Scalia Visit Brings Attention, Constitutional Debate to M-Law

By Matt Nolan

Justice Scalia’s visit to the law school last week was highly anticipated because the Justice is the primary symbol of what is perceived as a conservative court. Scalia did not disappoint as he shared his views on Constitutional interpretation, the role of the judiciary, and other topics during the visit.

Justice Scalia spent the Helen L. DeRoy Lecture at Rackham Auditorium on Nov. 16 articulating what he calls “Originalism,” his philosophy of interpreting the Constitution. Scalia began by decrying both liberal and conservative judges, and pointed out examples of cases in which both had allowed their personal preferences for policy to get in the way of sound judicial interpretation. He used the example of a Colorado case involving a state constitutional amendment prohibiting protected status from being conferred on homosexuals as an example of the liberal wing of the court over-stepping, and the example of BMW v. Gore as an example of the conservative wing doing the same - Scalia dissented in both cases.

The real fault line in the battle over constitutional interpretation, Scalia noted, is not between left and right – it is between Originalists and “those who are not Originalists,” or Evolutionists. The difference is between those who believe that laws and statutes should be given the meaning the words had at the time of enactment, and those who believe in a “living Constitution” that evolves with the mores of our times.

While proponents of the living Constitution argue that not interpreting the Constitution as an evolving document makes it inflexible, Scalia believes the opposite – every time a new right or cause of action is founded in the Constitution, there is less freedom for states and federal government to legislate and change their minds upon the issue with time. He believes his concept of a limited Constitution allows for more flexibility because the will of the people through the democratic process can always change laws.

When asked about the difficulties of determining original intent, Scalia retorted, “I don’t have to prove Originalism is perfect; I just have to prove it’s better than anything else.”

Scalia’s view requires a belief that judges can remove themselves from policy – which he argues he has done, specifically in the flag burning case that reached the court. His hypothetical living Constitution judge comes home from work, and when his wife asks him how work went he answers, “Great! It turns out the Constitution means EXACTLY what I want it to!” He says it’s hard to be an Originalist, but that it’s the most legitimate philosophy for the justices.

When asked whether he could get confirmed in today’s climate, Scalia took the opportunity to discuss why it is that nominations are becoming polarized. “It used to be that judges were selected for being smart lawyers; now that the people are figuring out that judges are rewriting their laws rather than interpreting them, they’re taking control of the process and wanting more of a hand in it. While this isn’t optimal, I prefer it to not having that check over the system.”

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Editorial: Urine Trouble

By Mike Murphy and the RG Staff

At the beginning of this term, returning students found that the traditionally women's bathroom on the second floor of Hutchins Hall is now open to both sexes, and that the bathroom on the first floor of Hutchins Hall is now open to the general public as a unisex facility. It's come to our attention by more than one female student that the experiment of opening these bathrooms has resulted (as is customary around the Law School when things are opened up) in a small percentage of the student body peeing all over everything and ruining it for everyone.

As a result of these continued and increasingly apoplectic complaints, we humbly (and somewhat embarrassingly) submit our Res Gestae Guide to Proper Unisex Bathroom Usage:

1) Your Mother is Not in the Bathroom With You (That Would be Weird).

Appropriately, it needs to be said: nobody wants to deal with your waste. Seriously, don’t leave a mess in the bathroom. TP goes in the toilet; towels do NOT go in the toilet. Wash your hands. Take a quick look around and make sure you’re not leaving anything on the floor, in the sink, or, er, in the toilet that you can dispose of more properly. Always flush and ALWAYS return the seat to its lowered position. You wouldn’t leave your fly undone, don’t leave the seat undone either. There’s probably someone waiting outside the door when you leave; they will judge you on your bathroom etiquette upon entry. They may be your friend, your professor, and/or hot. Don’t offend any of the three.

2) Hurry Up in There.

Hutchins Hall was obviously designed by male architects with huge bladders and an affinity for stair climbing. This resulted in options for bathroom usage that are limited and at times, inconvenient. In critical in-between-class times, please only use the unisex bathroom if you:

A. Have a class in 3 minutes and can’t make it or downstairs or

B. Your eyeballs are floating.

Further, guys: respect that women’s bathroom usage is potentially more demanding, important and time-consuming than yours. It’s occasionally frustrating; but consider the time you get back going in the bushes at a football tailgate. That said, leave the primping to a minimum; let’s face it, there are no Jude Laws or Cameron Diazes roaming these hallowed halls. We’ve heard reports of people talking on their cell phones or checking their e-mail in the bathroom. These people, clearly, should have their portable electronics peed upon. Have some dignity.

