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# Res Gestae

STUDENT NEWSPAPER OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL

October 14, 2003



Since 1950



Vol. 54 No. 4

## Downloaders Beware! Record Industry Lawsuits Are Indeed 2 Legit 2 Quit

By Sharon Ceresnie

Most of us have heard about the lawsuits that the Recording Industry Association of America (RIAA) has brought against peer-to-peer file sharers. The newspapers have highlighted defendants like a 12 year-old who had

it become clear what the state of the law is on file sharing. And while the RIAA has only filed 261 suits as of September 8, 2003, many of us have begun to realize that the next suit filed could easily be against one of our friends or even ourselves.

for the Intellectual Property Student Association's (IPSA) guest speaker Andrew P. Bridges on "Are the RIAA Lawsuits Legit?" After speaking during lunchtime, Bridges also visited Professor Eisenberg's Trademarks class to continue the discussion of the suits. IPSA President Tally George said she was very happy



"no idea" that it was illegal to download music off of the Internet and the parents who share their child's sentiment. Neither before nor after the filing of the suits has

Precisely because many of us feel affected by this new wave of legal tactics by the RIAA, on October 8, 2003 Room 150 was filled with nearly 160 students

with the large attendance at the event and was "happy to have provided the Law

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# Res Gestae

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# Burning the Midnight Oil with the Insomniac-In-Chief

**By Andy Daly**

This weekend I received the latest of several e-mails telling me to go to bed. Folks who have awoken to new messages in their inboxes from a certain [dalya@umich.edu](mailto:dalya@umich.edu) have expressed concern over my penchant for sending e-mails at hours only Vlad the Impaler could love. Some have mistakenly chalked it up to my dedication or my hard work. No, I wish it were that noble. Granted, I often find myself remembering to do things that I should have done hours ago, rather than during the depths of night, but it's not the work keeping me up. To be honest, I am not really sure what is.

Perhaps I have some burning questions to answer. Ones that come to mind are: "If he is a documented sexual predator and world-class pervert, why is R. Kelly constantly singing love songs on my TV?" Or, "If Michigan is consistently one of the most overweight States in the Union, why can't I find fresh donuts in Ann Arbor after a long night of drinking?" And then there is the classic: "If the plural of leaf is leaves, why does Toronto's hockey team call themselves the Maple Leafs?"

When I said "burning questions" I hope you weren't looking for something deep or philosophical, I would need to sleep for at least a month before getting to that.

Despite the unanswerable nature of my queries, I am sure it is not they that keep me up. Perhaps I am waiting for something to happen, or perhaps it is my fear of missing something important or interesting. It can't have anything to do with my new digital cable box or the three-and-a-half-pound bag of M&M's I bought, would it?

Deepening my dilemma is the fact that I kinda like being up to all hours of the night. My friend Sara's appeal that I go see a doctor and get some prescription sleeping pills fell on deaf ears. "I don't really have any trouble sleeping," I told her, "I just don't go to bed." I sit up and watch TV, play computer solitaire, instant message other saps who get caught up late, and ponder inane questions like those listed above. Sometimes I even do house chores at 3:00 a.m.

Maybe its the freedom and quiet that comes with late nights on the couch doing nothing in particular. Nobody bothering me, no one to tell me what to do - there's a certain peacefulness that comes with being the last one on duty. Here's to hoping that my future employer doesn't get wind of these tendencies. Wouldn't want them getting any funny ideas, would we?

In any event, it looks like I will have to embrace the nocturnal lifestyle for the time being. And to those with whom I correspond, do not be troubled if you get an e-mail from me at some unholy hour - I'll sleep eventually, it just might have to be during class.





## Letter to the Editor:

# Taking the MPRE - It's A Mystery to Us

Which of the following critical topics was *not* offered as a presentation by your very own Office of Career Services this semester?

- a) Bright Lights, Small City
- b) How to be Happy as a Lawyer
- c) The Logistics of Being a Lawyer:  
When, Where and How to Take the Bar Exam.

Unfortunately, as any 3L knows, the answer to the above question is (c). While the authors of this article understand the value of presentations on such topics as (a) and (b), we also value the importance of being able to one day sign our names to actual legal documents, something which, we hear, is hard to do if we never take the Bar Exam.

