in arbitrage pricing theory, or for a tax break. That's when my dad called and revealed all. The conversation went something like this.

“Dad, do you know who published my Corporate Finance textbook?”

“No.”

“McGraw-Hill.”

“Ok.”

“Do you know who they are?”

“Yes.”

“And???”

“And what?”

“McGraw-HILL. Faith Hill and Tim McGRAW. They published my Corporate Finance textbook! Isn't that amazing?”

There was a long pause. Then:

“You ding-a-ling. Aren't you learning *anything* over there?!”

“What do you mean? Isn't

it great???”

“McGraw-Hill is a publishing house. They've been around forever. They publish all kinds of things. Half the books on your shelf are probably McGraw-Hill.”

It turns out the McGraw-Hill has been “a leader in providing high quality information and analysis across global markets for more than a century.” The company was founded by James McGraw and Jonah Hill. They weren't nearly as interesting as Tim or Faith, but I guess you could say they each had their own thing going. McGraw was a teacher in upstate New York. He began working in publishing in 1884, when he purchased the *American Journal of Railway Appliances*. Jonah Hill is a former editor at *Locomotive Engineer* who ages backwards and can be seen today in such movies as *The 40-Year Old Virgin*, *Knocked Up* and *Superbad*.

And so it seems the truism is simply true. In the case of McGraw-Hill, truth is stranger than fiction.

## TRAGEDY: Media Misbehaves

Continued from page 2

Palin and Maddow are not alone in this frenzy. The headlines are full of pot-shots at both the right and the left; the political blogs can't stop talking about how thoroughly it is the other side's fault, what with all of the lying and name calling those jerks over there across

the aisle do. At times I find myself so disgusted (are they really so un-self-aware?) that I have been scrolling through my news feed without reading most of it. Why read such finger-pointing, such rubbish? I could write the script for them. Hopefully this news cycle will turn over soon, and we can leave the victims and their families to heal in peace.

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& Social Change**

presents



**FROM PAGE TO PRACTICE:**  
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