

RES IPSA LOQUITUR

Timeline of Activism Around Issues of Race, Gender and Sexual

Orientation

by Jackie Payne and Amanda Smith

This is a non-comprehensive overview. We apologize for any omissions or inaccuracies.

1965-1970

1965- Harry Edwards, an African-American student and future professor, graduates from the U of MI Law School. After his graduation, there are no African-American students in the law school. Women account for 3% of the population of the law school.

1966- Bob Harris, an adjunct professor, leads the informal efforts to recruit African-American students by setting up a program which would eventually become the MAP program.

1969- The law school sets up a formal goal of 10% minority attendance ("Blacks and Non-Cuban Hispanics.") The faculty passes this measure by a margin of three to one.

1970- The first Black Action Movement (BAM) sweeps the campus. After massive protest, classes are closed and the University shuts down. Several Black law students emerge as campus leaders. Some law school classes are disrupted, glass is broken and some faculty members feel wounded after being "out in front" on the issue of minority admissions.

1970- The University Regents pass a goal of 10% minority admissions and send the resolution back to the individual schools for ratification. In the spring of 1970 the law school faculty meets to vote on ratification in the basement of the Law School. During the meeting, the faculty decide to continue despite a bomb threat. The ratification passes by one vote. The faculty feel as if they have a "gun to their head." Layman Allen rushes back to Ann Arbor from New York to cast the deciding vote.

1970-1974

1970- WLSA is still a "legal sorority" and approximately 9% of the students are women. A group of women from the senior class succeed in having a large Wall Street firm banned from the placement office after making discriminatory sexual comments about female law students at firm parties. The banning of the firm becomes a "cause celebre" and generates "a lot of good press" for the law school. Women students make a presentation to the faculty about their experiences in the law school.

1971- Harry Edwards becomes the first person of color on the law school faculty.

1971- BLISA is extremely active, running study groups and sharing outlines.

1971- Dean St. Antoine publishes a article in Law Quad Notes advocating increased minority admissions.

1971- All women law students regularly congregate in the women's locker room in the basement of Hutchins Hall (where they can all fit.) The more senior women students give locker room "pep talks" on how to handle classes, do placement, and "answer all of the illegal interview questions."

1974- The women students help watch one student's child during the day and law school child care is suggested for the first time. By the end of this year, all of the women law students can no longer fit in the women's locker room in Hutchins Hall.

1974-1980

1974- Harry Edward accepts a permanent position at Harvard Law School. Ted St. Antoine sees him regularly and extends him an offer to return to Michigan every time he sees him.

1974- 5 of the top 6 "academics" at the law school are women, including Chris Whitman. Whitman is the first female Editor-in-Chief of the Law Review and is offered a teaching position at the end of her third year.

1975- Sallyanne Payton is extended an offer by Yale Kamisar, then head of the Personnel Committee, after extensive recruitment. On hearing the news, he leaps down the hallway shouting: "We got her! We got her!"

1975- African-American students demonstrate over the lack of minority faculty members after the departure of Harry Edwards. Some faculty resentment occurs because of the concern that "it would look like hell" because Payton might perceive her offer as a device for student pacification.

1976- Sue Eklund joins administrative staff.

1976- Chris Whitman and Sallyanne Payton begin teaching. They are the first women on the faculty at Michigan.

1976- The MAP program is officially named as it gains additional content. Students of color pursuing LL.Ms are recruited to teach part-time with the MAP program as they pursue their degrees. It is hoped that this program will provide a means of entry for students of color into the teaching profession.

1976- Women account for 20% of the Law School's entering class for the first time.

1977- Several times during Chris Whitman's first years as a faculty member, other faculty members presume that she is a secretary at the law school.

1980-1985

1981- The first association of gay and lesbian law students is formed.

1983- 3 gay and lesbian law students make an organized presentation to the faculty at a faculty meeting. After the meeting, a faculty member (who later dies of AIDS) stands and announces that he "is a member of this oppressed minority," and becomes the first out law professor at Michigan. Not all faculty react well and there is some snickering as they leave the meeting.

1984- As part of the "Law Revue" annual event, a mud-wrestling match between several female students and two male faculty members is planned. After hearing of this event, Dean Gordan suggests to the faculty members that mud-wrestling with students might not be appropriate. The female students angrily confront Gordan, demanding to know why the event was canceled.

1984- The Queer Law Students Alliance bulletin board is vandalized two or three times a week, and is eventually covered in glass. The student who took responsibility for changing the board was persecuted in the classroom and at home. Students stood outside his door in the Lawyer's Club whispering "Jagot," etc.

1984- Becky Eisenberg and Jessica Litman are hired as professors, for years afterwards, the female faculty member's names are constantly mixed up.

1985- Anti-Semitism remains an issue in faculty dynamics and student interactions (according to faculty members.)

1985-1990

1986- A seminal bridgework on pornography in the new section is a high point in collective learning and creates a feeling of collegiality among many of the participants.

1987- The second BAM sweeps campus.

1987- After the MAP program is extended to include several intense faculty/student retreats, discussions about how to realign cases to incorporate issues of race, and after several minority students excel institutionally, incidents of "outrageous aggression towards students of color" occur. The incidents, including a racist pendaflex, provoke student faculty meetings and an organized presentation to the faculty. "The students' only demand" was to include Asian-American students in the MAP program.

1987- Dores McCree is given an institutional position within the law school.

