

Vermont Law School FORUM

Volume XXVIII, No. 4

Friday, February 7, 2003

South Royalton, Vermont

BLOWING THE WHISTLE ON WHITMAN: EPA WHISTLEBLOWER KAUFMAN VISITS VLS

The former Chief Investigator for the EPA Ombudsman, Hugh Kaufman, will visit VLS to share his message of accountability in government and his years of experience working to help grassroots communities. Most recently, Kaufman filed a whistleblower suit against Administrator Christie Todd Whitman for her financial conflict of interest with Citigroup as well as her dissolution of the EPA Ombudsman office. Kaufman is no stranger to controversy. EPA officials loath Kaufman for his bare brass tactics and his unwillingness to play ball with the EPA political bureaucracy. For these same reasons, Kaufman is regarded as a hero throughout many grassroots communities facing the most dangerous toxic waste threats. The Kaufman litmus test—i.e. you either love him or you hate him—is one that I continue to enjoy using when I meet environmentalists.

In 1977 EPA investigator Hugh Kaufman visited Love Canal and discovered toxic waste seeping into homes and school buildings in the community. Kaufman's work led to, then junior Congressman, Al Gore effort's to focus Congress on the national problem of uncontrolled hazardous waste. Working within EPA and with lawmakers, Kaufman created the idea of a small tax on chemical feedstock that would act as a revolving fund to help EPA recoup costs from polluters to cleanup toxic waste sites. This fund became known as Superfund and the national legislation (CERCLA) passed in 1979 under a lame duck Congress. Newly confirmed, President Reagan entered office after making campaign promises to America's oil and chemical industry. Kaufman's testimony to Congress on these improprieties, led to the resignation of EPA Administrator Anne Gorsuch and the imprisonment of Superfund head Rita Lavelle for perjury.

From 1998-2002, Kaufman was the EPA National Ombudsman Robert Martin's chief investigator, investigating citizen complaints about EPA inadequacies at hazard-

ous waste sites. Throughout that time Kaufman and Ombudsman Martin's recommendations were approved nearly 75% of the time—many of these decisions embarrassing both Democrats and Republicans. As a result, political pressure culminated in a move by recently appointed EPA Administrator Christie Whitman to move the Ombudsman to the Office of Inspector General—where the Ombudsman lost his independence to choose his casework, travel and meet with the public and Congress. On Earth Day of 2002, Ombudsman Martin resigned from his position as Ombudsman and Kaufman filed a whistleblower suit against Whitman.

Kaufman has challenged Whitman for not disclosing her financial conflict of interests with polluters in the US regarding

the World Trade Center cleanup, the Anniston, Alabama chemical weapons incinerator and other waste sites in the US. Currently, Kaufman's case is before the Department of Labor Office of Administrative Law Judges where he is in discovery phase of the suit.

Kaufman has also appeared on Michael Moore's "TV Nation" where he testified about the hazards and environmental justice implications of dumping New York City sewage sludge on a poor Chicano community in west Texas. Kaufman was a Captain in the Air Force and served in the Vietnam War. Kaufman joined the EPA when it was created by President Nixon in 1970. For more than 30 years Kaufman has traveled all across the country to lend his experience to local, grassroots communities who struggle

with the burden of the most toxic environmental hazards in the country. The Environmental Law Society and the Environmental Law Center welcome Mr. Kaufman to VLS and hope you will join us for his talk: Conflict of Interest at EPA: Blowing the Whistle on Environmental Fraud.

Spencer Hanes, '04



VDAY
UNTIL THE VIOLENCE STOPS

For the first year ever,
**The Vagina Monologues are
COMING!**

V-Day Vermont Law School 2003 is
a benefit production of Eve Ensler's
"The Vagina Monologues"

ONE PERFORMANCE ONLY!

at the Chase Center on Friday, February 21, 2003 at
7:30pm

What: V-Day Vermont Law School 2003, a benefit production of Eve Ensler's "The Vagina Monologues"

Where: Chase Center

When: Friday, February 21st doors open at 7:30pm

Admission: \$5

Contact: Olivia Campbell

Goal: To raise awareness to stop violence against women and girls and funds for Safeline and the Indian Country Project

Continued on page 3...

THOUGHTS ON KING

Baku J. Taila, '05

Think Tank Thoughts

Ollivia M. Sexton, '05

Vermont Law School FORUM

BROTHERHOOD

I was a member of a co-ed service fraternity in college, which had very strong traditions. One of those traditions was something called "pass the gavel." At the end of each chapter meeting, the gavel was passed from brother to brother for them to say whatever they wished, be it good or bad. After each brother was done with their rants, they finished with the words, "love and respect," and then passed the gavel to the next brother. It fostered the idea that no matter how much you may be at odds with the person next to you, you still cared about the fraternity and its members. As much as some of you hate the idea of the Greek system, maybe we can learn a lot from it. VLS is not that different from a fraternity, as we are joined together in the common pursuit of our goals and dreams. (Additionally, I believe Appellate Advocacy can count as hazing.)

