

# The Prelaw Society Journal

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### Controversy in Art? Who Would Have Thought?

*By Lisa Barnshaw, Freshman, Art Education Major*

As a visual artist, I understand the need for expression through all media. I also know that not everyone is going to like your work. For example, in response to the events of 9/11, our high school theater department almost unanimously proposed performing Aristophanes's *Lysistrata*. The play, which was written in 412 BCE, looks at women withholding themselves sexually from their men completely until the men agree not to fight a war. Our school principal, although personally in support of the production, rejected our idea because of the negative reaction he believed would come from the parents. We could have argued for our right to perform the play until we were blue in the face, but because rehearsal, funding, and eventually the use of the stage and equipment were all part of a public school, our point was moot. Our school could not have its name directly associated with this piece because the community response to it could be more problematic than helpful.

My experience in my theater company last year is quite similar to the 1998 Supreme Court case of *National Endowment for the Arts v. Karen Finley*.

The government-funded National Endowment for the Arts (NEA), the organization in question in *Finley*, states that its mission is to enrich "our Nation and its diverse cultural heritage by supporting works of artistic excellence, advancing learning in the arts, and strengthening the arts in communities throughout the country." It is designed to encourage us to exercise our First Amendment artistic rights through government funding. Like any other foundation that awards grants, the NEA considers certain criteria when it awards its grants, one of which is respect for what the general public views as decent. The latter criterion created a stir in *Finley*.

*National Endowment for the Arts v. Karen Finley* asked whether First Amendment rights violated this decency clause. Karen Finley, John Fleck, Holly Hughes, and Tim Miller, more commonly known as the "NEA Four," are all performance artists who applied for a grant in 1990. The prior year, a combined \$45,000 of NEA money was awarded to two "provocative" works: "Piss Christ," an Andres Serrano photograph of a crucifix immersed in a glass of urine, and "The Perfect Moment" by Robert Mapplethorpe, a photograph portraying a homoerotic scene that Congress later deemed to be pornographic. Both works led to formal complaints about the NEA for its "abuse of the public trust."

Congress reacted to the controversy by subtracting the exact amount awarded to Serrano and Mapplethorpe from NEA funding as well as by inserting an amendment into the NEA's 1990 reauthorization bill. The amendment, also known as Section 954, directs the NEA chairperson to ensure that "artistic excellence and artistic merit are the criteria by which (grant) applications are judged, taking

into consideration general standards of decency and respect for the diverse beliefs and values of the American public.”

The NEA Four applied for their grants just after the incident with the two photographs, but just before Section 954 went into effect. An advisory panel approved all four applications, but in the midst of the hype from the prior year, the NEA Council overruled the awards. The NEA Four filed a suit for reconsideration of their projects under First Amendment and statutory claims.

Finley needed the money to help her continue performing, but she also contended that Section 954 hampered the right of artistic expression because it gave the government the power to define “indecent or disrespectful” artwork. As Justice Sandra Day O’Connor later explained in her opinion for the court, Section 954 is acceptable under the Constitution at face value for it does not prohibit any artist from creating works in the manner of their choosing. Instead, it adds a public concern for decency to the long list of criteria for those artworks the NEA deemed “artistically excellent.” The NEA is not obligated to fund Karen Finley’s work nor does it infringe on her First Amendment right to express herself freely. Karen Finley and the others in the NEA Four may still create their artwork in any way that they please.

Because I have been educated in art for a number of years and understand its benefits, as well as enjoy the “shock value” (the initial reaction to art of Serrano, Mapplethorpe, and the NEA Four), I personally support their artwork. However, I also understand that my situation is different from much of the general public because the more conservative viewer and those who have not been expected or taught to evaluate the reasons behind each work take a lot of artwork at face value. When you are unable to dig deeper into art, I understand how you might see it as obscene, offensive, and even unnecessary. The government cannot teach everyone to have insights into provocative works. It may well lean towards awarding money to the “artistically excellent” pieces that the public would more likely accept. Provocative art is generally created because artists feel the need to express themselves and/or raise attention to a cause, not to make money. With such controversial art, there will always be people who support your efforts and just as many who condemn them, and when it is the government writing the check for applications in which not everyone is awarded money, it has the right to choose the artwork to where the money goes.

I hope that Karen Finley continues to walk across stage wearing only chocolate, screaming about how AIDS has captured the lives of many of her friends. I look forward to Holly Hughes and Tim Miller exploring life as homosexual Americans. I will personally fund their provocative, underground, non-mainstream art by exposing myself to their performances. These artists are free to make art as long as the passion is there. However, this does not mean that the government has to pay for it.