The authors also acknowledge that, especially given the absence of new episodes of "The OC" to distract us during the past month, we could have been researching when, where, and how to take MPRE and the Bar Exam. But let's be honest. Our Office of Career Services has lulled us into a feeling of false comfort and security over the past two years. We've been led to believe that, for whatever conceivable employment-related issue that could possibly arise during our stay in Hutchins, OCS will

send us a minimum of five reminder e-mails about the informational presentation they have arranged for us on just that topic. Why would we ever suspect things would be different when it came to taking the Bar? Granted, the requirements for passing the Bar differ in many states, but 48 out of 50 States require the MPRE. And we only need to review option (a) above to see that OCS has never been shy in the past of offering employment information just because it doesn't affect every single student.

To make matters worse, we happen to know, based on an informal and unscientific poll of our classmates,<sup>1</sup> that several students (the authors included) sent e-mails to their career counselors requesting information on the upcoming MPRE, only to be told individually to check the "useful links" on the career service website.

One helpful student graciously sent an e-mail to the listserve regarding the quickly approaching MPRE registration deadline, at which point chaos ensued. Confused 3Ls turned to each other asking "What is the MPRE? Do I need to take it? Do I need to take a course? If so, how do I sign up? And will my law firm pay for it?" Meanwhile, over at 200 HH, OCS was grappling with the burning question of whether or not Denver is a good place

to practice law and whether my happiness is directly related to my salary. OCS finally sent an email to the listserve the day *after* the late fee for registering for the November MPRE exam went into effect.<sup>2</sup>

Given our collective experience, it actually turns out that signing up to take the test in a different state, signing up for the Barbri course, and figuring out how to coordinate having your law firm pay for the course can be fairly confusing. At least confusing enough to merit a quick lunchtime presentation by our career counselors. Such a solution would certainly make our lives, as well as theirs, significantly less stressful. We fear that without such a presentation, we may have no choice but to sheepishly attend the upcoming OCS presentation on "Alternatives to Law Firm Practice."

CJ Albertie, 3L  
Katie Lorenz, 3L  
Erin Meek, 3L

<sup>1</sup> Poll may or may not have been conducted at Rick's American Café.

<sup>2</sup> Also included in this helpful email was the wrong date of the test.



## ACLU Celebrates, Reads Banned Books

Michigan Law students walked the edge, literarily speaking, at the "Books So Good They're Banned in Texas (and elsewhere)" reading on Wed., Oct. 1.

Members of the ACLU's Michigan Law School chapter read selections from the 100 Most Frequently Challenged Books List compiled by the American Library Association (ALA). The event was held in recognition of the ALA's Banned Books

Week, held Sept. 20-27, 2003. Each year the American Library Association compiles a list of "banned books." Many of these books are not banned per se, but they are objected to by parents or school boards.

"Fortunately, the first amendment rides out most of these challenges," said Erin Conlon, Michigan ACLU Secretary. "We just wanted to raise awareness to the books that are commonly banned, and

demonstrate why they might be challenged," she said.

"The fact that challenges do succeed once in a while is troubling in this day and age, particularly when you take a good look at the list," said Ali Shah, Michigan ACLU President. These books are national treasures, and the authors are a "Who's Who" of American literature, people like John Steinbeck, Mark Twain,

**Continued on Page 4**



# Alcohol Policy Abused: Training Session Needs Redirection

By **Jessie Grodstein  
Kennedy**

Both law students and administrators alike recognize the severity of alcohol abuse. With effects ranging from liver damage to memory loss, alcohol is undoubtedly a potent substance. Yet the Law School's Administrative Oversight Committee on Alcohol and Substance Abuse (AOC), which purportedly seeks to provide "education in the areas of prevention, identification, intervention, and referral with respect to alcohol and substance abuse," has developed an alcohol host training procedure that focuses more on the bureaucratic process for holding an event where alcohol may be served than on methods for recognizing and assisting those students who may need help.

On Friday, October 10, 2003, Dean Charlotte Johnson, a member of the AOC, held a training session before a full room of students. She spent the majority of the hour-long session outlining the procedures which apply to any law student, faculty, or staff-sponsored event where alcohol is served. The expansive scope of the policy, which applies to any

event that is openly advertised within the Law School community "or outside of the community" as well as to any event that is "sponsored or co-sponsored by a law student organization (including student journals)", appears to be aimed more at protecting the Law School from liability than at protecting students from the adverse effects of alcohol.