1987- Faculty votes to add sexual orientation to the anti-discrimination policy of the career services office. The Regents of the University limit the application of that portion of the policy to private employers.

1988- Lee Bollinger becomes Dean.

1988- Bollinger excludes the CIA and the FBI from campus, the first for its explicit anti-gay hiring policy and the second for its systemic mistreatment of people of color within the organization.

1988- After a administrative reorganization, Bollinger presents the faculty with an administrative organizational chart placing the Dean in the top institutional position. The same day, a corrected chart appears with an apology, repositioning the faculty at the top of the chart.

1990- Women are 50% of the law school for the first time. Women students give an organized presentation to the faculty on their concerns.

1990- Catharine MacKinnon is hired.

1990- Critical Race Theory Reading Group is first formed.

1990-1995

1990- University of MI conducts a study on quality of life issues for gay men and lesbians, it is ignored by the administration. Bollinger orders copies of the study for all faculty members and devotes a faculty meeting to the issue.

1991- Women in the Law Clinic is started under the guidance of Suellen Scarnecchia. Eventually provides legal counsel to Jennifer Ireland among others.

1992- Journal of Gender and Law is begun by six second year women students.

1992- Sue Eklund organizes a series of faculty/student meetings run by an external facilitator to discuss the ability of faculty members to deal with issues of race and gender in the classroom.

1993- University of Michigan adds sexual orientation to its anti-discrimination policy.

1993- Jeff Lehman becomes Dean

1993- Journal of Race and Law begun by three students.

1993- A student run conference on prostitution becomes the center of a controversy involving pornography and the first amendment.

1993- BL SA and JL SA start a reading group on Black/Jewish relations with the help of Professor Malamud.

1994- After student protest around the lack of non-corporate employment opportunities, the Public Interest Office is formed and Rob Precht is hired.

1994- Women in the Law Clinic is closed after vigorous student protest.

1994- Women faculty organize a response to the Lani Guinier study on women in law school.

1994- Service day becomes part of new student orientation.

1995-1996

1995- The University of Michigan extends benefits to the partners of its gay and lesbian employees. Virginia Gordan is instrumental in the policymaking process.

1995- Legal Aid to Urban Communities Clinic is started. Rochelle Lento is hired to run the clinic.

1995- Dores McCree announces her retirement.

1996- Professor Lance Jones' office door is defaced with a racist slur: "Nigger Go Home"

1996- In response to that incident, Jeannine Bell, Tony Miles and Corinne Vorenkamp, three first year students, arrange a student meeting to organize around the issue. This group eventually becomes the Ad Hoc Committee on Issues of Race, Gender and Sexual Orientation.

1996- At an open faculty meeting in HH250 a capacity crowd of students and faculty members listen to students of color, women and gay and lesbian students describe their experiences and voice their outrage at the institutional culture at the law school.

1996- In response to a libelous story about Catharine MacKinnon in the Res Gestae, several students put up anonymous posters around the law school deriding the Res Gestae.

1996- In response to the same libelous story, a different group of students, Kathleen Wilson, Sally Dworak-Fisher and Gillian Wood, produce the first issue of the Res Ipsa Loquitur. It quickly becomes a forum for discussion surrounding the Ad Hoc Committee.

1996- The Ad Hoc Committee on Race, Gender and Sexual Orientation sends out an open roll call to faculty asking them to support measures to change the institutional environment at the law school. (see subsequent story)

1996- The Ad Hoc Committee puts up a large piece of paper outside HH100, supplies index cards and encourages students to record their experiences. It becomes known as "the Wall."

Re-inventing the Wheel: Social Activism at the Law School by Jackie Payne and Amanda Smith

It was not our original intention to write a separate piece on the history of social activism at the University of Michigan Law School. We wanted to give a very factual account of the historical evolution of and reaction to activism here with regard to issues of race, gender and sexual orientation. However, after interviewing a thirteen faculty members and Deans and doing some additional research, we realized that a simple timeline of events would not adequately convey the wealth of information we accumulated. Therefore, the following is an account of our insights into the institutional culture, how it is constructed and maintained. This piece focuses exclusively on interviews with current faculty and administrative staff. Because of time constraints we were not able to interview current non administrative staff members, students, past faculty and many current faculty members who would have been able to contribute to this history, perhaps from a different perspective. It should be recognized that the history provided here is an almost exclusively "academic" and predominately white perspective. We recognize that the concerns and contributions of the staff at the law school have consistently been underappreciated, but the scope of this piece is limited. We encourage future activists to continue this inquiry and continue to document the progression of the law school on these issues.

After our involvement with the Ad Hoc Committee on Race Gender and Sexual Orientation last year, both of us

were frustrated by what we felt was a constant "re-inventing of the wheel" whenever student activism occurred here. Even with a limited knowledge of past events we were aware that this was not the first time these issues had been addressed at the law school and we felt from our peers a sense of resentment because of the perceived lack of progress on these issues. As Susan Schick, a 1996 graduate, wrote in the *Res Ipsa Loquitur* last year: "The student body at this school is constantly changing, while the power structure remains the same. As long as the administrators feel they can appease us by holding meetings and perpetually studying the problems, nothing will change. New students will arrive, become outraged by their treatment here, try to make changes, become frustrated, and leave."

Therefore, our idea was to provide some context for student activism, both in order to alleviate some of the feeling that no progress has ever taken place at this institution and to demonstrate that there is a very real reason for the frustration.