## **A Congress Pacific, A President Crowned: *By Robert Chiles, Junior, Music Education Major***

“This republic rests on a system of checks and balances, three branches, two legislative houses, and separate powers. Our system reflects the hundreds of years of history behind it. In our Madisonian system, divided power may not be as expedient as some would like, but it guarantees the American people’s liberties. Quite simply, our representative form of government depends upon power divided and power shared.” West Virginia Democrat and dean of the United States Senate Robert Byrd intoned these words in his opening remarks in the Senate debate on the funding of the war against Iraq. Unfortunately, Byrd seems to be one of the few members of the legislature to share this constitutional vision of separate powers. Nothing more exacerbates this point than the Congress surrendering to the president its power to declare war. The last hope may lie in the “far-fetched notion” of judicial review.

In the fall of 2002, on the eve of a mid-term election, the Senate, following the lead of the House of Representatives, passed a resolution allowing the president to use the armed forces, as he deemed necessary to defend U.S. interests in the Middle East. Short of a Declaration of War, this resolution was not a mandate for war authorized by Congress and thus it failed to pass the Article I, Section 8,

constitutional test that only Congress may declare war. Rather, it was an arcane surrender of power from the legislative branch to the chief executive. Rather than fulfilling its obligation to debate and declare war, Congress participated in the latest in a series of relinquishments on the part of the legislature. "A pall has fallen over the Senate Chamber. We avoid the one topic on the minds of All Americans," said Robert Byrd in his book, *The Arrogance of Power*.

Despite the clear constitutional definition of war powers, as well as a century and a half of adherence thereto, the twentieth century and the dawn of the twenty-first have witnessed an increasing willingness on the part of the Congress to yield its power to declare war to the executive. The first occurred far before the twentieth century, in 1811, when Congress passed a "secret resolution" which was a declaration of war in the future, if certain circumstances were to take place. The first direct assault on the Constitution, however, took place under President Theodore Roosevelt when, in 1903, he used the U. S. navy to intimidate Colombian troops to ignore the Panamanian rebellion. Other notable examples followed with the advent of the Cold War. In 1950, President Harry S. Truman used the military in the Korea without congressional authorization under the guise of a United Nations action. During the Eisenhower administration, Congress twice yielded the power to make war to the president without itself declaring war: in 1955, Congress granted Eisenhower power to take action to defend Formosa from Chinese attack, and two years later, Congress passed the "Middle East Resolution," granting the president the power to use the military to defend the sovereignty of Middle Eastern states.

The 1964 Gulf of Tonkin Resolution, propelling the nation fully into Vietnam, is perhaps the most historically compelling example of congressional yielding to the executive.

Still today, we are faced with the same arguments for the blatantly unconstitutional actions of our current administration, and the equally reprehensible delegation of congressional power. The Bush administration points to recent history to justify why the president is able to make war with congressional approval, but without a declaration of war. Decisions on matters of constitutionality belong to the judiciary, and not in the executive. Many people, including Supreme Court justices, have attacked the doctrine of "that's-the-way-it's-done-so-what-if-it-is-unconstitutional." Justice Felix Frankfurter once wrote that "illegality cannot attain legitimacy through practice," and Chief Justice Earl Warren once said, "That an unconstitutional action has been taken before does not render that action any less unconstitutional at a later date."

Despite the tradition of throwing the Constitution to the wind and of doing whatever the president wants, the Supreme Court has made it clear that the rules still apply. The answer, therefore, is to challenge the executive's warmongering as unconstitutional. If the legislature is willing to allow the executive to ride roughshod over its constitutionally assigned powers, perhaps the third branch of our system should be called into action. Surely a Supreme Court, free of the political pressures of the day, will see the wisdom in its past decisions and shed light back on the Constitution's Article I, Section 8. Such a challenge is crucial for the U.S. to maintain its constitutional tradition of equal powers and checks and balances.

Should we fail at this, we are looking at what Charles Pinckney, Alexander Hamilton, George Washington, and of course Senator Robert Byrd, would all deem a monarch.

## **Protecting the Children or Limiting Free Speech:** ***By Lisa Gahs, Sophomore, Pre-Elementary Education Major***

Seven-year old Jenna walks into her local library and needs to use the library's computers for a school project because she doesn't have access to the Internet at home. However, when she completes her Internet search, she stumbles across pornographic material. When Congress passed the Children's Internet Protection Act, or CIPA, it had children like Jenna in mind. It was an attempt to protect children from Web sites that are specifically intended for adults by installing content filters in public libraries. In the last few years, Congress has passed three laws dealing with regulation of pornography on the Internet. The

first, the Communications Decency Act, according to the Washington Post, “made it a crime to put sexually explicit material on the Web within reach of minors.” The Supreme Court struck down this law on the grounds that it violated the First Amendment. The second law, the Child Online Protection Act, says Corey Simpson of Northwestern University, made it “illegal for commercial websites to transmit material deemed “harmful to minors.” This law was partially upheld by the Supreme Court last year, while the remainder was returned to the lower courts for further review.