3) The Three’s Company Rule: Come and Knock on Our Door.

While locks are provided and should always be used, you can’t really go wrong with a polite knock if you are unsure if someone is currently using the facilities. Reduce the chances of embarrassment for you and your friends, professors, and favorite RG contributors by knocking before testing the handle. It’s your own fault if you end up seeing something you don’t want to. Alternatively, if you are prone to leering, please return to whatever rock you crawled out from under.

4) Aim High, Miss High: The Video Game Analogy.

Most men’s bathrooms are covered in urine. Men go willy-nilly all over everything; it’s our way of marking our territory, which is clearly a holdover of our descending from packs of wolves. Guys, when you go to the bathroom, think of it...
Too ‘Legit’: Chomsky Rocks Hutchins

By Diana Mack

The last several months of election politics have made it pretty clear that this nation is deeply divided over its conduct of foreign policy. Yet, until we hear the views of Noam Chomsky, we may not realize just how deep this political chasm really reaches. Chomsky came to the law school on October 28 to deliver the Academic Freedom Lecture entitled “Illegal but Legitimate: A Dubious Doctrine for the Times”.

But from the scene that took place inside and out of 100 HH (See Editorial), it quickly became apparent that Chomsky is not your ordinary “leading intellectual.” As crowds of swooning supporters swarmed about the place – some literally climbing through windows – others fighting bitterly for a spot on the floor - one got the sense that Chomsky is the beacon of hope – the political Noah’s ark – that many pin the very survival of the modern world on. Inside, Chomsky delivered a call to look under our political rug and expose the hypocrisy of American – and western – foreign policy, in a talk that was as sobering as it was polarizing. Agree with him or not – there is much to gain by listening to him. One thing we can take to heart is his emphasis that we in America do have a unique opportunity – and responsibility – to reflect on our academic and political freedom – and how best to use it “wisely, honestly, and humbly.”

Chomsky focused his talk on the legitimacy of the use of force in international affairs. He argued first that the now infamous U.S. policy of preemption or “anticipatory self-defense,” flies in the face of a global consensus on international law that goes back to WWII. Bush is his most recent target, for it was Bush that brought the “entire edifice” of international law “crashing down” with the war in Iraq. But Chomsky does not limit himself to standard Bush-bashing. He points out that such policy has roots that stretch far back, and in the process he takes on an entire history of American foreign policy that has claimed the right of America to protect her own interests.

With a mild-mannered but unrelenting sarcasm, Chomsky argues that attempts to legitimize the use of force reveal a political and moral hypocrisy in American foreign policy so deeply embedded that it is even transparent to basic public discourse. He tells us that the United States has declared a unique moral authority to resort to force whenever it serves U.S. interest to “dominate the world” - but in the process has rejected basic principles of universal morality that dictate that the U.S. should apply the same standards to itself as it does to others. He claims in this light that it is really the US that has repeatedly sponsored “international terrorism” in places like Cuba and Nicaragua – and then asks us to think about the logical consequences if the US was granted the right of “anticipatory self-defense” against terror: “If the US was really committed to basic principles of universal morality...then Cuba, Nicaragua, and a host of others have long been entitled to carry out terrorist activities within the US because there is no doubt whatsoever of US involvement in very serious terrorist attacks against them.”

He cautions that this “is of course advocated by no one”, but he implores us to “think through the logic.” With my mouth open, I tried to do just that – and concluded that I had just listened to a moral justification for the Laws of Hammurabi. Maybe I missed something, but I thought the standards of international law had moved beyond “eye-for-an-eye”. I wondered if he would extend his sobering logic to include Osama himself – but he never did say.

Behind this angry rhetoric against American foreign policy is his deep-seeded conviction that something is wrong with our own public discourse. Chomsky bids us to look carefully at the facts that underlie the actions of our political leaders – and then castigates the media for a failure to do just that. He laments the failure of a US press that perpetuates rampant hypocrisy: “The New York Times is vigorous in its denunciation of global adversaries of the US who contemplate aggressive wars or engage in possible acts against American citizens in violation of international law, but ignores such matters in the case of US actions.” He points to deep-seeded American beliefs – in the assumption of the unique moral value of the US, of a mission to redeem the world by spreading the American way of life, of a faith in the “divinely ordained destiny” of America - that lead us to silently “internalize” the right of the US “to carry out genocide around the globe.” Such ideals, he argues, have the effect of reducing policy discussion to a “choice between good and evil.”