We interviewed 13 professors and administrators and asked them substantially the same questions about historical events, community interaction, and their sense about what behaviors do and do not work to make change here. The interviewees were: Layman Allen, David Chambers, Sue Eklund, Heidi Li Feldman, Virginia Gordan, Yale Kaniyar, Jeff Lehman, Deborah Malamud, Nick Rine, Dennis Shields, Ted St. Antoine, Kent Syverud and Chris Whittman. We felt that the best way to present the information we gathered was from the perspective of the three groups which most directly affect policy and practice at this institution- faculty, students and administrators.

What behaviors on the part of students have been effective at fostering cultural change or producing positive avenues of communication and which behaviors have been ineffective, misdirected or have produced resentment or backlash?

All of the professors and administrators that we spoke to were very familiar with student activism at the law school and many noted that it had consistently been a part of the institution. Almost everyone we spoke to remembered names of individual students who were effective activists and who contributed to the long term development of the law school and were able to describe somewhat how those students succeeded. Many faculty members remember students who made organized presentations to the faculty at faculty meetings and list those meetings as a place where constructive dialog happened and real change was initiated. One such presentation, where gay and lesbian students addressed a meeting, made a particular impact. In part because of the students' activism, a faculty member (who has since died of AIDS) came out to his colleagues for the first time. Many interviewees cited the law students who took leadership roles in both campus-wide Black Action Movements (BAM) as effective leaders who maintained a sense of responsibility to their community. The groups of students who started both the Journal of Gender and Law and the Journal of Race and Law were similarly cited.

Student activism is perceived as particularly effective when an individual student is able to make such an impression on a faculty member that their viewpoint changes or they recognize something (perhaps unpleasant) about

themselves. As Dean Whitman said, "when you hear something coming out of the mouth of someone you care about" you take the issue more seriously. For example, Professor Kamisar noted that he had been educated by his students around issues of race, gender and sexual orientation. Kamisar mentioned specifically the response of David Lewis, now a prominent alum, to his lecture on the Fisher case (328 U.S. 423 (1946)) in his first year criminal law class. The case involves (in a simplified form) the death sentence appeal of a Black janitor who had killed a white librarian after an argument in which the victim called the defendant a "dirty nigger" and began screaming at him. Justice Frankfurter wrote a dissent to the court's opinion upholding Fisher's death sentence citing to the defendant's involuntary "primitive urges." Lewis apparently made it very clear to Professor Kamisar that it was not the defendant's "primitive" nature that provoked the killing, but rather his fear of harm or death because a white woman was screaming at him in a small town in the south in the 1940s, a scenario that would put a Black man at great risk. Kamisar has since included this account in his criminal law classes.

However, faculty perception of student activism is not overwhelmingly positive by any means. Many interviewees told us about negative experiences they had had with student activism, a dynamic that seems to take several forms. First, several faculty members noted that they found student activism less effective when it had a self-aggrandizing tone and perhaps was undertaken less for the good of the institution and more for the good of the student. Second, student activism that is perceived as confrontational or

demanding is often followed by a very negative institutional response, often described as a "backlash." Third, faculty members expressed concern about activism for which student refused to "be accountable" or which was anonymous.

The first dynamic was mentioned in passing by both Dean Lehman and Professor Syverud, both of whom contrasted it with the behavior of students who are committed to making this a better place. Professor Syverud noted that this dynamic might develop because "activism" gives students increased access to faculty members that they might not otherwise have.

The second dynamic listed above is best described with reference to the backlash surrounding the student activism after the B&M movement. (see Timeline - 1970) It is our conclusion that faculty and administrators resent student activism most when it makes them feel that students are holding a "gun to our head." After the first B&M movement, several interviewees mentioned that the faculty vote to ratify the (previously overwhelmingly agreed upon) 10% minority admissions goal was so close because faculty were resentful that law school classes had been disrupted by the Black Action Movement. Professor St. Antoine reports that the law school faculty felt they had "been out in front on this issue" and that they were unfairly targeted and chose to express that resentment by voting against ratification. In fact, newly appointed Dean St. Antoine had to write a piece in the Law Quad Notes specifically noting that he recognized that many faculty and alumni felt that to vote for ratification would amount to "bowing to student pressure" and arguing that they should ratify nonetheless. This backlash was also

evident in the faculty responses to the Open Roll Call last year. Many faculty members expressed resentment at the demands inherent in that poll and at the "ultimatum" that the students were giving the faculty and administration. Many faculty members were especially hostile to the idea that a non-response to the roll call would be counted as a "no" vote. Chris Whitman, in her e-mail response to the roll call, echoed the sentiment of many faculty members and said that "putting matters to a binary vote is a form of bullying which is inconsistent with my goals for this community."

The third dynamic is best represented in the negative faculty response to "the Wall" last year. Dean Whitman never read the cards on the Wall because she heard from others that it targeted people anonymously. She said that she "got the sense" that it was very hurtful, offensive and "combative" and that it expressed an unwarranted assumption of ill-will on the part of the faculty. Other faculty members echoed this feeling that students didn't trust faculty members to do the right thing. Perhaps connected to this is the painful fact that professors who have historically been advocates of progressive change on these issues brought up the events last year in their class and were taken to task because of the way they chose to deal with the events. Meanwhile other professors who chose not to address the issue at all emerged unscathed. In contrast, however, some professors responded positively to the Wall and other activism last year. Professor Syverud said that that activism last year was "more politically astute" than it had been in years past and that students were better at "keeping things salient," and the

clinical faculty (almost unanimously) voiced its support.