The CIPA is the latest such law. For social critic Amitai Etzioni, the American Civil Liberties Union and the American Library Association filed a lawsuit against CIPA on the grounds that it “violates the First Amendment because the filtering software blocks access to many sites that contain clearly protected speech, such as information about sexuality and reproductive health” and because, these groups argue, adults cannot be limited to material that is deemed suitable for children. The Third Circuit Court found the law to be unconstitutional because the filtering software blocks access to constitutionally protected speech, and to suppress, says Simpson, that material serves “no legitimate government interest.” Oral arguments in the case were presented to the Supreme Court on March 5, 2003, and a Supreme Court decision on the case is expected in July.

No one will argue that the government does not have a responsibility to protect children from pornographic material on the Internet. Children have the right to surf the Internet without being subject to obscene and inappropriate material. Their parents also have a right to protect their children from inadvertent access to pornography. On the other hand, adults have the right to view anything they want.

While adults have the ability to choose to view such material and those who do, do so consciously, children may not recognize a site as being pornographic or inappropriate. A simple search with the terms “White House” turns up a pornographic Web site within a list of many useful government websites dealing with the United States executive mansion. A child, researching the White House could easily stumble across the site, unaware of what it was. Granted children should be taught to be careful on the Internet and should be supervised. However, many parents and teachers are not computer literate enough to catch objectionable material when it is “disguised” within in the results of a search.

Meantime, adults should not be restricted in what they can and cannot view on the Internet. It is likely that the provision of the law that requires filters to block access to pornographic sites for both children and adults is one of the reasons behind the suit. Even with that argument, the CIPA as a whole does not violate the provisions of the First Amendment. The First Amendment guarantees free speech and free expression, neither of which is limited by the act. The material is still available on the Internet; it is just not readily accessible at a public library or school library where a child could potentially access it. If an adult were to access pornographic material at a public library on a computer and leave the window accessing the site open, a child wanting to use the computer would be subjected to material over which they had no control.

Congress’s basic idea to install filters in public libraries makes sense. The filters are designed to find objectionable material and block access to it. However, the filters are relatively new pieces of technology and are imperfect. The American Library Association (ALA) argues that the filters block access to legitimate information, like information about sexuality and health issues, and that they let through inappropriate and offensive sites. The simple solution is to find a better filter. Some are already more than 99 percent accurate. However if an absolutely perfect system cannot be created to separate material for adults and children, it may be worth putting up with some restrictions that spill over into the adult world. The American Library Association likens the filters “to a library’s purchasing an encyclopedia or a magazine and tearing out or redacting some of its content.” The ALA’s argument raises a valid point, except that the law allows the filters to be disabled if adults are conducting legitimate research. It can also be argued that in a library there is a distinct children’s section where juvenile fiction, magazines, and videos for children are kept on “kid-friendly” shelves that are low to the ground. The filters required by the CIPA are just an extension of that procedure.

The Children’s Internet Protection Act does not violate the First Amendment as the American Civil Liberties Union and American Library Association claim. The act does not prohibit pornographic material, but simply limits where it can be viewed and by whom, something that is no different than

broadcasting television shows with adult content late at night and installing V-chips in new televisions. The act protects children from harmful and inappropriate material by installing filters on library computers. Restricting adult access might be a legitimate restriction of freedom; perhaps, the Supreme Court will overturn that specific provision of the law, and uphold the protection for children. Since libraries cannot receive federal funding if they do not install the filters, it is in the library's best interest to install the filters. Some libraries say that to install the filters is an extremely costly process. Perhaps then the American Library Association should spend its time lobbying for more funding for the country's public libraries, than arguing that a technological flaw is limiting free speech. It is important to note that as time passes, technology will improve and the filters will become more accurate.

The current law's flexibility to turn off the filters is also important to remember. While the current Internet protection act may have flaws, if the American Library Association could work out the flaws with Congress and the Justice Department. If they succeeded, parents would feel a little more comfortable about allowing their children to use the Internet at a public library.