Law school is supposed to foster academic thinking, yet we spend hours composing everyone emails about not writing emails. We encourage diversity and innovation, yet are often closed to thoughts that do not mimic ours. Moreover, we neglect to remember that we are all law students with a common mission...to graduate and hopefully make this world a bit better. I do not believe that this can happen when we do not strive to make ourselves better.

I'll be the first one to admit that I am guilty of this, but it's not too late to turn it around. A vast majority of us need to grow up. Some of us need to grow a tougher skin, while others could soften up. I charge you to take a hard look at yourself and seek how to make yourself better. How can you make other's lives better? How can you make VLS better? When you start answering those questions, you can start to work on how to make the world a bit better.

*Love and Respect,
Shannon Maher*

STAFF

Shannon Maher '03 Editor	Brian Amones '04 Assistant Editor	
Abbi Doolittle '05 Editorials	Heather Dlhopsky '05 Features	Ollivia M. Sexton '05 Layout & Editorials
Jonathan Stein '05 Sports	Baku J. Taila '05 Features	

SUBMISSION POLICY

The *Forum* is a jointly funded student publication serving Vermont Law School and its surrounding community. Please contact the *Forum* office for advertising information (802-763-8303 ext. 2299).

Every effort is made to publish the *Forum* monthly during the Fall and Spring semesters, and usually distributed on Fridays. We encourage all articles, comments, rants, and inquiries without prejudice. Copy and photo deadlines are announced to the VLS community via email, though special arrangements may be made with *Forum* staff. Submissions should be made on a 3 1/2" IBM formatted floppy disk with your name and year on it or by email. Hard copies of the article should also be provided. Disks will be returned to you eventually. We reserve the right to edit all submissions as necessary, and the editorial staff makes the final printing decisions. However, unless an article is entirely without merit, lacks substantiation, or space is at a premium, we will do our best to see that submissions are printed.

The opinions expressed herein are not necessarily those of the editorial staff.

©2002-2003 by The Vermont Law Forum.

In the speech "I Have a Dream," delivered by Dr. Martin Luther King Jr. on August 28th 1963 in Washington, D. C, he educates us on the issues of racial injustice, police harassment and brutality, violation of civil rights and abuse of life, liberty and freedom of black people in the United States. He reminds us that the black community has still not received their unalienable rights of life, liberty and the pursuit of happiness, promised in the Constitution; but he hopes that one day blacks shall be treated fairly, with dignity, considered equals and not discriminated against. These words reflect on the title of his speech "I Have A Dream."

In it, he refers to all men irrespective of their color, caste, creed, race or religion as God's children, and if America is to be a great nation this must be realized.

A disturbing problem he touches on in his speech is the segregation of blacks, the harassment, denial of police protection and abuse of civil rights. "When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir," he said.

His reference to Jesus, Gentiles, Protestants and Catholics, the white men and the black men as God's children is taken from the Bible. Clearly a very sentimental monologue, it has an appealing tone and its effect leaves us spellbound. Dr. King's vision and goals are simple, yet breathtaking in their scope, the complete liberation of mankind and the elimination of injustice.

Dr. King's speech is informal in nature; one can easily see that it is full of emotions and reality and hence I say it shows the wonderful qualities of his heart. Dr. King was a moralist, a decent human being and recipient of the Nobel Peace Prize. His contributions were so dramatic and meaningful that they are universally appreciated. The entire world is the beneficiary of the efforts of this outstanding leader who brought millions of neglected and downtrodden people hope, and in so doing challenged the moral conscience of all people. Part of this universal appeal was that his philosophy of life was accessible, easily understood, recognized, and accepted. He challenged those committed to negativism to look inside themselves and to make brotherhood and equity a new possibility, and a meaningful reality. Dr. King was an eloquent and powerful speaker whose words were infused with a poetic majesty that both stunned and uplifted his audience. All who heard him speak took pride in their own self-worth, their commitment to social change and justice was rekindled and greatly deepened.

Dr. King's message is full of faith, hope, justice, love, equality and brotherhood. He says that we can achieve this goal by cooperation and non-violence and asserts that the day is not far when all of God's children shall be able to sing, "Free at last! Free at last! Thank God Almighty, we are Free at Last."

Truly we should keep faith in the rightness of good things in life and one shall see this dream come true.

Amen!

Opinions to get you thinking.

Dealing with N. Korea

Ted Galen Carpenter, Vice President for Defense and Foreign Policy Studies at the Cato Institute: Washington should consider another approach. It should inform North Korea that, unless it abandons its nuclear program, the United States will encourage South Korea and Japan to make their own decisions about also going nuclear. That prospect might well cause the North to reconsider and keep the region non-nuclear. Even if it does not do so, a nuclear balance of power in northeast Asia might emerge instead of a North Korean nuclear monopoly.

Larry M. Wortzel, Ph.D., The Heritage Institute: Without an American military presence, deep historical animosities and territorial disputes among Russia, China, Japan, and the two Koreas would lead to a major race for military dominance. A delicate balance has existed since the end of World War Two, when Japan renounced offensive military force and rejected nuclear weapons. Pulling out US troops would destroy that balance.