Importantly, student reaction to student activism is also often far from positive. For example, when the first gay and lesbian law student's alliance was formed at the law school, the only student who felt comfortable changing the basement bulletin board was targeted by other students in classrooms and in the Lawyer's Club. Similarly, during the open faculty meeting last year, many of the complaints from students of color and women students were about treatment they had received from other students. Both Professor Feldman and Professor Syverud identified the classroom as the crucial place where students (and faculty) must be respectful of each other.

The Res Gestae has also made accusations recently that perhaps the low matriculation rate of women and minority students last year was due to the fact that the Wall was up during preview weekend last year. Dean Shields noted that, although it is possible that students had such a reaction, it is also possible that students were more disturbed by the initial racist incident that provoked the responses on the Wall (see Timeline) or perhaps positively influenced by the fact that there seemed to be some effort to change things here. Dean Shields noted that racist, sexist and homophobic incidents occur in all law schools and that he makes an effort to tell that to accepted students during the admissions process.

In fact, Dean Shields attributes the drop in women and minority acceptance rates to something else entirely. It is Dean Shields' feeling that the ever increasing cost of attending a school like Michigan or its peers and the questionable job market after graduation

affects the admission rates of people "on the margin," specifically people of color or women who might be more sensitive to cost than other students (read: white male).

What behaviors on the part of faculty members have been effective at fostering cultural change or producing positive avenues of communication and which behaviors have been ineffective, misdirected or produced resentment or backlash?

In the course of our interviews, several specific events immediately stood out as faculty actions which contributed to positive change around issues of race, gender and sexual orientation. Bob Harris and David Chambers' early efforts and Virginia Gordan's later efforts to support the student-initiated MAP program were noted specifically by several faculty members. Professor Malamud's spontaneous offer of her living room as meeting space for the student-created Critical Race Theory reading group is also a good example. Catharine MacKinnon and Chris Whitman's attendance at the one of first Ad Hoc meetings, despite the fact that they did not know if faculty were invited and their recognition that the meeting might be limited to students, is a perfect example of an effective way to keep lines of communication open. Sue Eklund's consistent efforts to open and maintain dialogue between all members of the community were noted by many. And, of course, the constant efforts of Does McCree on behalf of students of color has resulted in the recent institutionalization of her role and the employment of her successor, Charlotte

Johnson. The clinical faculty has consistently publicly supported student activism in many forms for many years. Ted St. Antoine's pursuit of Harry Edwards and Yale Kamisar's persistence with respect to Sallyanne Payton serve as examples of how a Dean and a Chair of the Personnel committee can aggressively recruit people of color for academic positions. Rumor has it that Professor Payton, once she finally agreed to come to Michigan, said to Yale Kamisar in an exasperated tone: "Call off the dogs, I'm coming!" Some interviewees felt that the faculty also dealt well with the aggression towards students of color after the expansion of the MAP program in 1988 and to the students' demand that Asian-American students be included in MAP.

Yale Kamisar contributes yet another story of faculty activism that made him aware of problems with his own behavior. During the initial push to recruit minority students in the late sixties, there was, at one point, a faculty meeting at which one faculty member said that "we shouldn't go overboard" [in the effort to recruit black students.] Professor Harry Edwards immediately stood and gave an impassioned speech about the necessity for the recruitment effort. Professor Kamisar, then a junior faculty member, stood and proclaimed: "That was an emotional statement, and I'm not going to be swayed by emotional statements!" After the faculty meeting, Professor Edwards came over to Professor Kamisar and "really zinged him." He said "I guess only white faculty members can make emotional speeches, not black faculty members..." pointing out that, even then, Professor Kamisar was prone to emotional speeches himself. Kamisar reflected on the interaction by

saying: "I deserved it and I agree with him. I just hadn't thought about it in that way. It cleared the air when he said that to me." This strikes us as a perfect example of the way in which having a diverse faculty can be transformative.

It must be noted that not all faculty efforts to produce change in these areas have been so effective. This year's "cultural competency" meetings, suggested by Allison Lowery and adopted partially in response to the Ad Hoc Committee's proposal for mandatory "sensitivity training," actually resemble almost exactly a series of student/faculty meetings held in 1988/89, also conducted by an outside facilitator (a fact of interest, given our concern about cyclical activism.) Professor Nick Rine recollects that substantially the same faculty and staff members (mostly clinical faculty) participated in both this year's cultural competency groups and in the 1988 groups. Rine did note that of the "traditional academic" faculty, he remembers only one or two participating in 1988, while there were six or seven fully participating in this year's program. While Dean Lehman views this as a "threefold increase in faculty involvement," others have cited the low participation as a result of the program's voluntary nature. When asked about the low participation this year, Rine observed that the "culture here doesn't demand responsibility for the health of the institution as a whole." Rine noted that this dynamic is the result of the "individualistic" nature of the law school compounded by the tenure system. He did point out that this dynamic is not negative in and of itself, it just requires people to force themselves to be accountable, rather than relying on the

"institutional discipline" which exists in many other professions.