## **First Hand Legal Experience**

***By Neil Barclay, Senior, History Major, Political Science Minor,  
Editor, Prelaw Journal***

Since the age of ten, I have yearned to work in the legal field. When I found out about the Law and American Civilization internship, I was ecstatic. I thought to myself, finally I get a chance to see what it is like to work in a law office. The syllabus for the course stated that the primary goal of the internship was for students to learn the nature of a law office; I also learned about some of the realities of practicing law.

I worked at the Public Defender's office in Baltimore County rather than in a private firm because I wanted to work with attorneys who were in contact with the general public. I found that they were always willing to give me a few pointers about college, the Law School Admissions Test (LSAT), and law school itself. They explained to me their own experiences of going through "the lawyer-making process." In addition, they gave me many assignments or took me to court several times. During the semester, I dealt with ten lawyers repeatedly, but the one who took me under his wing was my supervisor Stewart Lyons, a graduate of the University of Baltimore Law School who has been a public defender for sixteen years. He told me that he liked working with interns because he was one once himself.

I accompanied Mr. Lyons to district court to observe his daily duties. One such day was typical when he resolved two cases: one was a prostitution case and the other a suspended license violation. I soon found that the alleged prostitute faced a year in prison, and the driver with the suspended license might have to serve a two-month sentence. Mr. Lyons told me, however, that both charges could be dropped for either fines or a Probation Before Judgment (P.B.J.). The only way they could be accomplished was by negotiating a deal with the state's attorney.

I learned that some vital negotiations occur before the actual trial. Mr. Lyons told me that "sixty-five percent of law negotiating happens before the attorney even steps into the court room." As it was, before trial, we stopped at the State's Attorney's office where Mr. Lyons persistently pressed for leaner sentences. In the end, the state's attorney said that he would be satisfied if Mr. Lyons's clients were given probation and fines. Providentially, the district court judge agreed. The client charged with prostitution received a \$50 fine and court cost, while the defendant caught driving with a suspended license had to pay a fine of \$100. The lesson that I learned from this trip to court was that a successful attorney has to be a good negotiator in and out of the courtroom.

Two other beneficial activities for me were legal research and legal writing. For example, I helped research a case pertaining to the Maryland General Exception Rule, which is rooted in the 1983 decision of *Straughn v. State*. My job was to draft a report explaining why the general exception rule protected one of Mr. Lyons's clients. My research and writing took two full days for me to come up with

a two-page document. I excitedly anticipated Mr. Lyons's reaction because I had worked very hard on the assignment, looking at four different cases similar to the one I was working on. To my surprise, when Mr. Lyons returned the document to me, it was marked with numerous corrections. I did not understand why I had made so many errors because I felt that I was a very good writer; after all, the majority of my term papers at Towson have been awarded either an A or A-.

When I went to Mr. Lyons's office to discuss the draft, he explained to me that my writing was insufficiently concise. Instead, it was too long and, as he put it, "drawn." He told me, however, that I should not be discouraged, noting that if I were in law school I would have learned how to do a better job. Other attorneys at the office reiterated Mr. Lyons's remarks. The head public defender for Baltimore County, Thelma Triplin, told me her first experience with legal writing was unlike anything she had done before. She said that in college, "I was a history major with a concentration in ancient Chinese civilizations. . . . I was used to writing in a liberal-arts style, not in a legal one. . . . The first couple legal documents I wrote were riddled with simple mistakes." Ms. Triplin's experience helped me cope with my own sense of failure. I told myself that I should not be too disappointed with my draft because I had never done anything like it before. Just as Ms. Triplin was, I too am a student of the liberal arts. Writing in a legal style is completely foreign to me. Instead of dwelling on my blunders, I decided it was a learning experience. The writing assignment taught me about legal writing, and it also put me a step ahead of other potential law school students. I had, after all, constructed my first legal draft while I was still in college. Not many prospective law schools candidates can say that.

At any rate, my internship at the Public Defender's office was valuable because it gave me first-hand experiences of regular attorney duties, such as drafting documents, researching, and attending court. I also learned that the law is definitely for me. The everyday tasks were very fulfilling and challenging, just what I want in my own career. I suggest that anyone seriously considering law school sign up for a Law and American Civilization internship. No undergraduate law course offers the thorough experience that LWAC 497 does.

## **“Advice and Consent” or “Duck and Delay?”**

### **Judicial Nominations in the 108<sup>th</sup> Congress**

*By Dominic Markwordt, Junior, Business Administration Major*

As the number of lawsuits continues to increase, more and more power is shifting to the United States Circuit Court of Appeals, the courts immediately below the Supreme Court and the courts of last resort for the vast majority of people. The Supreme Court issued a mere 74 signed opinions last term compared to the 107 opinions issued during the 1991-92 term and the 141 opinions issued during the 1982-83 term. As the federal courts' workload and vacancies increase dramatically, the Senate confirmation process is slowing to a crawl amidst acrimonious partisan infighting. The Senate's responsibility to the American people is to see that the federal bench is filled with qualified judges who will expeditiously provide equal justice under law for all.