Chomsky encourages us to move beyond such boundaries, and takes a critical eye toward the more nuanced view that the use of force is justified as “illegal but legitimate.” Chomsky cites the Kosovo bombing by NATO as a war that was found to be “illegal” because it did not receive approval from the UN Security Council, but “legitimate” because all diplomatic avenues had been exhausted, and there was no other way to stop the

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Scalia Faces Student Questions, Reactions

By Anne Gordon

Reaction, as they say, was mixed. Justice Antonin Scalia’s visit to the Law School last week drew its share of jeers, but most people expressed an appreciation for his willingness to address tough questions. There were many who just didn’t appreciate how the answers came out.

The theme of the week’s events was the defining philosophy of Scalia’s jurisprudence: originalism. And for all of you who didn’t hear the numerous odes he sang to the theory, I’ll sum it up in a few words. Any decision must be based principally on the text of the Constitution, supplemented by a general understanding of what the words meant at the time of the framing. It’s not the framers’ intent (don’t say framers’ intent!), rather, it’s the understanding by the framers’ generation of what that particular provision or amendment was meant to say.

To many students, this is unsatisfactory: “I’m not sure why over 200 years later I have to live with the racism and sexism that the founders put into the Constitution,” says Jeff Fenster, a 1L. Scalia’s response to this kind of criticism was that if we don’t like it, we should amend the Constitution. Never mind that less than 2% of the population can block an amendment – it’s not the Court’s job to make the Constitution say what the majority wants it to say.

Scalia’s first major public visit was a speech at Rackham Auditorium, where when questioned by a member of the audience about Bush v. Gore, he told him to “Get over it.” Aah, now THAT’S a great way to get the crowd nice and riled. The Justice continued to warm the audience by referring to Brown v. Board of Education as “the bloody red shirt that gets waved over (originalists’) heads.”

As one anonymous 2L pondered, “I wonder what kind of bodyguard security the Justice keeps...” Despite about a dozen protestors at the beginning and a few not-so-elegantly worded questions challenging his beliefs, however, both the crowd and Scalia held their own (and he was funny, too – something most of the questioners did not pull off quite as well).

The next day, Scalia taught two classes, including Administrative Law and two simultaneous sections of Constitutional Law. In both, he set out to talk about standing; but got farther on that topic with the Admin students than he did with the 1Ls. In the Con Law class, he talked a bit about the prescience of the framers, scolded the class for not reading the Federalist Papers cover-to-cover (I tried in college, I really did), and praised the bureaucracy of America. But when the questions started coming, everyone had to be a little more on their toes. In response to one question on the Rehnquist Court’s federalism, he responded that he didn’t think it had really been all that federalist at all. He said he’s actually not all that concerned about the states – the Supreme Court’s power is federal, and he intended to keep it that way. To some, this was a rather odd admission, and considering his keynote speech the night before at the Federalist Society, a bit surprising.

Regarding standing, he confirmed some students’ skepticism of his doctrine by saying that if the plaintiff in Lujan v. Defenders of Wildlife had had a return plane ticket to Sri Lanka (despite there being a civil war), she probably would have had standing. Note to all those future environmental lawyers out there: save your frequent flyer miles – you might need them some day to get the Supreme Court to hear your case.

The question that was foremost on many students’ minds, however, was Scalia’s sexual jurisprudence. A “Scaliapalooza” program sponsored by Outlaws and the National Lawyers’ Guild addressed this topic on November 9, and predicted that Scalia was going to talk about his resistance to “special rights” for gays, as he did in his dissent in Romer v. Evans. He did not disappoint.

Although appearing to get slightly agitated at the questions both in Con Law and in the Q & A the next day, Scalia answered students who challenged the idea that Equal Protection protects only in regards to race. Denise Brogan, a 1L, asked in class that if sexuality were an immutable characteristic, what would stop homosexuals from being covered under Equal Protection? Scalia, needless to say, had seen that one coming. In regard to Footnote 4 in Carolene Products and its reference to discrete and insular minorities, Scalia told the class that footnotes are “worthless.” He said that he never reads the footnotes and he encouraged the students not to do it either. So Professor Halberstam, your class would like to ask you that the “procedural rights” discussion in Footnote 7 of Lujan, written by Scalia of course, be hereby stricken from the exam.

He further responded that protecting homosexuality is not in the text, nor could anyone say that at the time of the amendment it was meant to protect gays. Yet the next day, he angered some by suggesting that the Constitution can sometimes go “beyond the immediate evil” to protect others (a justification for affirmative action and protection of whites, and using his word, “Ornamentals”). A student then asked that if that is true, and if if women, the mentally retarded, (and resident aliens) have also received protection under the clause, then why could it never apply to gays. Scalia’s catch-all response to this in both sessions was this: If you think that you deserve rights so much, then just get the majority to pass laws to protect you. In the wake of the state constitutional amendments passed on November 2, however, this was not much comfort to the many LGBT students in the crowd.