Rather than discussing the appropriate methods for approaching an intoxicated student (or professor) or how to recognize signs of binge drinking, Johnson spent the bulk of her time on issues such as advertising and funding for alcohol-related events. Other administrative issues included the notice requirement for how long in advance a student organization must inform the AOC of its intention to hold an alcohol-related event (21 days) and frequency of events – no student group may sponsor more than one alcohol-related event in any seven-day period.

Johnson fielded a number of questions related to the policy, including whether or not a private student, unaffiliated with any particular Law School organization, must adhere to the policy, even if the event were to be held at an off-campus

location such as that student's apartment. After all, if that student sent an e-mail out to the law student listserv, then it would appear as if his or her event is "openly advertised." In responding, Johnson seemed to recognize that the policy would need some tweaking, however she insisted that, overall, its enforcement should not be a problem.

The Law School Administration revised the alcohol policy with the stated goal of "bringing it in compliance with those policies adopted by the executive officers of the University, including the Vice President for Student Affairs and the Associate Vice President for Facilities and Operations."

The University as a whole is more sensitive to alcohol consumption, being that the University's new President, Mary Sue Coleman, is one of the foremost administrators dedicated to changing the culture of drinking on college campuses.

Yet a key difference exists between the undergraduate community and that of the Law School – namely those in law school are of legal age. Dean Johnson did insist that there have been one or two

**Continued on Page 7**

## ACLU, from Page 3

and Toni Morrison. Some of the most puzzling challenges are to children's books, you really scratch your head and wonder if there aren't greater things for parents to worry about than whether their kids are reading "James and the Giant Peach."

For more information about Banned Books Week and the 100 Most Frequently Challenged books list, visit the American Library Association's web site at [www.ala.org](http://www.ala.org).



## Presenters, Books and Authors:

Adil Haq,  
"Huckleberry Finn,"  
by Mark Twain

Ali Shah,  
"The House of the Spirits,"  
by Isabel Allende

Anne Fitzgerald,  
"Slaughterhouse Five,"  
by Kurt Vonnegut

Trish Rich,  
"Brave New World,"  
by Aldous Huxley

Aaron Goodman,  
"Lord of the Flies,"  
by William Goldman

Jessie Grodstein Kennedy,  
"James and the Giant Peach,"  
by Roald Dahl

Joanne Alnajjar,  
"I Know Why the Caged Bird Sings,"  
by Maya Angelou



# The Empire Strikes Back

By Steve Boender

The Strokes – *Room on Fire*



5/5 Gavels

The most anticipated sophomore album in recent history is almost here (actually, it is here if you have Kazaa...not that I know anything about that though). Yes, ladies and gentlemen, The Strokes are preparing to reenter the building. Facing scrutiny more intense than a Sammy Sosa broken bat, the five boys from Williamsburg went through two producers and several months of writing and recording to deliver the goods in the face of skepticism on a level equal with the hype that accompanied their first release.

And deliver they do. Right off the bat, on the opening track "What Ever Happened?", The Strokes show us that they're not messing around. A single guitar strums 16<sup>th</sup> notes as Fab Moretti lets loose a beat more complex than anything on *Is This It?*, and, as the rest of the band joins in, Julian Casablancas' trademark gravelly vocals come in stronger than any track on the previous record.

Displaying a sense of urgency markedly different from the detached cool of his previous work, it's as if Casablancas is trying to beat down all of his critics with a single line.

The record contains several other standout tracks, including the reggae-tinged "Under Control" and "The Way It Is", featuring a drum machine sound Kraftwerk would envy. However, none of them match the intensity of the opener. The record's first single, "12:51" is probably the best example of the Strokes' expansion of their sound. The vocal line is mimicked by a keyboard sound straight out of The Cars' "Just What I Needed", accompanied by some wicked handclaps. The result is a solid single, albeit not up to par with their breakthrough hit, "Last Nite."