Article II, Section 2, of the Constitution states that the President of the United States is empowered to appoint federal judges "by and with the Advice and Consent of the Senate." Article III, Section 1, explains that federal judges "shall hold their Offices during good Behaviour," which has consistently been interpreted to mean life terms. Federal judges are considered civil officers, and thus "shall be removed from Office on Impeachment for and Conviction of, Bribery, or other high Crimes and Misdemeanors," according to Article II, Section 4.

Life-tenured Article III judges continue to exert considerable influence long after the presidents who nominated them leave the White House. The Framers believed an independent, unelected judiciary could better safeguard the rights enumerated in the Constitution than could popularly elected judges subject to frequent elections. Consequently, judicial nominations have always been a partisan exercise with every president attempting to nominate those individuals who share his judicial outlook.

Conversely, senators opposing a president’s nominees routinely attempt to prevent them from being confirmed by using a variety of techniques. The president’s nominees are first referred to the seventeen-member Senate Judiciary Committee for consideration. The committee conducts an investigation into the background of the nominees and holds hearings. The nominees are often asked a variety of questions in a process that can last six to eight hours per day for as many days as the chairman deems necessary. If the chairman of the committee is a member of the opposition party, he can choose not to hold hearings on a president’s nominee, he can ask for massive amounts of documents, and he can even vote against the nominee along with members of his party. All this can happen until he decides to let the committee vote on whether to allow the full Senate to consider the nomination. Thus, a mere nine members of the Senate Judiciary Committee can prevent a president’s nominee from having his nomination voted on by the full Senate if the opposition party controls the chamber. These delaying tactics have become increasingly prevalent over the past twenty years. The time judicial nominees must now wait from the time they are nominated to their confirmation has lengthened to truly absurd proportions. The following chart shows the average number of days the initial Eleven Court of Appeals nominees of four recent presidents had to wait before being confirmed by the full Senate.

	Average Number of Days Initial 11 Court of Appeals Nominees Waited for Final Senate Action	Confirmation Rate: Court of Appeals
Reagan	39	100%
G.H.W. Bush	95	100%
Clinton	115	100%
G.W. Bush	Approximately 400 (and counting)	27% (thus far)

Even if the president’s party controls the Senate, and hence the chairmanship of the Judiciary Committee, a president’s nominee, is still not assured of a swift confirmation. Senators in favor of the president’s nominee can vote to send the nomination to the Senate floor for a final vote on confirmation. Senate rules permit senators to filibuster judicial nominations: Article XXII of the Senate rules provide cloture as the means to cut off debate and bring about a final vote if three-fifths (or 60) senators answer affirmatively to the question, “Is it the sense of the Senate that the debate shall be brought to a close?” It is possible for 41 senators of the opposition party to indefinitely delay a president’s nominees even if they have bipartisan support and would easily be confirmed if they received an up or down vote in the full Senate.

The scenario outlined is precisely what is happening to Miguel Estrada, a Hispanic nominee to the Court of Appeals for the District of Columbia. On May 9, 2001, President Bush nominated Estrada who waited from May 2001 until September 2002 for a hearing before the Judiciary Committee. In late January 2003, the Republican-controlled Judiciary Committee voted 9-8 along party lines to send Estrada’s nomination to the full Senate. By this writing, four cloture votes on Estrada have failed to pass by votes of 55-45, with four Democrats joining all 51 Republicans in voting to end debate, this despite the fact that Estrada received a unanimous well-qualified rating (the highest possible) from the American Bar Association (ABA).

After the New York Times reported that the Bush administration was contemplating abandoning the half-century tradition of asking for the ABA’s input, Senators Patrick Leahy, D-Vermont, (then Chairman of the Judiciary Committee), and Charles Schumer, D-New York, wrote to the president to argue that the ABA’s evaluation is “the gold standard by which judicial candidates are judged.” After Estrada received a ringing endorsement from the ABA, Democratic senators charged that they needed confidential, internal attorney-client memos that Estrada had written while he served as Assistant Solicitor General in the Clinton White House. While the ABA believed it had enough information to evaluate Estrada’s candidacy, all living former solicitors general (four of whom are Democrats) signed a letter

agreeing that the memos should be kept confidential. Clearly, some senators are not genuinely interested in the qualities Estrada would bring to the bench. This is odd because the same senators who voted to sustain the Estrada filibuster declined to filibuster the confirmation of Jeffery Sutton to the Sixth Circuit Court of Appeals, even though the ABA had given him a qualified/well-qualified rating.