Philip H. Gordon, Senior Fellow, Foreign Policy Studies at the Brookings Institute: As tempting as it may be for America's allies and Mr. Bush's domestic critics to let the administration stew in its own juices, whatever perverse satisfaction that might bring would be easily outweighed by the enormous damage to global nonproliferation goals.

Regarding N. Korea the first time around:

John Bolton, the Senior Vice President of the American Enterprise Institute in 1999: While everyone can agree that we must seek to avoid a disastrous, and possibly nuclear, war on the Korean peninsula and beyond, it is unconscionable that the White House is unable to muster even a modicum of resoluteness to contain, let alone roll back, the North Korean threat. The administration's counter argument that any toughness will inevitably lead to a North Korean first strike is exactly backward. At present, the North can conclude realistically that if the U.S. responds so limply when faced merely with threats, it will be even weaker when confronted with actual force.

Harvard's Kennedy School of Government Review Team, 1993: The North Korea Policy Review team, led by William Perry, recommends that in return for North Korea eliminating its nuclear weapons and ballistic missile programs, the US would begin to normalize relations and ease trade sanctions. Currently there are no diplomatic relations between the two countries. The easing of trade sanctions is critical to North Korea, which has suffered devastating food shortages. If North Korea does not agree to curb its weapons of mass destruction, the Review Team recommended a strategy of containment of the dangerous threat.

...continued from cover

V-Day at Vermont Law



V-Day Vermont Law School – a benefit production of Eve Ensler's ground-breaking, Obie Award-winning play, "The Vagina Monologues" – will take place at the Chase Center on Friday, February 21, 2003 at 7:30pm on behalf of Safeline and the Indian Country Project. Tickets are \$5 and may be purchased in the Chase Breezeway beginning Wednesday, February 12th or reserved by emailing ocampbell@vermontlaw.edu (only if you cannot come to the VLS campus to buy tickets). What could be a more perfect Valentine's Day gift?

What is V-Day?

V-Day is a global movement to stop violence against women and girls. V-Day is a palpable energy, a fierce catalyst that promotes creative events to increase awareness, raise money, and revitalize the spirit of existing anti-violence organizations. V-Day generates broader attention for the fight to stop worldwide violence against women and girls including rape, battery, incest, female genital mutilation (FGM), and sexual slavery. V-Day provides funding to create and nurture innovative programs to stop the violence. The 'V' in V-Day stands for Victory, Valentine, and Vagina. For more information, please visit www.vday.org.

Personal experiences of the V-day organizers and cast as well as national statistics call to the need for V-day in our community.

- Somewhere in America a woman is battered, usually by her intimate partner, every 15 seconds. (United Nations Study on the Status of Women, 2000)

- Every 21 hours on each college campus in the United States there is a rape. (Campus Outreach Services)

- From 1993-1998, women ages 16 to 24 experienced the highest per capita rates of intimate violence (19.6 per 1,000 women). ("Intimate Partner Violence," Bureau of Justice Statistics, May 2000)

- American Indians were the victims of rape or sexual assault at 3.5 times the rate of United States residents of other races and about 90% of the victims report an offender of a different race. ("American Indians and Crime", Bureau of Justice Statistics, February 1999)

The production crew and cast of over 30 VLS students, staff, administrators, and local community members invite you to help stop violence against women and

girls. If you have not been touched by a vagina, you need to come. Come for your mother, your sisters, your daughters, your girlfriends, your friends, and for yourself. Please join us for a benefit production of "The Vagina Monologues" at the Chase Center on Friday, February 21st at 7:30pm. V-day VLS also involves a 1% Campaign – to reclaim 1% of the U.S. Department of Defense budget to be directed toward the security of women, a Rape-Free Zone Campaign, a benefit dance party with the Vulva Choir at Crossroads, vagina-friendly bake sales, and other educational information. We promise that you will laugh, possibly even cry, take action to help others, and become enlightened. The proceeds from V-day VLS events will be donated directly to Safeline and the Indian Country Project.

In Windsor and Orange Counties, Safeline offers services for survivors and victims of sexual assault and domestic abuse 24 hours a day. A member of the Vermont Network Against Domestic Violence and Sexual Assault, Safeline and its volunteers (several of which are VLS students) work daily to build safer communities through preventative education and collaboration with other groups and agencies. If you would like to know more about being a Safeline volunteer or need assistance please call 802-728-5647.

The V-Day Indian Country Project will raise awareness of the issues facing Native American and Native Alaskan women in the United States and First Nations women in Canada. As Director of the V-Day Indian Country Project, Native American activist Suzanne BlueStar Boy, travels across Indian Country to collaborate with Native American and First Nations women working to end violence and to educate them about V-Day as a means to raise funds and consciousness within their communities. The project will also build coalitions to strengthen tribal commitments to end violence.

What are "The Vagina Monologues"?