Rine's concerns may be connected to a phenomenon that Dean Jeffrey Lehman has identified in other contexts. Lehman feels that one reason activism happens cyclically here is because the first priority of the institution in responding to "incidents" involving race, gender and sexual orientation is to take steps to alleviate the concerns of or respond to the harm done to the individual students involved in the incident, and not to try to make immediate systemic change in every instance. This prioritization seems to be reflected in the structure of the cultural competency groups. The goal of those groups was to help the 40 participants understand the dynamics of race, gender and sexual orientation in the law school, but it did not provide any means to translate the experiences of the participants into institutional changes that would prevent harmful dynamics from developing in the future. While the law school did attempt to counteract this phenomenon by creating the Environmental Environment Committee, which reported directly to the faculty (see report to faculty, 4/11/97), the cultural competency group was still left frustrated by its inability to share its collective experience. It is worth noting that no one we spoke to criticized the cultural competency group as ineffective within its scope; just the opposite. The implication from our interviews was that the program was a very effective educational experience on a personal level, but limited in its reach.

Notably, this "voluntariness" problem is not limited to the faculty and administration. Student participation in the cultural competency group was also

voluntary and, as a result, only one white male student participated. We found an interesting contrast between the voluntary cultural competency group and the faculty-created and team-taught mandatory new section bridge week on pornography in 1986. Professors Feldman and Whitman both participated, the former as a student and the latter as a professor, and both cited this experience as exhausting and tumultuous, but, ultimately, as one of the most productive and collegial experiences they had at the law school. One of the reasons that this bridgeweek was so productive, we understand, was because it involved the participation of community members who had vastly different viewpoints and approaches to the contentious issue of pornography. It is perhaps the case that, if the bridgeweek had been voluntary, the group would have become more self-selected and less thought-provoking. Professor Feldman repeatedly emphasized the value of having interactions with students and professors with diverse viewpoints and explained that she considered "diversity" to be a broad concept encompassing personality, style, education, political affiliation, and political sensibilities in addition to race, gender, and sexual orientation. She also emphasized that interaction across such diverse viewpoints did not come without personal risk to participants, but that it resulted in positive change across the board.

There have been other incidences of well-intentioned "faculty activism" which did not produce their expected results. In 1994, University of Pennsylvania Professor Lani Guinier published a study based on evidence she had gathered about the experiences of women in law school. In response to this

study, several faculty members assumed that the women law students at the University of Michigan would be concerned about their academic position in relation to male students and they perceived a need to reassure the women law students here that they did not perform substantially less well than their peers. These faculty members, predominantly women, organized a meeting with female students to discuss their academic performance. According to Dean Whitman the meeting became very tense, with the students expressing that, irrespective of their formal academic performance, they had experienced the law school as extremely inhospitable to women. Professor Malamud distinctly recalls this as one of the first times women professors were called out as "not getting it" and as "being part of the problem." Although this effort clearly grew out of genuine, sincere concern for the women students, the lack of communication between the faculty and students led to a misdirected effort which seemed to result in hostility and resentment on the part of students and confusion on the part of faculty.

Several faculty members noted that as the student body and the faculty become more diverse, it may be becoming more difficult for students or faculty to act collectively. Dean Gordan related a story about a "Law Revue" event in the mid-80's in which a group of female students and two male faculty members planned to have a mud wrestling match in the Lawyer's Club Lounge. After hearing of the planned event, Dean Gordan "suggested" to the faculty members that mud wrestling with their students might not be entirely appropriate and the event was canceled. Dean Gordan was quite surprised when

the group of female students then showed up at her office furious that she had intervened. Professor Feldman also pointed out that, with somewhat greater diversity among women professors and with an increasing number of different "styles" of female teaching and academic work, women students or professors might not immediately share the same concerns or agenda. She also remarked, however, that it is exactly this diversity across faculty members that provides students with a broader set of examples as to the myriad of styles with which white women and people of color approach lawyering.

In contrast to this developing dynamic, several faculty members reported to us that there is some sense that groups within the faculty are acting collectively, either as women or as young faculty generally, in order to make change. The female faculty members' activism within the faculty last spring serves as a positive example of this. Throughout the course of last year a group of women faculty members began meeting informally to provide each other with much needed support and an explicit coalition, an interaction that had not really happened before. Professor Malamud explained that "enough cumulative impacts on enough people made things you've been putting up with unacceptable and that leads to change."

What about this institution makes change so difficult. What problems still persist here, and, institutionally, what steps can we take to make positive change around issues of race, gender and sexual orientation?

As mentioned above, most interviewees mentioned the impact that individual people can have on the "tone" or "atmosphere" of this institution. Almost all of the interviewees also emphasized the importance of making strides in hiring a diverse faculty. These two points, made by so many faculty members, strike us as internally consistent and crucial to the institutional effort to improve the dynamics around race, gender and sexual orientation here. As Layman Allen said in our interview: "When Harry Edwards joined the faculty it made a big difference. When Chris and Sallyanne joined the faculty it made a big difference. In the way things were talked about, in what was talked about, their mere presence made a big difference and it was reflected across the board." This observation is reflected in many other faculty members comments. Professor Malamud said: "the faculty is a very strong institution but the particular character of the institution really depends on certain people." Professor Syverud also noted the importance of hiring minority faculty members and noted that "the same five minority candidates are aggressively recruited every year [by all of the top law schools] and the problem is getting those people to come given our lack of progress in diversity hiring in previous years." Dean Shields said: "the primary concern is the make up of the faculty." Professor Rine noted that the faculty must make change themselves and that they were the ones "really in charge." Dean Lehman said, as reported above, that "the institution is the sum of the individuals who compose it, so having a Rob Precht or a Charlotte Johnson makes a difference." Hearing this same sentiment from most of the people we interviewed, we are convinced

that hiring a more diverse faculty is well understood to be the most important priority in any effort to make change around these issues. There is some disagreement, of course, on the best way to achieve this goal, but we found it interesting that this hiring issue was consistently seen as so pivotal, given the general perception among students that no serious action has been taken to diversify the faculty in many years.