As long as Schumer continues to believe Estrada's nomination is "a stealth missile—with a nose cone—coming out of the right wing's deepest silo," there is little hope that an amicable agreement will be reached. Senator Harry Reid, D-Nevada, the second ranking Democrat in the Senate, was asked how many hours would be acceptable to end the debate on the nomination of attorney Priscilla Owen, (another ABA unanimously "well-qualified" candidate) for a vacancy on the Fifth Circuit Court of Appeals. He replied "there is no number in the universe that would be sufficient." This persistent stalling by some senators has led Sen. Orrin Hatch, R-Utah, the current chairman of the Judiciary Committee, to suggest that when Democrats regain control of the Senate they can expect their nominees to receive the same treatment they are giving Republican nominees. It is time for senators to break out of this vicious cycle and uphold their oaths of office because vacancy rates of 15 to 35 percent on some Circuit Courts means that justice is delayed and ultimately denied to citizens who are entitled to it.

## **Alimony in the State of Maryland**

***By Brooke Nicholas, Junior, Political Science/Women's Studies Major***

Women have historically received alimony from their estranged husbands for several reasons. In his book, *The Law of Sex Discrimination*, Ralph Lindgren points out that that alimony was once used as a reward to compensate the wife for years of domestic labor during marriage. Alimony reinforced the idea that marriage was based on an exchange of services and obligations, establishing a relationship between the breadwinner husband and the housewife. As time progressed, however, alimony is now awarded to both husbands and wives.

In 1979, Maryland courts interpreted alimony as support and maintenance for the wife after a divorce. Alimony was the legal responsibility of her husband. It was intended to support his wife until she died or remarried. It was also awarded to those women who, according to the court, behaved themselves with proper wifely conduct. The foundation for this standard was evident in the New York Family Law Court's 1970 decision of *Glover v. Glover*, when the court awarded the petitioner alimony on a public charge basis in a fixed interval for approximately four weeks. The judge decided that petitioner Glover's "gross misconduct" did not entitle her "to support from him on a means basis." The court stated that any wife who would attempt to destroy her husband's professional career ought not be awarded alimony on a means basis. In this case alimony was awarded to the petitioner on a basis of privilege for "good behavior," and not as a necessity.

As time went on, the courts began to reflect a change in societal attitudes. With women's liberation movement, the principles for awarding alimony substantially changed. In the 1987 *Turris v. Sanzaro* decision, new Maryland case law was created that awarded indefinite alimony for life to a spouse who would never become self-sufficient. In this hearing, a newlywed couple's marriage was dissolved shortly after the wife developed multiple sclerosis. Dr. Sanzaro (the wife), who was granted an absolute divorce on May 22, 1985, requested indefinite alimony from her former husband. But the court held that "the purpose of alimony is to provide an economic means for both parties to deal with their new, unmarried lives on their own." The Maryland Court of Appeals decided that the *Sanzaro* case could be reviewed to take into account any errors in the lower court decision. Dr. Sanzaro, however, waived immediate alimony, but knew that she would soon need alimony as her sickness progressed.

The *Turris* decision marked a progressive change for our government in regard to absolute gender equality. As divorce rates increased, important court cases brought to light many post-divorce women who were unable to support themselves. Maryland and many other states began to add provisions for alimony within their divorce statutes. The 1980 Alimony Act was enacted into state law in order to

provide a concrete standard for spousal support in the form of alimony after the dissolution of marriage. This act has been cited in several Maryland Court of Special Appeals cases. It has made major changes in Maryland law concerning alimony. Prior to its enactment the standards for awarding alimony were judicial rather than statutory.

After the 1980 Alimony Act, as reflected in the *Turriss and Blaine v. Blaine* decisions, the standards for alimony became statutory. Colleen M. Halloran, writing in the 1998 *University of Baltimore Law Review*, cites the 1980 Alimony Act in *Crabil v. Crabil* when the court held that the act was responsible for supplying “a multi-factor framework used in determining the amount of duration of an alimony award.” As is now clear, over recent years the standards of awarding alimony have evolved.

## **Is Free Speech Really Free?**

***By George Karithanom, Junior, CIS Major, Political Science Minor***

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment guarantees citizens of this land certain freedoms such as freedom of speech, freedom of the press, and freedom to assemble. But are there consequences for these freedoms? Do we pay a price for expressing our ideas and beliefs on the world around us? I feel that we do. It has been shown that if an individual's point of view does not mesh with that of national opinion that individual may face dire consequences. By taking away freedom of speech, the government has no obstacles to exercise full censorship of its people. Censorship involves the use of force to control what you may say, read, or see. Recently, censorship has been on the rise in America.