Hailed by The New York Times as "funny" and "poignant" and by the Daily News as "intelligent" and "courageous," "The Vagina Monologues," first performed off-Broadway by Ms. Ensler, dives into the mystery, humor, pain, power, wisdom, outrage and excitement buried in women's experiences. "The Vagina Monologues" introduces a wildly divergent gathering of female voices, including a septuagenarian New Yorker, a vagina workshop participant, a woman who witnesses the birth of her granddaughter, a Bosnian survivor of rape, a Native American survivor of domestic violence, and a feminist happy to have found a man who "liked to look at it". The Vagina Monologues have been performed to great acclaim throughout the world - from Zagreb to Santa Barbara, from London to Seattle, from Jerusalem to Oklahoma City, and now in South Royalton, Vermont.

VLS EMPLOYS COST-EFFECTIVE IT MEASURES

The Chronicle of Higher Education recently highlighted several strategies for spending information technology monies wisely. Many of the cost effective measures mentioned are already being used at VLS to cut unnecessary costs and to provide our IT users (students, faculty, and staff) with the best services possible.

Dartmouth College, the University of Arizona, and VLS are among the schools with policies guiding student printouts. At VLS, the results have been dramatic since new paper usage policies went into effect earlier this year for the printers in the Westlaw/Lexis-Nexis Lab and in the Computer Center. Students continue to print their first 400 pages free and subsequent pages are billed at five cents each.

The law school's new printing policy has saved a tremendous amount of paper. "We're down 25% in terms of paper usage," says Support Specialist Fran Rhynhart, who notes that the printing centers' recycling bins have not been as overflowing as they once were.

Another way identified to save costs is for schools to band together with peer institutions. VLS is doing this through "EDUCAUSE," a nonprofit organization that is advancing higher education by promoting the intelligent use of information technology.

Through participation in EDUCAUSE's affiliate, the North East Regional Computing Program (NERCOMP), VLS has been able to obtain some software licenses at "group rates." VLS also derives software savings from its subscription to the Microsoft Campus Agreement for higher education.

The group approach to software procurement has not been needed for hardware purchases, however. "We're already getting a good deal from Dell on computers," says Randy Spydell, director of technology planning for VLS.

Dell's aggressive higher education discounting was singled out in the Chronicle article, which offered Case Western Reserve University as an institu-

tion that is benefiting from a "preferred provider" relationship. Vermont Law School enjoys similar price reductions, which are also extended to students and employees who wish to purchase Dell hardware for personal use.

Advancements in computer technology puts continuous pressure on IT departments nationwide to upgrade. Indiana University and VLS are among the institutions that have initiated "life cycle" purchasing programs, which ensures that all desktop computers are replaced on a three-year schedule. The schools save money by buying computers in bulk, and software, support, and maintenance costs are also reduced by the hardware standardization.

In addition, the life cycle strategy encourages computer recycling. VLS is in a better position to sell its "old" computers at the end of the three-year period, observes Spydell, because they are all of the same make and are of similar models.

Spending IT funds wisely is not always a question of getting deals on the latest hardware and software. In the case of using students to handle help-desk questions, it's more a matter of making good use of what's already on campus. The Chronicle article looked positively on the use of students for nighttime, help-desk duty, but VLS has gone one step further by having students available during the day as well.

"There's quite a lot of technical expertise among the VLS student body," says Director of Networks Scott Ayen, "and students are capable of handling many questions that come up. Of course, the IT staff is also available during the day whenever we're needed."

Information technology will continue to be a priority item as Vermont Law School plans for the future. "The VLS community expects and deserves to have high-quality computing technology," says Associate Dean Randy Foote, "but we must do what we can to spend our dollars wisely. The Chronicle article points out that we're already doing quite a number of things right, and we will continue to look for savings and efficiencies that will give us more bang for our buck."

Open
Monday - Friday
7:30am - 7pm

Saturday MARKET
8am - 5pm

Sunday
11am - 4pm

a food co-operative

Up close and personal with *Grutter*

Ollivia M. Sexton, '05

I spent last summer groveling over a case that has recently hit the media and heart strings of America with a bang. Last summer I filled my days working as an intern at the Center for Individual Rights (CIR) in Washington DC, on a case about a white girl who didn't get into the University of Michigan – *Grutter v Bollinger*. At first I didn't quite understand the magnitude of the case. I thought it was rather strange that someone would sue a college that didn't admit them. It took me only a few days to figure out what was really at stake.

I worked with the exact statistics that are being thrown around in the media – admission percentages of minority students in Washington, Texas, California and Florida (the four states that once upheld affirmative action, and subsequently outlawed it). I found the stats from the fact sheets of the schools themselves. My job was to figure out whether the number of minority students in college had really gone up or down. By the end of the summer I had compiled 130 pages of data which I was to summarize into two articles.

To my surprise, the numbers upheld both sides of the argument. Minority populations have risen and fallen under affirmative action; likewise, they have fluctuated in its absence. And that is exactly why we hear these numbers on both sides, with people swearing by

their statistics. These people are not lying – the numbers tell both stories. It's interesting how numbers can be whatever you want them to be. But numbers and their manipulation aren't the real concern in this case. The issue is much more fundamental and understated, a l i m o s t opaque.