On a broader level, we did glean some insight from the interviewees as to whom students should direct their activism. Numerous faculty members described as essential the presence of a dean who is committed to addressing the issues surrounding race, gender and sexual orientation is essential. Professor Feldman noted that the seemingly "fortuitous" occurrence of several students interested in the same things arriving at the institution at the same time is instrumental in making change, but she added that, because such a circumstance is so fortuitous, having a Dean who is consistently committed to making change is crucial.

As Dean Lehman himself said, the Dean clearly plays an important role in identifying issues and setting the agenda. Throughout the interviews, Dean Bollinger was consistently praised as an example of what a progressive leader with a strong commitment to diversity issues can accomplish. As an example, Dean Gordan remembers Bollinger's insistence that a report on the experience of gay men and lesbians in the University not be "made invisible, ignored, disbelieved or simply tolerated" in the law school as it was throughout the rest of the university. Determined to address the issue, Dean Bollinger purchased a copy of the report for each faculty

member and devoted a faculty meeting to discussing the report. Professor Feldman similarly commended Bollinger's commitment to doing something about the gender related issues that pervaded this environment during his tenure. Dean Lehman's emphasis on welfare issues may be seen as another example of such leadership. The establishment of the Legal Assistance to Urban Communities Clinic, one of the only transnational clinics in the country, was cited as evidence of Lehman's concern.

It is clear, however, that having a committed Dean alone is not enough. Dean Lehman described the norm of committee governance as problematic. The law school, specifically, differs from other schools on campus in that it does not have an executive committee which would free it from some collective action problems. The Dean described the general governance process in the law school as follows: the Dean thinks that something is important, he (or maybe someday, she) appoints a committee to work on the matter further. The committee researches the issue and makes a proposal to the full faculty for a vote or further appropriate action. Professor Rine referred to this aspect of the institutional culture as a "clumsy" process where no one is really in charge and it takes a long time and a lot of consensus before anything is accomplished.

Clearly, the implication of these comments is that change must come (at least in part) from the top down. This committee oriented mentality along with an event that occurred during Dan Bollinger's tenure leads us to wonder, however, whether there is a consensus on where the "top" is. After an administrative shuffle at the beginning of

his Deanship, Lee Bollinger sent around a typical organizational chart with boxes representing the hierarchy of the institution, listing the Dean at the top, then the faculty, then the Administration and so on. Apparently, however, this chart provoked some anger in some quarters and the same day Bollinger sent around an apology and a revised chart with the faculty at the top, then the Dean and the administration. Thus, while strong leadership from the Dean is necessary, it is clearly not sufficient. The faculty, which perceives itself to be at the "top" must bear the responsibility of sending a message of commitment to diversity issues.

Many interviewees noted that although the incredibly individualistic nature of the faculty creates the possibility that one person can act as a catalyst for change, they also noted that the same dynamic can produce stagnation and work against collective activism, by taking the pressure off the faculty as a whole (a dynamic reflected in many classroom discussions between students.) The earlier comment about the individualistic nature of the faculty may also help to explain the faculty responses to student activism described above. It ends up meaning that "no one can tell anyone else what to do" and that even when faculty are working successfully with some students, any suggestion that the law school create a program *mandating* the very same activities is met with a refusal to be so controlled.

As a final point, we heard several times that it is important not to view the law school in isolation from the greater community of Ann Arbor. Ann Arbor is clearly not a environment free from racist, sexism and homophobia. From the Black female law student who was

wrestled to the ground by a SWAT team for no reason in the early 70's to the round-up and blood testing of a huge majority of the African American men in the area in the mid 90s, to the racial graffiti on Lance Jones' door, Ann Arbor is not a haven. And while, of course, the law school is not responsible for the whole of Ann Arbor, it was repeatedly noted with pride by the interviewees that our institution, in the past, has reflected and often preceded, the development of society. We must take this tradition to heart in our future behavior.

We agree with David Chambers comment that "maybe we shouldn't be so worried about re-inventing the wheel. All 'incidents' will have their own historical meaning and what the appropriate response is may not be completely informed by history," but we do believe that a history of this kind of action at the law school will prove useful in the future, if only to remind community members that their predecessors shared their concerns. It is our hope that this history and timeline provides tangible information and that our insights help in this community's efforts to give events their own historical meaning and move towards a more tolerant and diverse community.

*Jackie Payne and Amanda Smith are
JLs.*

The Writing on the Wall

By Hardy Vieux

Sometime during the first week of March last year, the wall outside Professor Lance Jones' office was defaced anonymously with the words "Nigger Go Home." Most students became aware of that act through word of mouth immediately afterwards and those who did not received a short memoria pendaflex from Dean Lehman the following week stating that the act was "manifestly inconsistent with the norms of our community." A group of first year students, Jeannine Bell, Tony Miles and Corinne Vorenkamp organized the initial student response, calling an organizing meeting and arranging to speak at an open faculty meeting called by the Dean. At that meeting, in a packed 250HH, dozens of students of color, white women and gay and lesbian students recounted countless experiences which demonstrated, as Tony Miles said at that meeting, that the racist slur directed at Professor Jones was not so "manifestly inconsistent" with this community's norms, and in fact, perhaps was a natural outgrowth of this community's norms. Dean Lehman closed the meeting by saying, "I don't agree with everything said here, but I will think about what you have said."