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Eating Crow: A Messy Situation

By Jana Kraschnewski

November in Ann Arbor brings more than cold nights, turkey with stuffing and fear of imminent final exams. It also brings sidewalks splattered with white, early morning sound bombs, and, hand-in-hand with these, flocks of thousands of crows. Corvus brachyrhynchos is the technical term for them, but others call them just plain annoying.

The crows come to roost on the trees in and around the Law Quad every year to be near warm buildings, lights and away from the wind. During the day, they fly away to eat fruit, snails, little lizards, grain, smaller birds, mice, eggs, toads and bugs. They sometimes fly up to 50 miles away to find food. Adult crows eat their weight in food every day, consuming between eight and ten full meals. Eating that much food means only one thing for those of us on the ground: a whole lot of crow poop. And we can find it everywhere from the sidewalks to the benches to our own windowsills because the crows always return home at night. Apparently home means the Law Quad.

We are not the only lucky ones, though. Word has it that Angell Hall also sees more than its fair share of the birds. But neither location is suffering a case of the birds. Crow poop is the reason. The solution, albeit temporary, is to set off sound bombs to disrupt the crows. The solution, albeit temporary, is to set off sound bombs to disrupt the crows.

But what do we do about the crows? City and University policy have mutually decided against killing the birds, despite reports of a Michigan crow being diagnosed with West Nile Virus back in 2003. The solution, albeit temporary, is to set off sound bombs to disrupt the crows. Since the crows are only in the city during the nighttime hours, these bombs must be detonated late at night or early in the morning—neither which are entirely convenient for sleeping (or drinking) students. Will the crows be packing their bags any time soon? Not likely. "They usually stay a few weeks," Harrison reports. "They just love us." And their favorite accommodations while in Ann Arbor are the big trees on the east side of the Law Quad.

Some students are bothered by the birds but others don’t seem to mind. "[I]n reality, the crows don’t bother me at all. I live on the Tappan side [of the Lawyer’s Club] and, whatever, they’re crows," said 2L Eric Krause.

The bottom line is that there isn’t much we can do about our feathered friends, short of cutting down all the trees in Ann Arbor. They’ll be gone in a few weeks (to where, no one really knows). If they really bother you, carry an umbrella.
Actual Useful Information:
Exam-Taking Tips from Profs, Students

By Shari Katz and Erick Ong

If you are getting ready for finals, you are not alone. From studying, to taking the exam, to putting that thing behind you once its over, here are some tips from Michigan’s own Professors…

So stop pulling those all-nighters, memorizing the holding of every case in your book, and worrying about how many pages your outline is, and read on for what will best help you prepare for those anticipated finals.

Read the Question First...And Think Before You Write

It’s always the same thing: Think (outline, etc.) before you write.
- Reuven Avi-Yonah, Consumption Taxation of Individual Income and Transnational Law

Read the question carefully, and note precisely what is being asked. Then, begin analyzing the question in your mind or on scrap paper to determine what the issues are. After determining the issues, prioritize them by ordering them according to their relative importance and allocate your time in answering the issues accordingly. In deciding what the issues are and how much time to devote to each, keep in mind the scope of the course and the approach of the professor.

You will have had a semester with the professor, and you should have gained an understanding of his or her thinking process and what kinds of issues he or she finds most interesting. If your resolution of one issue forecloses another issue that appears to you to be one of the principal issues that the professor wished to raise, don’t fail to discuss the foreclosed issue. Instead, say something like, if the prior issue were resolved differently, then this other issue becomes relevant and this is how it should be resolved. You don’t want to take alternate turns on every issue in the exam, so there is a judgment to be made as to whether the foreclosed issue is likely to be one the professor wanted to be discussed. In making these judgments, you can use other indicators to help you. For example, if the exam question lists a suggested time, and if your answer or you may have missed one issue but seen others. If the instructor can see that your theory is correct or that much of it is correct, he or she may give you partial or full credit. If you don’t label your figures, the instructor can see what your theory was, but sometimes he or she can’t do so.

Before beginning writing your answers, allocate the time allotted to you among the questions. Write down for each question the time you think you should be finished answering it. Then, as you finish your answer to each question, pay attention to whether you are adhering to that schedule or whether you are ahead or behind in time. If you are behind in time, you will need to make an effort to catch up so that you don’t reach the last question with only a few minutes left to answer it.