Consider these examples. In June of 1993, the Supreme Court ruled that it was constitutional to destroy over 100,000 books and tapes and seize all the assets of a bookstore chain without trial because eleven of the books and tapes sold by the chain were deemed obscene (*Alexander v. United States*). Next “indecent” speech for a time could put you in prison. This is possible because in the Communications Decency Act's Section 223, indecent speech via telecommunications devices (cell phone, Internet, or fax) was punishable by up to two years in prison and a \$100,000 fine. However, what exactly is “indecent speech?” Congress did not define it when it created the act so it was lucky the court ruled it a violation of the First Amendment in 1997.

Finally, Congress passed the Omnibus Counterterrorism Act one year after the Oklahoma City bombing. Its purpose was to pursue after terrorists, but it also meant that any American with affiliations with a foreign or domestic organization with which the government does not approve could be prosecuted. Under the act, the Attorney General could label as “terrorist” any individual or group in America. The government could seize all of the assets of the banned group as well as the assets of any individual who has contributed to that group. If you paid \$3 to attend a lecture by a Middle Eastern group, and the Attorney General decides that the group might have terrorist affiliations, your home and business could be seized.

These examples are gross infringements on our civil liberties. According to a First Amendment Center poll, 49 percent of Americans feel that the First Amendment is more contemptuous than comforting. The purpose of the poll was to explore the “public's willingness to tolerate” First Amendment restrictions in times of crisis. But the First Amendment is not the problem. Perhaps it is an unfair for us to expect our leaders to mend quickly what could turn out to be one of the greatest tragedies this country has ever faced.

Following September 11, there was a national movement to censor everything that was “un-American” or did not agree with what the government deemed to be right. Locally, the Baltimore Museum of Art removed an installation entitled “Terrorist,” acquired in 1990, “out of respect to visitors’

sensitivities.” While later reinstalled, one might ask why wasn’t it removed after the Oklahoma City bombing?

The comic strip, “Boondocks,” was pulled from newspapers on Thanksgiving Day, 2001, from the Dallas Morning News when the creator, Aaron McGruder (an alumnus of the University of Maryland) was critical of President Bush. The strip’s main character, Huey Freeman’s grace at Thanksgiving dinner included the words, “in this time of war against Osama bin Laden and the oppressive Taliban regime, we are thankful that our leader isn’t the spoiled son of a powerful politician from a wealthy oil family who is supported by religious fundamentalists, operates through clandestine organizations, has no respect for the democratic electorate process, bombs innocents and uses war to deny people their civil liberties. Amen.” Doesn’t the First Amendment guarantee McGruder the right to express his thoughts freely? Wasn’t this country founded on the belief that individuals can criticize the government freely? Aren’t we trying to spread these rights to other countries in the world?

In addition, restrictions on speaking your mind spread throughout other media as well. One well-known incident involved the music industry on March 10, 2003, at a concert in London, when the lead singer of the popular country band the Dixie Chicks, Natalie Maines, told her audience that “we’re ashamed that the President of the United States is from Texas.” As soon as the news broke, fans and radio personalities began to bash the band. The negative publicity was so pervasive that a radio station in Bossier City, Louisiana, even had a “Dixie Chicks Destruction” day. Why the backlash against a group who expressed its opinion?

Even though the Constitution guarantees people freedom of speech, it is by no means free. It is most certainly restricted during times of war. It is sad that we are not able to talk to one another freely about our perspectives of the world. It is sad that we have to think in the back of our minds that there could be repercussions for what we say. I don’t think that it is right for anyone to obstruct those who want to speak their mind. It is a way for us as a single race—the human race—to grow, live, and most importantly, learn from one another.

## **Affirmative Action: Reparation for Historical Injustice or Reverse Discrimination?**

*By Shelvon Skinner, Sophomore, Pre-Business Administration Major*

Some people who feel that affirmative action is reverse discrimination deeply oppose it. And yet, for all of the past collective inequality, is there really such a thing as discrimination when referring to affirmative action? As we all are aware that white men are at the top of the social ladder? For a minority or a woman to be offered the same choices they have is to be considered reverse discrimination seems out of the ordinary. An example of this is shown in the University of Michigan’s School of Law case currently before the Supreme Court. The case deals with three women who were denied admission to the University of Michigan School of Law because of their white ethnicity.