After the frustrating open faculty meeting, a group of students began to meet regularly to try an take some action around the issues brought up in the meeting and to take advantage of the sense of community formed between students during that meeting. Flyers were posted and e-mails went out and the large and diverse group of student who met the next week named itself "the Ad Hoc Committee on Issues of Race,

Gender, and Sexual Orientation." The group was truly ad hoc; we scheduled meetings whenever we could and a different group member facilitated every time. We invited members of the "basement groups" to attend and continued our communication with several supportive faculty members, including Professor Catharine MacKinnon. Our ideas for activism arose from our group discussions at meetings and were decided by majority vote, usually after (lengthy) discussion. Several students, primarily Liz Bain, Jackie Payne and Elissa Barrett, suggested that we create some sort of forum for students to express the feelings they had first mentioned in the open faculty meeting. Those students noted that other law schools, including Yale, had a similar kind of forum and they suggested making index cards available and posting them on a large piece of paper outside Room 100. This idea developed into "the Wall."

In their early organizational efforts, Tony, Jeannine and Corinne had formulated a set of proposals for change that they presented to the faculty in the open faculty meeting. As a larger group, the Ad Hoc Committee decided that the crucial factor in any change at the Law School was the support or non-support of the faculty. In order to gauge support, Dr. Adale Walters and myself, suggested a faculty "Roll Call." Several committee members correctly noted that simply asking faculty members for thier opinions would have produced very limited results. Therefore, we decided that, along with the Roll Call, we would send faculty and administration members a ballot whereby they could indicate their support or disapproval of the Ad Hoc Committee's proposals. The Committee

also decided that, in order to provoke some kind of response, we would say on the ballot that a non-vote would be taken to mean a "no" vote. This Roll Call and the ballot produced a voluminous, and predominantly angry, response from the faculty. These responses were then posted, along with the ballot responses, outside of Room 100.

It is my feeling that the faculty did not understand our objectives in either the Roll Call or the ballot. They perceived us as too "radical" and as coercing into taking a stand. It is my impression that the faculty did not fully appreciate how much the educational environment had deteriorated over the years. Their general sense seemed to be that the Ad Hoc Committee was trying to make them look bad in front of their peers and the students they teach. For the first time, the faculty had been put on the spot by the students and that fact was as unsettling as the substance of the proposals.

We knew that our activism would not engender support from every facet of the Law School community and yet, I do not regret it at all. I feel that our actions had serious practical and symbolic importance. On a practical level, we really woke some people up. They were forced to talk about these issues and quickly. If we had just said, "please send us your responses," the faculty may not have responded immediately by holding a faculty meeting and subsequently adopting a modified set of resolutions (which they did within a week.) The Roll Call and the ballot were not destructive direct action mechanisms, rather they were just effective means to communicate our frustration to the faculty and administration. Given the

gravity of the situation, our actions were certainly warranted.

I particularly object to those people who say that the Wall may have resulted in the decrease in women and people of color in the first year class. Those people have the cause-effect relationship all wrong. People of color and women are not at all surprised that the Law School is not always hospitable. The Law School is simply part of a larger society that often marginalizes and discriminates against women and people of color. Our actions were an attempt to initiate a dialogue- a dialogue that too often does not take place in our society. Those accepted students who saw the Wall, I am led to understand by several first-years, were encouraged that these things were being dealt with here.

I also disagree with those people who discount the cards because they were anonymous. That objection misunderstands another cause-effect relationship. Given the competitive environment we have here, there is almost no way to critically address professors when you think that your grade might be on the line. It is no surprise that people left their names off when they were critical of professors. Furthermore, I am baffled that the real topic of conversation is still "the Wall" rather than the troubling dynamics the Wall brought to light. We need to find strategies for change. We need to look carefully at Visiting Professor Eric Orts' Quality Circle idea, where a group of students in the classroom act as liasons or facilitators between the other students in the class and the professor, and others like it. We need to move on to the substance, now that it is out in the open somewhat.

To be clear, the Ad Hoc Committee had problems, externally and internally. We had an especially hard time monitoring the internal dynamics of the group. We were a large group of different people, with different backgrounds, who felt passionately about these matters in different ways. But nonetheless, I feel that we were a success. We remained (and remain) committed to direct action and affecting change through building coalitions and education.

Hardy Vieux is a 3L. He is also 1996-1997 Editor in Chief of the Michigan Journal of Race and Law and the 1997 Campbell Moot Court Competition Winner.

CULTURAL "COMPETENCY"? by Alicia Perla

Over the last several months, I along with 40 other students, administrators, and faculty participated in a five week Cultural Competency Workshop. With the aid of facilitators, trained to work with issues relating to multiculturalism, we spent time exploring issues of race, gender, and sexual orientation – what they mean to us personally and professionally, and how those issues are addressed at the law school.