Typically, the Professor’s grade for the exam will turn on whether the student saw the issues in the question and how the student analyzed those issues. Your analysis and understanding of competing considerations is more important than the solution you chose. You want to show the professor that you saw the strengths and weaknesses of the plausible positions, and you want to show the reasoning that led you to choose one solution over others.
-Douglas Kahn, Estate and Gift Tax and Taxation of Individual Income

If I ask you to draft a memo assessing whether a given proposal to amend deposition practice ought to be adopted, then I don’t want a discussion of the place of depositions in American civil procedure, or a listing of problems that sometimes arise during depositions, or an analysis of the chief failures of discovery. What I want when I ask that question, what I really, really want, is the draft of a memo assessing whether the given proposal to amend deposition practice ought to be adopted.
-Richard Friedman, Civil Procedure

READ the question, READ the question, READ the question. All the way through. Twice. Before you start writing anything. It is heartbreaking as a professor to read brilliant answers to a question I didn’t ask.

BUDGET YOUR TIME. If there are 3 questions, with the same number of points allocated to each, you CANNOT do well if the third one has a paragraph and then the desperate notification: TIME!!!! You should stop question 1 after the first hour, and question 2 after the second hour. Even if you could do better on them.

These look like unbelievably obvious suggestions, but they account for most of the people who do badly in my courses. The others are the people who completely blew off the course, and for them, well, there’s prayer...
- Phoebe Ellsworth, Psychology of Litigation

“Here’s a lesson drawn from my daughter’s favorite episode of Blue’s Clues, “Stop, Look, and Listen!” After you think you’ve figured out a hypothetical, don’t rush to write down your answer. Stop. Take a fresh look at the hypothetical. And listen to your answer. Is
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there any other way of understanding the hypothesis? Have you accounted for all of its significant parts? Taking such a moment before barreling ahead can be helpful in exams as well as in figuring out what Blue sees and hears on the porch of her house. Once you’ve reassured yourself of your answer, get out your handy dandy notebook and proceed. You’ll see, as the famous jurist once said, an episode of a child’s video is worth a volume of logic.”

-Daniel Halberstam, Constitutional Law

Most of the dumb mistakes I run into are caused by not reading the questions carefully enough. Don’t try to save time by rushing through the question. Figuring out and answering the question the tester has in mind is more important than just knowing stuff and being smart.

You’re not doing this for your health; the idea is to impress the person who wrote the test. Do what you can to figure out what they want. For starts, ask us: e.g., “Professor Jones, could you tell us what sort of answers you like on exams?” You probably won’t learn anything new, but once in a while we’ll surprise you. Get old exams from the same professor, with model answers if possible, and - this is the hard part - don’t just read the questions and the answers. Take the exam - or at least part of it. Write answers, or type them, under circumstances that resemble the real exam, and only then read the model answers. Pretend that you’re training for a performance. You are.

-Samuel Gross, Evidence

General Exam Taking Tips

Learn how to apply the law to the facts. On an exam, the facts may hide the rule or involve the interaction of several rules, some of which may be in tension with one another. As a general matter, an approach to studying that emphasizes detailed knowledge of the rules in the abstract may not be very effective in helping you to work through an exam problem. A better approach to exam study is to learn the fundamental principles well, and, having gained knowledge of those principles, to understand how they operate in factual settings.

In my experience, students who spend significant time on practice exams, preferably under exam conditions, and then review their answers closely with others who have also done the problems, are likely to do better on the exam than are those who know the legal rules in great detail but have not studied how they work in practice.

-David Hasen, Corporate Taxation

Pace yourself. Leave plenty of time to read over your all your answers before the exam is over. You’ll be amazed at what you find that you’d rather not have your professor read. Above all else, do whatever you can in the coming weeks to maintain a sense of perspective and humor.

-Susanna Blumenthal, Criminal Law

I don’t know if this is true for all professors, but I want the student to get straight to the analysis. When a sentence in an exam answer begins, “In State v. Jones, the court ruled . . . ,” I know that this sentence will earn the student zero points. As far as I know, the student has simply block-copied that sentence straight out of his or her notes or outline. The students should remember that I am the one reading their answers and I know what State v. Jones held. What I don’t know is whether the student understands how to apply the holding to the facts I have given. The student therefore needs to prove to me that he or she can apply the rules derived from the cases. He or she should start doing that right away instead of wasting valuable time simply restating those rules.

-David Moran, Criminal Law

General advice:
1. First look for the “call of the question.”
2. Don’t start writing too soon.