I am talking about the moral side of affirmative action. I am not, for one moment, overlooking the real social ailments that strike at the heart of this debate. I know that all schools do not offer equal education to students. I understand that teens who lead lives filled with turbulence are unable to put their best foot forward in high school and therefore are not able to attend the best colleges or college at all. I know American heritage, and the suffering and oppression that parts of our population have endured. To some circles, because I am a woman, I belong in one of those marginal categories.

There are ways to handle these more pragmatic problems without resorting to legitimizing discrimination. Schools should be asking students to write admission es-

says about their dreams, goals, and aspirations. Admission departments should be making these decisions after reading students' reasons for not excelling at school – personal crises, poverty, or trauma. Students should be admitted because they



Defendant Lee Bollinger (left) of the University of Michigan and the Plaintiff, Barbara Grutter.

want a chance, not because they can check a “preferred race” box on their application. Race and gender should not even be

questions on the form. What should it matter what someone's sex or skin color is?

I cannot see why we would revert to a tradition proven to be harmful, oppressive, degrading and immoral. Either way we cut the cake, when someone is judged for any reason, by any criteria, other than their merit, policy that is dangerously too close to legitimized discrimination is introduced.

The issue is about judging people based on the color of their skin, or their gender. One argument that many proponents of affirmative action have trouble answering is, “why is it okay to judge people based on their race when it benefits them, but is a blatant display of dis-

crimination when it harms them?” How can the same principle, judging someone on something other than their merit, be *discrimination* in one instance and *diversity* in another?

For years, people have protested against being judged by their color. Why now is there an exception to the rule? If the principle is wrong, as it is decidedly so, then the principle is wrong. Period.

We can't play loopy goopy with our most fundamental principles. The consequence of such action is a degradation in the importance and poignancy of the principle itself. As they say about common law maxims, the best way to overrule a precedent you don't agree with, but don't have the support to outright strike down, is to keep making exceptions to it until there is nothing left of the maxim. Making decision based on someone's skin color is wrong – let's not lose sight of that.

In syllogistic terms, discrimination is wrong; discrimination by definition is judging someone based on criteria beyond one's merit. Admitting students into schools based on the color of their skin is making a judgment based on something beyond merit. Therefore, affirmative action in university admission offices is discrimination. As discrimination, affirmative action is wrong.

Yes, we need to find a way to allow students equal access to university educations. Yes, we need to work against an oppressive past which has hindered much of our population. Yes, we need to encourage diversity. No, allowing discrimination is not the answer.

1L Perspective

Jonathan Stein, '05

So unless you are one of my housemates (you know who you are), then you have gone and picked up your grades from last semester. If you're like me, and several other people I know, you are less than satisfied with how you did (putting it mildly). It's apparently normal for us to do worse in our first semester of law school than we ever did as undergraduates. It doesn't matter how many practice tests off the campus network we did, or how many practice problems from the Examples and Explanations series of books, the final exam in law school is completely different than anything we've ever done before.

For our continued relative sanity (some would say we're insane simply for coming to law school), I have some advice. I'm not going to lead you in meditation or breathing exercises. For that, I'd say to go over to Spirit of Health, if that's your choice. Before you despair, questioning why you are in law school at all, remember one thing: you're reading this. You've already made the best decision you could—you came back after the first semester. All is not lost. It's only one semester. There are 5 more to

go (more than that if you're in the combined program with MSEL or getting an MBA/JD with Dartmouth Tuck Business School). Each semester abounds with opportunity to turn this one semester of grades around.

In December, I wrongly said those finals were the March Madness of law school, except they're in December, not March. In the NCAA Tournament, aka March Madness, if you lose a game, you're done for the season. Over years of watching college basketball, I've seen impressive runs of many teams come to crashing halts in those first or second rounds of the NAAs. The truth is, those finals we just took are worth as much as the first half of a Maryland-Duke game. Including the decisive 87-72 victory on Saturday, January 18 of Maryland over Duke, the team that trailed at halftime has won six of the last seven games of the series. This doesn't mean the finals are meaningless. To clarify, those finals are a teaching tool, just like how their team played in the first half is for the coach of the winning team in the Maryland-Duke rivalry, whether it's Maryland's coach Gary Williams or Duke's Mike Krzyzewski. (Yes, Word gave me a red-underline spelling error when

I typed in his name.) Sure, there's some shouting and use of four-letter words in those locker rooms at halftime, maybe even a kicked or thrown object or two, but both coaches are great teachers who always end their halftime lectures with a positive message to motivate their teams before they come out to play the second half. Consequently, neither team quits in the second half. There's always an increased intensity by the team that wins that overpowers the other team in the end and fuels the ongoing rivalry. Over those last seven games, Maryland has won four, with two on the road at Duke, and winning there is a nearly impossible task, proving that nothing is impossible.