"You Talk Way Too Much" and "Meet Me in the Bathroom" are probably the

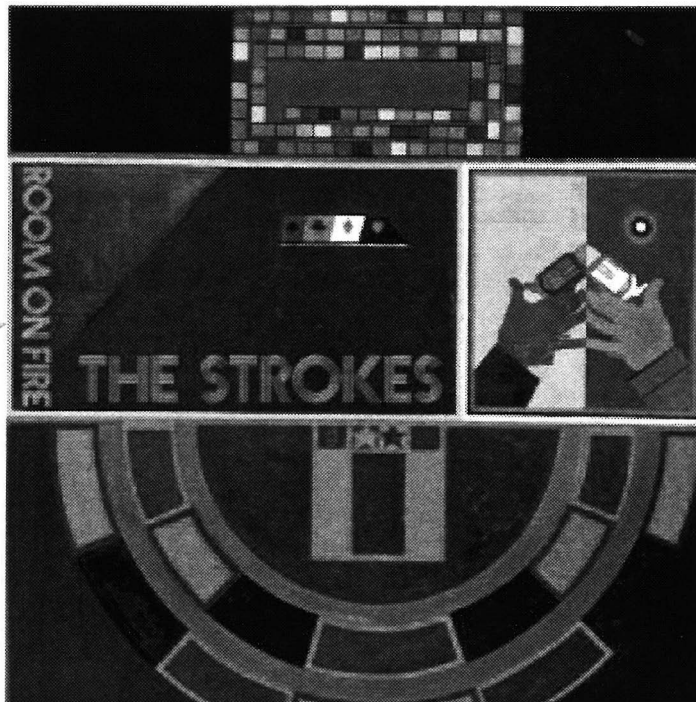
studio versions after a year of bootlegged live versions. The only real disappointment though, is "blah", which incorporates a disco beat and some decent guitar work, but never really finds a groove.

*Room on Fire* doesn't stray too far from the Strokes we're used to, but one noticeable difference between this record and *Is This It?* is the strength of the songs, both lyrically and musically, than most of the band's previous work. The past two years of constant touring have tightened up the band considerably, and the boredom that inevitably results from playing the same 12 songs night after night seem to have inspired them to expand their sound a bit, incorporating a variety of drum sounds, vintage keyboards, and the aforementioned handclaps.

Sure, the album does not have an instantly classic single like "Last Nite" that will be sure to pop up on K-Tel's inevitable "Living in the 00's" series. Nor has the band tried to reinvent itself in any drastic way. What they did do is put together a solid album – no more, no less.

Many people were hoping to see the Strokes fail miserably on this record, mostly because on *Is This It?* the band just made it look so *easy*. With *Room on Fire* the

band has established themselves as legitimate artists, and while it doesn't seem so easy anymore, it still feels like a lot of fun.



tracks most like the bulk of *Is This It?*, which makes sense considering the band's been playing them live for the past year. From the minimalistic guitar to the boyfriend-bored-with-girlfriend subject matter, they're the least compelling tracks on the record, although it's nice to hear





## DOWNLOADERS, from Page 1

School with a highly relevant and compelling legal event."

Bridges is a partner at Wilson, Sonsini, Goodrich & Rosati, P.C. and has unique experiences representing the technology industry. He practices in the areas of trademark, copyright, advertising, consumer protection and unfair competition in Palo Alto and brought a unique perspective on the issues of peer-to-peer file sharing shaped by his past representation of technology developers. "His from-the-trenches insight gave extra credibility to his review of the RIAA lawsuits," said George.

In 1999, Bridges successfully represented Diamond Multimedia in a suit brought by the RIAA under the Audio Home Recording Act claiming that Diamond's MP3 player failed to comply with the Act's design restrictions. This was a key step in facilitating the widespread use of MP3 players and the digital music industry's growth. He cites this as part of the first phase of the "Internet Music Wars," as he aptly calls them. Until the present phase of the "Wars," the focus has been on stopping the technologies that facilitate music file sharing from developing. The present phase is the first time the music industry has specifically targeted the users of these technologies.

Given his particular concern with allowing for technological developments, Bridges believes that pressure on actual files sharers is more appropriate than pressuring the technology developers to stop creating new technologies. "I think it is a safer world for suits to be against users than technology developers," he said.

But Bridges is not unsympathetic to the situation that many consumers are facing as the RIAA proceeds. He admits that the suits can easily be brought abusively through the use of inappropriate subpoenas. "The RIAA," he said, "is used to plowing through people."