3. Budget time between questions proportioned to how much credit they’re worth.

4. Omit essayist techniques that don’t get you points (e.g., intro, summary, long quotes).

5. Use shorthand for case names, etc.

6. If you run out of time submit outline or sketch.

7. Practice exam writing (use old exams; strict time).

More on issue spotters:
1. Almost all doctrinal classes use these.
2. Call of the question—if it asks you to discuss the rights and obligations of A, don’t spend time on B.
3. Use facts—weave them in, don’t narrate them, don’t get them wrong, try to use all of them (OK to say more facts are needed, but must state why).

4. Completeness is important—discuss everything that might get somebody (who is covered by the call of the question) some relief (entertain all plausible characterizations, though spend more time on the more plausible ones).

5. Spend more space on issues that took more time in class.

6. Don’t discuss issues that the question has taken out of contention (e.g., don’t discuss Statute of Frauds if the question states that the contract is in writing) (if you’re not sure, just mention quickly).

7. Remember the bottom line (what is the relief?).

8. Helpful technique is to pretend you are a lawyer for one side, then the other.

9. It’s not necessary to draw a definite conclusion (we make these borderline on

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Policy Questions:

1. Determine what policies or underlying issues for the legal system the professor has been interested in. These are some possibilities:
   - rights-based explanation/justification (e.g., corrective justice)
   - economics-based explanation/justification (social welfare maximization)
   - critical theory
   - institutional issues
   - evolution of legal doctrine
   - doctrine's connection with social and economic context
   - justice in individual cases vs. designing a system
   - rule-based adjudication vs. discretionary adjudication
   - the lawyering process

2. Take a multi-faceted approach. (Use more than one of the approaches the professor finds important— not necessarily the only way to do it, but probably safer in most cases.) Note: try not to go writer-by-writer; take a more integrated and critical approach.

3. Use concrete examples from the course to illustrate your arguments.

4. Don't parrot the professor unless you can't think what else to do (answers that disagree can be more interesting, just be careful not to be conclusory—i.e. show that you do know what the professor thinks and why)

5. Do not rely on knowledge from your previous education or experience, rely on what was in the course under examination (prove that you took the course)
   - Margaret Radin, Contracts

When it's over... it's over

Just one thing. Avoid post mortems. When it's done, it's done. The brilliant answers your classmates describe weren't half as brilliant as they sound, and yours was probably better than it feels. Go on to the next exam. When they're all done rejoice and forget the whole thing
   - Ed Cooper, Civil Procedure

And, since they've gone through the process themselves, here are some wise words of wisdom that Michigan's 3Ls have to share...

Préparation is key for the exam. . . . but don't panic (too much) if you haven't started:

Pick up an old exam, go through it with your friends and check with the model answers, if there [are any]. Otherwise, ask the professor for comments. You've paid for it already.
   - Tao Huang

About exams — get into the heads of your professors, and try to think about the issues and answer the questions the way they would. Don't leave out your own take on things. [Doing well on exams] means not focusing too much on outside materials — spend quality time with old exams and get into the nuances of class discussions.
   - Julia Irick

Relax. Look at the old curves in Res Gestae. You might get a grade you aren't happy with, but there's a good chance you aren't going to flunk out of law school. Ask your friends and your friends' friends for their old outlines. You don't get bonus points for reinventing the wheel. Treat "study days" like a job. Put your hours in during the day and then go to the movies or out for a drink at night.
   - Russ Cole

Take care of yourself mentally and physically

Take time out, even while you are studying like crazy, to do something to unwind. No one gets a good grade by studying every second. It's unnatural.
   - Reena Gokani

Don't forget to get some sleep.
   - Linda Park

During the exam

When you get the question, even if you think you know exactly what to write, jot out a quick outline to give your answer structure. No matter what others say, believe in the IRAC.
   - Robert Frommer

Read through the questions on the exam at a pace slow enough to really understand what is happening. A lot of people rush through and just start typing. That's not a good idea because you'll probably miss something or misunderstand the direction of the question, so just read slow and ignore all the click-clacking that starts to occur way to soon.
   - Reena Gokani

Answer the question asked. Nothing will lose you points faster than writing a kick-ass response to a question the professor didn't pose. Don't go to Rick's in the middle of your 24-hour take-home. Cheap beer and Crim Law don't mix.
   - Russ Cole

Don't run out of time.
   - Doug Nelson

Headings and sub-headings are your friends. Remember, professors usually will spend less time reading your exam than you spent writing it. Make it easy for them to find your answer.
   - Darcie Tilly

Again, when it's over... it's over

And when it is all over, go get a beer at Ashley's and forget about it. After all, it's just school.
   - Robert Frommer

When the exam is over, don't discuss it with your peers. It will only heighten the anxiety you'll feel during the 8-10 weeks it takes for the elves at the North Pole to grade your exam.
   - Russ Cole
From the Bookshelf:
Recommended Reading for Winter Break