It should not be a surprise to anyone at this point (although undoubtedly it will be to some) that there is a problem with regard to the way students of color and women are treated at the law school by fellow students, professors, and the administration. The experiences and viewpoints of women

and students of color are continually and systematically shut out of classroom discussions. Professors exclusively talk about doctrine in the context of a reality that does not exist for some students in the classroom. During the rare times that issues which affect women and minorities are discussed, inevitably, there are students who put down their pens, start rolling their eyes, and begin having conversations among themselves because what is being said isn't really important. The message is clear: your experience is not important, it doesn't count, now shut up so we can get back to talking about what really matters.

So what did the workshop groups come up with to combat some of these problems? Unfortunately, there was no singular consensus reached as to how to go about addressing the problems that we all agreed exist – we simply did not know how to begin. Professors looked to students to take a leadership role in demanding that the hiring committees look at a more diverse field of candidates for visiting professor and tenure-track professor positions. They encouraged students to approach professors outside of class on a one-to-one basis with their concerns, making specific suggestions as to how the professors could expand their discussion to include issues of importance to women and students of color. At the same time, students looked to tenured professors, with their status and obvious positions of power within the school, to inject issues of multiculturalism into the curriculum, to point out bias when students make comments in class that reflect one-sided viewpoints, and to expand their criteria for defining "promising" candidates for professor positions. While there was no shortage of ideas, there was a pervading

sense of cynicism and frustration – by upperclass students that have worked on the Ad Hoc Committee and who have made these very same suggestions again and again, by first-year students that have two years of battling ahead of them with little expectation of success, and by professors and administrators who have been here long enough to see the cycle repeat itself: crisis erupts, demands for change are made, token response is given, and no difference in the law school environment results.

Perhaps the most frustrating experience for me was the realization that, as committed as the persons who participated in the workshop are to making the law school environment better for all members of the community, we cannot change the culture of exclusion without the assistance of students and professors who are appalled by racist, sexist, and homophobic viewpoints but who don't say anything out of fear, frustration, or exhaustion. The members of the workshop made individual commitments to take steps to bring these issues to the forefront. Yet, however well intentioned, we will not have an effect as long as there is continued silence by those who are empathetic, but who don't feel that it is their responsibility or place to speak.

One very valuable lesson that I learned through the workshop was that there is no such thing as "cultural competency." No one is an expert on the subject, we all have blind spots, and we all need those blind spots revealed to us – not just to make others feel included, but to make ourselves more open-minded, deliberate, and informed people (and believe it or not, better lawyers). Revelation of our assumptions and misconceptions can only be made

through discussion. These issues will not go away, not here and not in our professional careers, so we better start learning how to address them openly and directly, if we have any expectation of understanding one another and working effectively to all our benefit.

Alicia Perla is a IL.

The Thing Speaks for Itself by Sally Dworak-Fisher

The impetus for the initial publication of the *Res Ipsa Loquitur* was a "humorous" story published by the *Res Gestae* in January of 1996. The story, entitled *The MacKinnon Line*, depicted the trials and tribulations of virile male law students forced to suffer the wrath of Professor MacKinnon as she inflicted PMS on them through monthly kicks in the groin. Needless to say, not everyone found the story as funny as the editors of the *Res Gestae*.

Speaking from my own perspective, I was outraged by the story, but I was initially unsure what to do about it. Other people I spoke to, women in particular, were also offended, and we debated whether responding to the story would lend more credence to it than it deserved. Gradually, however, we began to see the story as more than just an instance of stupidity or insensitivity; we viewed it as symptomatic of the treatment of women and their relative powerlessness within the law school. Viewed in that light, a response --not only to the story, but to broader issues as well --was needed.

The first issue of the *Res Ipsa Loquitur* went to print in February and consisted of both responses to the story

and excerpts of women's experiences of isolation and alienation at the law school. The by-lines were published with names of famous women rather than our own in an attempt to de-personalize the issues and minimize accusations of brown-nosing for those of us in Professor MacKinnon's class. Both the by-lines and the contents of the *Res Ipsa* were met with considerable hostility from some students, which we took to be a sign that the problems we identified were as serious as we believed.

In the weeks following publication, it became painfully clear that the law school was not, and probably never had been, a community where each student, professor, and administrators were respected equally. With the word "nigger" written on Professor Jones' door, racial tension in the law school came to a head. This incident opened the door to reflection on the ways in which people of color, gays, lesbians, and other minorities are disempowered within the law school. With the formation of the Ad Hoc Committee, and on-going activism within the law school, *Res Ipsa Logitur* went to print for the second time. It has come to pass that, with each publication, editorial duties have shifted hands.

In the second issue, the writers and editors expressed their desire to use *RIL* as a vehicle for dialogue about issues of race, sexual orientation, and gender. It was the belief of the editors of the paper that silence is complicity, and that we must speak out against, and seek to rectify, the injustices we see and experience. It is in the spirit of confronting the most painful and difficult issues in the law school that the *Res Ipsa* was formed, and in the spirit of continuing to work toward a community

where each member is treated with respect and dignity that we continue.

We would like to thank the Ad Hoc Committee on Issues of Race, Gender and Sexual Orientation for creating a community and solidarity around these issues, Sally Dworak-Fisher and Kathleen Wilson for creating this forum and giving activists a voice, and past and future editors and writers for their continuing commitment to social change.
- Jackie Payne and Amanda Smith, eds.

Any future submissions should be placed in the *Res Ipsa Logitur* pendaflex on the third floor of Hutchins Hall.