This semester is our second half. Don't give up. Now is the time to evaluate study strategies and formulate alternatives that are more efficient and provide more time for review and practice problems and practice exams. We've now all faced the psychological element of the law school final exam. More efficient study also provides more time for mental relaxation and pursuit of activities that aren't related to law school, like skiing now that we have about 8 feet of snow on the ground up

here and it's been around 5 degrees lately. Over two years, from 1878 to 1880, Thomas Edison came up with over three thousand ways to *not* invent the commercial incandescent light bulb before he did invent it. Frustrated as he may have been along the way, he didn't give up. Coming in to law school, we all had dreams of including a law degree in our future lives in some way, whether it be as corporate counsel, entering private practice, working for a firm, non-profit, or for a government agency. We all owe it to ourselves not to give up on the dreams we had when we came here, to do all we can to continue our pursuit of those dreams. This is a new semester. Those grades all belong to the each of us that existed last year in 2002. In order to love to win, we must hate to lose. Whether it's on the basketball court or at practice, or in class or studying, we must hate to lose. It isn't about the screaming and kicking of objects after we lose, but what we gain from the game that determines whether we lose well, including when to just let it go and move on. Now that it is 2003, we are each new people, each one of us with a clean slate. Resolutions aside, let's all zoom ahead in pursuit of better grades, not for the paper chase competition of Harvard-type schools, but for the competitor within ourselves that hates to lose.

Mahatma Gandhi



Everything You Do Changes The World



Rosa Louise Parks

Community Calendar

Anonymous Submission

February 8 – *The Kid Stays in the Picture*, 7 and 9pm. Loew auditorium \$6.

Barbary Coast Jazz Ensemble: Big Band Funk, 8pm. Spaulding Auditorium \$14. 603-646-2422.

Contradance in Norwich, VT. 8pm \$7...bring clean, soft soled shoes.

Occom Pond party, 12-3pm, Hanover. Free. www.hanovernh.org.

Pancake Breakfast, 7:30- 11am, Thetford Center Community Building. \$5.

February 9 – Vaughan Recital Series at Faulkner Recital Hall. Pauline Oliveras, accordion at 4pm. Free. 603-646-3531.

February 12 - Vaughan Recital Series at Faulkner Recital Hall. Free. 603-646-353.

Dartmouth Film Series, *Bloody Sunday*, at 6:45 and 9pm. Spaulding Auditorium, \$6, 603-646-2422.

February 13 – *Ghost in the Shell*, 7pm at Loew auditorium \$6. 603-646-2422.

February 14 – BARACHOIS at The Chandler Center For The Arts, 8 pm. "Traditional Acadian music featuring foot rhythms, piano, percussion and close harmonies laced with a liberal dose of laughter." Students \$4 discount. 802-728-6464.

Dartmouth Wind Symphony: Heroes and Villains, 8pm at Spaulding Auditorium, \$10. 603-646-2422.

February 15 – *Naqoyqatsi* at 7 and 9pm. Loew Auditorium \$6. 603-646-2422.

Hard Eight 6:45pm and *Nine Queens* at 8:50pm, Spaulding Auditorium \$6, 603-646-2422.

February 16 - Vaughan Recital Series at Faulkner Recital Hall. Stella Lee, piano at 4pm. Free. 603-646-3531.
4pm. Free. 603-646-3531.



The Best Care...For The Best Cars.
since 1989

Helmut's German Auto

BMW
PORSCHE
AUDI
MERCEDES
VW

920 US Rte 5 north
Windsor, VT 05089

Helmut Blania
(802)674-9303
(800)491-BMWH

HelmutEuroAuto@aol.com

WHEN THE VIOLENCE STOPS, WOMEN AND GIRLS WILL BE

ALLOWED TO BE BORN IN CHINA, INDIA AND KOREA
SWIMMING IN IRAN
SAFE IN THEIR BEDS AT HOME IN THE UNITED STATES, EUROPE AND ASIA
EATING ICE CREAM IN AFGHANISTAN
KEEPING THEIR CLITORISES IN AFRICA AND ASIA
WEARING BLUE JEANS IN ITALY
VOTING IN KUWAIT
WALKING IN THE PARK AT NIGHT IN THE UNITED STATES
OPENLY FLIRTING IN JORDAN
SAFE AT PARTIES ON COLLEGE CAMPUSES
PLAYING WITH TOYS AND NOT BEING SOLD AS THEM IN ASIA, THE UNITED STATES, EUROPE AND EASTERN EUROPE
DRIVING CARS IN SAUDI ARABIA
WEARING TROUSERS IN SWAZILAND
SAFELY WALKING HOME FROM WORK IN JUAREZ, MEXICO
ENJOYING SEX
CELEBRATING THEIR DESIRES
LOVING THEIR BODIES
RUNNING THE WORLD

- Eve Ensler, V-Day Founder and author of "The Vagina Monologues"

Fourth Annual Washington, D.C. Indian Law Conference

OF TRUSTS AND TRENDS:

Emerging Dynamics in Indian Country

Phoebe Mills, '04 & Eileen Wisor, '04

Tribal Infrastructure: Establishing & Strengthening Tribal Codes and Courts

The ability of tribes to exercise sovereignty has been growing over the past several decades. Maintaining tribal land bases and exercising self-sufficiency has been the key to success. However, de facto sovereignty is genuine control over decisionmaking. To gain this control, American Indian Tribes should use their sovereignty to build strong, stable governing institutions. If tribes can build infrastructure, they will be prepared to make informed decisions when opportunities arise.