By Ali Shah

This time of year, it’s hard to imagine that such a thing as “free time” exists in anything but legend, but when finals wind down, it’s always a great time to catch up on your reading. Here’s a few suggestions of (relatively) recent classics to consider:

**Fiction**

100 Years of Solitude, Gabriel Garcia Marquez (1967)

Bookmark the family tree page of this remarkable South American saga of the Buendia family, you’ll need it often as the generations pass. For the love of God, don’t die without reading this novel first. If it isn’t the greatest thing ever written by anyone, it’s close enough. It won’t hurt to find time for Love in the Time of Cholera, either.

A Fine Balance, Rohinton Mistry (1996)

OK, I’ll admit, I hadn’t heard of this novel of life in Indira Gandhi’s India in the mid-1970’s until Oprah put a sticker on it. A very genuine and well-crafted account of life in the rapidly industrializing subcontinent for a handful of characters struggling to find their place in it.

The Power of One, Bryce Courtenay (1989)

A moving South African tale of race, justice, and the exceptional value of adults who take time to deal with children without patronizing them. Perhaps you’ll be inspired enough to take a deeper step into literary South Africa and pick up Nadine Gordimer sometime.

A Confederacy of Dunces, John Kennedy Toole (1980)

If New Orleans only makes you think of vomit in the streets, Mardi Gras, and Girls Gone Wild videos (a friend told me, I swear), read this amazing and funny novel with one of the great antiheros ever in American Literature, one Ignatius K. Reilly. The book was published posthumously after the author’s suicide at age 32 by the dogged efforts of his mother, a remarkable story in and of itself.

Winter’s Tale, Memoir from Antproof Case, Mark Helprin (1983/1995)

How much do I love the way Helprin writes? So much I can overlook the fact he was Bob Dole’s speechwriter in the 1996 campaign. Read Winter’s Tale, a lavish fable of New York City in its Golden Age (of sorts), for some of the most lyrical sentence-by-sentence construction in the modern English language, or try Memoir for a much more humorous and fast-paced read about an adventurous life and personal vendetta against coffee.

Blindness, Jose Saramago (1995)

Everyone has their own idea about the big-picture metaphors at work in this rapidly-moving story of an epidemic of blindness in an unnamed city, but I’d suggest letting it stand for itself and simply embracing the reluctant heroism of the doctor’s wife. A good introduction to the Portugese Nobel Laureate.

**Nonfiction**

Gödel, Escher, Bach, Douglas Hofstadter (1979)

How the hell do I explain what this book is about? Suffice to say you’ll read a few pages at a time, put it down, and go “Whoa, that’s really trippy. My head is spinning.” Weaving mathematics, patterns, music, machines, and throughout, a wonderful spirit of intellectualism-as-entertainment, it is unlike anything you’ve ever read, unless you’ve read Metamagical Themas by the same author.

The March of Folly, Barbara Tuchman (1984)

The magnum opus of historical inquiry into the pursuit of national policies by great powers which run contrary to self-interest. Sound familiar? Beginning with the paradigm of the Trojan Horse, Tuchman examines a string of catastrophic policy decisions by the great powers through the years, including the British loss of colonial America and the U.S. experience in southeast Asia. If only Tuchman were alive to append another chapter on the bewildering agenda of the neo-cons.

Manufacturing Consent, Noam Chomsky/Edward Herman (1988)

For anyone who’s been wondering lately how the mass media became a wholly owned subsidiary of the Pentagon, take a look back at this classic deconstruction of political propaganda and you’ll be surprised how long it’s been since the established media powers decided to roll over and have a cigarette. Regardless of your political leanings, you will genuinely wonder if anything you see or read from major news outlets is true. Classic Chomsky.

From Beirut to Jerusalem, Thomas Friedman (1989)

If, in the 3 years since 9/11, you still feel perplexed and befuddled by the middle east conflict, go back to this slightly dated but exceptionally valuable account of the roots of it all. Friedman tends to piss off both sides of the Israeli-Arab dispute in equal measure, and it’s to his credit. If you really want to understand what is happening today and don’t know where to begin, start here.