The legal basis for these RIAA lawsuits is §106 of Copyright Act's which grants

to copyright holders the exclusive rights to reproduction, derivative works, distribution, performance, public display and digital performance in sound recordings. The RIAA claims that peer-to-peer file sharers have infringed the reproduction and distribution rights of the copyright holders when they upload and download music files on the Internet.

Bridges agrees that the RIAA can easily make a prima facie case of infringement based on the right of reproduction, but that the basis for the claims under the distribution right is a bit less clear. He claims that "distribution per se is not an exclusive right of the copyright act," and that file sharing does not implicate distribution in the traditional sense of the word since file sharing is not a form of leasing, renting or ownership transfer. He believes that the exclusive right that file-sharing more clearly implicates is the performance right, but, because of problems of proof, the RIAA has focused its attention on the distribution. This legal tactic is based on ease of bringing the suits, according to Bridges, "they [the RIAA] are trying to sue a lot of people and they are trying to do it easily."

Bridges believes that these suits will have an overall positive impact on shaping the law and public policy for the Internet and Music industries. "It's time we have these debates," he said, "I think the lawsuits have brought fundamental issues which will shape public discourse and copyright policy."

As for how copyright policy should progress from here, Bridges believes that the law can do much more to accommodate the development of Internet music. He explains that it has become part of societal norms to go to the Internet for music, but that there are few options for users to legally download music. "People are using these services because they don't have a real alternative," he said. Bridges believes Copyright Policy should take into account these societal norms. He even suggested that, perhaps, "in the context of sound recordings, all of the rights of §106 should be thrown out the window and a right of compensation be developed."

So, "Are the RIAA Lawsuits Legit?" According to Bridges they are on legal, common sense and moral grounds, and they are an excellent place to begin dialogue with Congress about the Internet and music industries. "The policymakers are having a taste of technology," he said. "When they taste it, suddenly they get it!"



### *The Surfing Club's 2nd*

#### *Annual Cedar Point Road Trip*

*is taking place*

*Friday, October 17.*

*Experience the adrenaline-  
pumping, vomit inducing roller  
coaster heaven that is*

*Cedar Point.*

*We will meet in front of*

*Hutchins Hall, Room 150 at 3:45*

*and carpool from there. Cost is  
\$12.50 (admission) plus a small  
gas contribution.*

*As we need to determine the  
number of cars to organize, RSVP  
at [wildway@umich.edu](mailto:wildway@umich.edu) or sign  
up on the Surfing Club's*

*bulletin board.*



# Fifty Ways to Leave Your Laptop

By Michael Murphy

The story starts at two in the morning on a Wednesday two weeks ago when my old laptop packed a bag and hit the road and took my legal practice memo with it. It left in the middle of an e-mail, left in a flash of frozen blue screen and vague, ominous messages. I tried to reason with it by using the most reassuring curse words and threats that I knew. But as I tried several times to boot up our relationship, it told me that we had “permanent” and “fatal” errors with our “operating system.”

I called its friends at customer support, and they tried to talk some sense into it. “At least give him back his paper,” they said. “For all the good times you’ve had together.”

Nope. My old laptop somehow knew that I, in typical guy fashion, was about to ‘trade up.’ A newer, better looking and more popular laptop had reached my house in Detroit that same day.

I drove home in the middle of the night, thinking that maybe some software or recovery disk would let me have two computers instead of one. Nothing. I got back home at 6:30 a.m., set up the new computer, and slept for two hours before shuffling off to my first class.

Friends of mine in my section offered me their class notes and sympathy – and I am grateful to them for that – but nobody could bring my paper back. This

has all happened to us from time to time, and we all know how much it sucks.

But as I sat in my afternoon class in yesterday’s clothes with a computer in front of me that came straight from the box, with a paper lost on another ambiguously broken computer, no shower so I’m reeking of dirty Irish American Man, all kinds of e-mail and voice mail piled up, all kinds of reading to do, I wondered how I was going to do everything I needed to do with no time and less sleep I realized that in some sick way I was *enjoying myself*.

What the hell? Maybe this means I have a touch of dramatic fever, but if I do, I’m not alone.