Certifying tribal codes and strengthening tribal courts is an excellent place to start. Tribal legal institutions have been attacked as unfair and not in-

dependent; therefore, revisiting tribal constitutions and certifying tribal codes could help this situation. In addition, tribal council terms could be staggered to create stability and continuity. Although tribal courts have limited jurisdiction, their capacity is growing. For example, they hear cases under the Indian Child Welfare Act, and decide an array of issues such as family, housing, hunting and fishing. Thus, tribal courts need reliable and equitable adjudication so they can respond competently to pressures from outside and to cultural values from within.

Similarly, stable economic development will strengthen sovereignty. Sovereignty is expensive; therefore, tribes need revenue to carry out these tasks. Tribal enterprises and individual entrepreneurs should be encouraged because outside investment is a tricky option when trying to retain tradition. Furthermore, a critical component of sovereignty is leaving it to the tribes to decide how they want to develop economically. As a result, Tribal Administrative Agencies and Tribal Business Codes are also top priorities. Public hearings and community participation in adopting codes will help foster understanding about economic proposals.

From a more traditional aspect, codes must recognize and reinforce tribal values. Traditional ways of resolving disputes and

repairing relationships is key. In sum, the boilerplate constitutions given to tribes are not meeting the needs, goals and values of current day tribes. Establishing and strengthening tribal codes will build infrastructure and ultimately strengthen sovereignty.

Trust Land: Protecting Your Trust Application from Collateral Attacks

In 1934, Congress passed the Indian Reorganization Act to stop the massive transfer of Indian trust land and resources to non-Indians. In particular, section five authorizes the Secretary of the Interior to acquire fee land in trust for the benefit of Indians and Indian tribes. The Indian Gaming Regulation Act (IGRA) covers

the process of tribes taking land into trust for gaming purposes. Basically, this is a two part determination: 1) the best interest of the tribe, and 2) not detrimental to the rest of the community. In addition, the tribal request is subject to the Governor's concurrence. The Bureau of Indian Affairs uses a non-codified checklist for determinations; however, at this point there has been a 100% litigation rate on gaming approvals.

Challengers are usually local citizens, landowner associations, local government, attorney generals, environmental groups and other tribes. These groups are often suing over quality of life issues, such as anti-gaming morality. However, some groups may be afraid of competition. In reality, lack of trust is often at the bottom of it all, which often comes from miscommunication and misconceptions. The types of challenges cover garden-variety Constitutional issues, 10th Amendment issues, and statutory challenges based on NEPA, IGRA and others. The best avenue for tribes may be Memorandums of Agreement or Memorandums of Understanding; altering the regulations process itself; new legislation altogether; or amicus briefs submitted on behalf of tribes.

Trust Relations: Understanding New Paths to Federal Recognition

The Federal Acknowledgment Process

(FAP), enforced through the BIA and codified in 25 CFR Part 83, evolved from the Indian Reorganization Act's "need to identify who can qualify," Civil Rights and Indian activists of the 1960s seeking to enforce violated treaties, and federal refusal to sue states for lands taken from tribes because of their unrecognized status. The basis of the process is to recognize that a government-to-government relationship exists between the federal government and the petitioning tribe. It is based on seven mandatory criteria centered on a requirement that a petitioning tribe's existence has been substantially continuous from 1900. The burden of proof is on the tribe to meet this criteria and failure to meet any one criteria will result in a negative finding.


A tribe may not petition if they have previously been denied recognition-the rationale being that an agency cannot undo what Congress has done. In addition to the FAP, Congress has the power to acknowledge tribes through legislation, the President by Executive Order (but has relied on the

BIA through this process), and the federal courts through litigation. However, tribes are encouraged to first exhaust their administrative remedy through the FAP.

Although guidelines have been established to assist petitioning tribes, challenges lie in the absence of a land base, loss of native language, and cultural assimilation. Also problematic is the traditional use of oral history (only accepted for the modern period) and splintered and amalgamated tribes. Guidelines and suggestions include the use of local, state and national archives in conjunction with the use of historic maps and unratified treaties, while tracing back memberships rolls. Professional assistance and funding is available; however, the process remains cumbersome, and the criteria have historically been outlawed or combated making it almost impossible to meet. Ultimately, the tribe humbly petitions the federal government to tell them who they are and to validate their identity.



VLS Students Phoebe Mills and Eileen Wisor



~a cooperative non-profit~

Serving the Health of our Community

- * Individual and team-based services for adults, infants, children, elders and families
- * Educational Programs
- * Beautiful studio offering classes and workshops
- * Space for group meetings, community events & private retreats

Come visit us at our historic farmhouse
on Rte. 14 in Royalton -- next to Welch's hardware

PO Box 10
S. Royalton, VT 05068
(802) 763-9900
www.spirit-of-health.org

In Memoriam



Front row: Astronauts Rick D. Husband (left), mission commander; Kalpana Chawla, mission specialist; and William C. McCool, pilot. Standing: Astronauts David M. Brown, Laurel B. Clark, and Michael P. Anderson, all mission specialists; and Ilan Ramon, payload specialist representing the Israeli Space Agency.