According to a Towerlight story, “Jennifer Gratz, one of the students rejected from the University, said, ‘Court records show that if I had been Black, Hispanic, or Native American, I would have had nearly 100 percent chance of admission with my grades and record.’” Does it not matter that several other Caucasians, remarkably more than minorities, were actually accepted by the University? For Julie Peterson, the university spokesperson, “the idea that affirmative action ushers in unqualified students is flat out wrong, the school only admits students who have a strong chance of succeeding, and all students we admit are qualified.”

I feel the University of Michigan School of Law was simply trying to achieve diversity. This means that unfortunately these women were denied admission. I don’t believe that black candidates were accepted only on the basis of their ethnicity and race. I am confident that they have an ample, if not more, qualifications.

Racism has not diminished in America. But progress has been made so that blacks are now in a very strong position to move the society forward. Peterson also stated that “we believe that what we’re doing is legal and constitutional; abolishing affirmative action at University of Michigan would prevent the school from attracting minority students, causing a real blow to the campus.” Evidence for this can be found in California where minority enrollment plunged at the Berkeley campus following the passage of proposition 209, which banned affirmative action. As President Clinton said, “Mend it, don’t end it!”

The formation, existence, and necessity of affirmative action are inextricably bound to the defining peculiarities of our nation’s development. But because it is such an intense struggle and full of controversy, the nation will either move backward toward increasing segregation, inequality, and discrimination or move forward toward integration and equality for minorities and women. The fate of affirmative action will determine the direction of our nation.

## **Prelaw Year in Review**

The Prelaw Society held several meetings during the now-concluded academic year 2003-2003, including some with law school admissions deans from area law schools. Other highlights: a meeting with a corporate attorney and managing partner of a major Baltimore law firm and a session with a judge in Baltimore Circuit Court. The most popular, fun event was a mock-law school class conducted by Prof. Robert Condlin of the University of Maryland School of Law who came to Towson to lead students in a discussion of a famous civil procedure case.

During the fall semester (2003), watch for meetings with additional law school admission deans as well as a practice LSAT. Everyone is always invited to these meetings, but you will have to pre-register for the LSAT. So either pass by the Prelaw Society’s bulletin board on the first floor of Linthicum Hall (midway down the east end) or sign up on the Society’s e-mail distribution list (contact Prof. Fruchtmann at [jfruchtmann@towson.edu](mailto:jfruchtmann@towson.edu)).

This academic year has been a banner one for law school applications. They are now at their highest level in history. The result has been that many applicants, even at this writing in the middle of May, have not yet heard from the schools to which they have sought admission. With competition so steep, even our best students are facing the prospect that they will be unable to attend the school of their choice. Even worse, some students must confront the even worse problem of being rejected at all the schools to which they’ve applied. Even so, many of ours students have been admitted to many schools, although it appears that the great bulge we are now witnessing in law school applications will likely continue for the next several years.

The economy seems to be the major reason for the increase in applications. Students have decided that with the job market as weak as it currently is, staying in school may be the better choice for the time being. At the same time, however, the job market among law firms is mediocre at best, miserable at worst. The National Law Journal reported in April that many firms are laying off associates as the legal business dries up. Corporations are more likely to hire in-house counsel because it is less expensive than using lawyers in outside firms, or sometimes they may be reluctant to use counsel at all unless they absolutely have to. Of course, the dot.com failures over the past three years have been extremely devastating to the firms that represented these businesses. When will it change? No one will dare predict.



The *Prelaw Society Journal* reflects the views and opinion of the writers whose work is contained herein and in no way reflects the views or opinions of the Towson University Prelaw Society or Towson University.

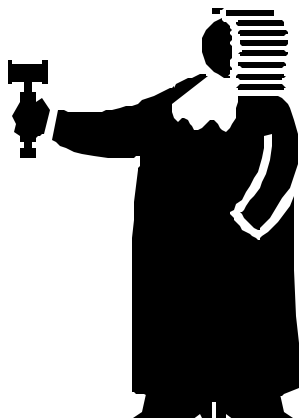
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Write for the *Prelaw Society Journal*! Published once each semester, the journal is written and edited by Towson University undergraduates. If you have a legal or constitutional issue that you have strong feelings about, write a 1,000 to 1,200-word commentary, and we will consider it for publication. Please provide it to us on disk (WordPerfect or Microsoft Word). We particularly would like to see a debate on a particular subject. If you wish to take a position and know someone who takes the opposite point of view, please submit such essays to us. We also consider essays about legal internships and other experiences you may have had in a legal or judicial setting, including, but not limited to, law firms, states attorneys' offices, judges' chambers.

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