I had so many things going wrong all at once, I had to separate them into what I could and couldn’t control, and focus only on those things that helped me through the situation. I may be wrong, because I’m new, but isn’t that what were supposed to be learning here?

I know this. I’ve tried working a 9-to-5. After two years of that, I was so bored and frustrated that to me “Office Space” was Cinema Verite. My routine was like this: mailing work in, spending the morning deciding where to eat lunch, spending the afternoon deciding where to go that evening, which was usually nowhere. I had nice things, but even that got old. To me, no paycheck in the world is worth that kind of sterile contented boredom. If that works for you, awesome.

I’m not trying to be condescending, not at all, I’m jealous. Good for you.

But I don’t think contented boredom works for most of us, here.

If you’re here, you’re cashing in three quality years of your life, energy, and money you probably don’t have to make an investment in yourself, a real test of your knowledge and resourcefulness. It’s hard to see with all the stress and demands on our time, but think about it. With caffeine running through your veins, shrugging off sleep and your e-mail and voice mail screaming at you, that’s when you know you’re in the thick, defining your limits. Not bored.

Two days later, in the computer lab, the employees there and I broke into old laptop’s hard drive. We stole all of my stuff back, the paper included, in true Barenaked Ladies’ “The Old Apartment” fashion. I left no note, left no personal belongings behind.

New laptop came with a broken keyboard. But, like any guy on the rebound, I chased after the first thing that came along and that I could get ... even if it was, technically and literally, damaged goods. I fixed the keyboard later in a delicate operation, and new laptop and I are doing just fine. But we’re in that honeymoon phase. I’ve already seen its screen flicker once or twice for no reason. It had better not get any ideas, because I can always get drunk and reformat my ex-laptop and just start fresh off.



## ALCOHOL, from Page 4

instances where a law student was underage, however that student must have been underage for only a portion of her first year. It would seem highly unlikely that the Admissions office would accept an 18 year-old as a first year law student, even with Doogie Howser-like credentials.

According to the Alcohol Host Training handbook, “the impetus for the revisions [to the alcohol policy] are the obligations of the legal profession regarding the determination of character and fitness for the practice of law as well as the law school’s own policies for investigating character and fitness for the practice of law.”

Which begs one question, should those who are not of the inappropriate “character and fitness for the practice of law” have been admitted in the first place?







# Announcements

**Tuesday, Oct. 14**

**“Clerking at the  
United States  
Supreme Court”**

with Prof. Joan Larsen and  
Prof. Molly Van Houwling

12:35 - 1 p.m.  
236 HH

**Thursday, Oct. 16**

Law and Economics  
Workshop  
Presents

**Rethinking  
Prosecution  
History Estoppel**

by Douglas Lichtman,  
Chicago

3:40 - 5:15 p.m.  
Room 236 HH

**Tuesday, Oct. 21**

**Dean’s Corner**

An informal discussion  
with Dean Evan Caminker  
12:15pm  
150 HH  
Pizza will be served

**Wednesday, Oct. 22**

**Opportunities for  
Lawyers Who Like  
Legislation:  
One Alum’s Journey  
from Capitol Hill to the  
White House and  
Beyond**

with Broderick Johnson, ‘83  
4 p.m.  
250 HH

**Thursday, Oct. 16**

LSSS Presents  
Professor’s Perspectives

**“So Fresh, So Clean:  
Mark West’s Book on  
Japanese Sex and Other  
Stuff too Exciting to Print”**

with Prof. Mark West  
4-5 p.m.  
Lawyer’s Club Lounge

Federalist Society Presents

**Discussion on the  
2nd Amendment,  
the Right to Bear Arms, and  
the ongoing lawsuit to  
overturn D.C.’s gun control  
measures**

with Bob Levy, Cato Institute

12:30 - 1:15 p.m. - 138 HH

Student Allied for Freedom  
and Equality presents

**1st Annual Edward  
Said Lecture:  
The Question of  
Palestine**

Union Ballroom  
7:00 -9:30 p.m.

**Send Your  
Student Organization  
Announcements  
to [rg@umich.edu](mailto:rg@umich.edu)**

**Presenting the U-M  
Affirmative Action Case**

Maureen Mahoney,  
member of the University of  
Michigan defense team in  
Grutter v. Bollinger

4 - 5:30 p.m.  
Power Center  
for the Performing Arts