Columbia's Final Voyage
January 16, 2003

photos from NASA/REUTERS

NASA MISSIONS HISTORICALLY A HARBINGER OF PEACE

Jonathan Stein, '05

January 28, 1986. I was 6 years old and it was early morning, a cold morning. We all know what happened that morning. The image of the *Challenger* destroyed at takeoff burned into our heads, with all seven astronauts losing their lives. Watching in my kindergarten classroom, the teachers really had no way of explaining to us young children what had just happened, but we knew anyway.

September 29, 1988 was the first shuttle launch since *Challenger*. We were in our portable classroom at Farmland Elementary in third grade, the year all our classes were in the portables, watching on TV as *Discovery* launched successfully. I remember in the broadcasters' voices a real sense of trepidation and hope that it would go alright before it launched. After it launched, I remember a sense of joy and relief that the space program was going onward. Since then, I have felt a sense of awe regarding space exploration and the possibilities it opens for us as a world.

The 1990s. We as Americans come to regard NASA missions of space flight as being as routine as commercial aviation. Probably somewhere between 75-100 missions are flown without a hitch, and we become so jaded and complacent regarding something so complex that the launches are no longer routinely shown on broadcast television.

The morning of January 16, 2003. I was here in South Royalton, flipping between

CNN and MSNBC coverage as I prepared for classes. I watched *Columbia* launch on one of the first missions in a very long time that did not involve the Space Station, this was a purely scientific mission. Aboard the spacecraft is Israeli Colonel Ilan Ramon. In a time of severe economic depression, a time of war with the Palestinians, a time of horrifying televised images of shredded bodies and lost lives, Ramon offers both Israelis and the world a ray of hope. Ramon is a national hero to Israel. On board the spacecraft also is the flight engineer, a woman originally from India, Kalpana Chawla. She too is a role model and national hero to India. The Americans who fly on these shuttle flights are truly unrecognized heroes to America. In this time of peril in Asia, the Middle East and around the world, this cooperation between nations for space exploration shows a commitment to good winning out at the end of the day, a commitment to peace. That's what the space program is all about. People from nations around the world have flown on the space shuttle, including Saudi Arabia, Canada, Russia, and others I am certainly forgetting to recognize here. Thankfully, it doesn't end when they land.

The American space program has coincided for much of its existence with the Cold War, a time of an adversarial relationship on the ground with the USSR. Despite this relationship on the ground, the United States and USSR established cooperation in space efforts. Such cooperation is likely

to have resulted in the later warming of relations on the ground and the end of the Cold War, the end to communism and the breakup of the USSR, the warm relations we enjoy with Russia today.

Today is February 1, 2003. Today is a day that will go down in history as a very tragic one, much like that of the destruction of the *Challenger* in reverse—on approach to landing, contact with the *Columbia* was lost, and it broke up over Texas. I never thought I'd feel the need to write something like this. Right now, it's 3:45 PM. In 42 years that the space program has existed, NASA has never lost a returning spacecraft. As we all know, the debris was scattered over hundreds of square miles, if not thousands. As we all know, one orbiter, representing 25% of American orbiting capacity was destroyed today. As we all know, seven lives were taken today, and we're pretty sure it was not terrorism-related, as the shuttle broke up significantly above the range of any surface-to-air missile, and security was excruciatingly tight prior to its launch.

These people died doing what they loved. Their sacrifice should both be mourned and celebrated by us. We found out who these people really were today and the amazing things they had accomplished in their lives. The scientific research they were doing up in space surely promised to help us on the ground in the future. I learned today that one of the astronauts aboard, Dave Brown,

a native of Arlington, VA, hoped one day to go to Mars. William McCool was an alumnus of the University of Maryland, like myself. Another, Michael Anderson, born in nearby Plattsburgh, NY across Lake Champlain, had logged over 211 hours in space. Ilan Ramon logged over 4000 hours as a fighter pilot, served in the 1973 Yom Kippur War, and participated in a mission in 1981 in which he was responsible for the bombing of an Iraqi nuclear reactor. This mission, widely criticized worldwide then, was later lauded as having delayed Iraqi weapons programs. The American space program is a program promoting peace. While we must mourn the lives lost, we must not let their sacrifice be in vain. The space program must go on and fix the currently unknown problem or problems that claimed their lives. Through developing a new generation of space flight vehicles and continuing work on the Space Station, NASA can go on. Life must go on. It is said that when someone takes a life, they have not only destroyed that life, but a universe. The saddest part of the events of today is that it is highly likely that the American and world public would never have known about the special people aboard that spacecraft if they had landed as planned. In this unfortunate time of impending war and bloodshed in the Middle East despite many protests against such action by many people including VLS students, I hope the Bush administration looks to the stars in charting our course as Americans, and shaping the future history of the world.