Guns, Germs, and Steel, Jared Diamond (1999)

As explanations of big, uncomfortable questions go, this one tops them all in its exhaustive research and amazingly well-designed hypothesis. Why did the world turn out the way it did? Why didn’t indigenous peoples from the Americas and Africa march into Europe, taking land and spreading disease, instead of

*Continued on Page 17*
Students Gandy Dance at the Jenny Runkles Fall Formal

The Res Gestae congratulates Nadine Gardner, 2L, and Jay Surdukowski, 2L, the 2004 recipients of the Jenny Runkles Award, presented at Women Law Student Association’s Jenny Runkles Banquet and Fall Formal, held on Nov. 12 at the Gandy Dancer in Ann Arbor. Photos courtesy of Natalia Cortez, Bob Koch, Megan Roberts and Jay Surdukowski.
Now, Now, No W(h)ining: Faculty and Students Enjoy Pie and Coffee at Mixer

Photos Courtesy of Diana Geseking
Music Attorney Lays Down Laws of Rock

By Erick Ong

There are currently four major, multinational record companies. The legal issues they deal with range from real estate, domestic and international tax laws, employment and labor law, and antitrust issues, to a whole host of intellectual property areas, including copyright, patent, trade secrets, and digital distribution issues. Kristopher Ahrend, a transactional lawyer for Sony/BMG Music Entertainment was invited to speak about IP issues and contract negotiations with artists for Sony Music Departments. The event, held this past Monday, was sponsored by the Entertainment Media and Arts Law Students Association (EMALSA).

The Intellectual Property issues inherent with Ahrend’s job are enormous. Although he mentioned the hot areas of peer-to-peer file sharing of songs done through the likes of Grokster and Napster, he does not typically deal with these issues in his day-to-day work. Ahrend’s work tends to focus on more mundane problems such as trademark issues. For example, a band was signed recently by the name of The Valley Girls. The label hated the name and questioned whether it was confusingly similar in sound to another band’s name. Ahrend differentiates the music industry from other industries. While you would not name a computer company Red Apple, or an electronics company Sunny Electronics, in the music industry you can have similar names like U2/US3 and Queen/Queen Latifah, as the music industry is a crowded market. Even though these names may be phonetically similar, one distinction can make a huge difference. An example would be if artists are known for different music genres such as one in jazz and another in hip-hop.

Another example of trademark issues is illustrated by the following question: Why are the brand names of clothing that artists/musicians wear censored in music videos? Ahred explains that the owners of these trademarks may not want their brand associated with a particular musician/artist. For example, perhaps the New York Yankees would not want to see Michael Jackson donning the Yankees’ traditional pinstripes given his recent legal problems.

As a further example of the intellectual property issues faced by Ahrend, two years ago a band created a collage for a charitable event, by cutting and pasting together pictures from various magazines such as Time, Newsweek, and People. The problem was that these images were owned by the photographers who took them and who might not wish them to be displayed in this manner. There was one particular photo depicting a crucifixion scene. The person who took this photo demanded $25,000 for its use. The artists balked at this price, and Sony would not pay either. Both sides refused to budge. One day the legal department received a package, and inside was this disputed picture blown up to a large poster size, with brown tape covering the center of the picture. At the bottom of the picture was a caption that read: “To all you greedy lawyers and record label companies, may ye all rot in hell. Merry Christmas.”

The contractual issues start when an artist is first signed with a major recording label. Ahrend’s department gets a call from the artist’s lawyer to negotiate how much they pay and how many albums need to be sold. The most important thing for an music contract attorney to know is how much their client is going to be paid. This is called the “penny rate” which is a royalty based on a percentage of record sales. It is important to know whether you are getting 25% of wholesale or retail price, as the difference can be tremendous.

The attorney also needs to be aware of “deductions.” Sony pays the artist only on 85% of the net sales. Common at Sony is an “executive bonus deduction” which allows the company to pay less for CD sales than other sales, such as cassettes, 8-tracks, and records. This CD rate deduction is a carryover deduction started when CDs were not yet a viable market and record labels charged for the additional cost to make them, market them and sell them.

Initially a drafted recording agreement is created that is 60-100 pages long. This may sound like a large document but a long history of bad contractual relationships between artists and their labels have made this necessary. Ahrend stresses that while artists often think that every provision within the contract is negotiable, but that is not the case. The key is to know what is negotiable and what is not. Leverage for the negotiable parts varies based on an artist’s marketability.

Ahrend’s advice for artists’ attorneys is to look at the resources available such as the C-elite programs which make form agreements public, to know about the deductions beforehand, and to read Don Pasman’s (lawyer for Mariah Carey) book titled, All You Need to Know About the Music Business. Also, be nice to the record company attorneys. The parties do have competing interests, but at the end of the day they both wish to close a deal.
The Reason for the Season: Things to Be Thankful for in the State of Hutchins

By Liz Seger

We do a lot of kvetching about this $100,000 experience called Law School. As a class, I think law students are particularly good at being dissatisfied with the world coming in, and the Socratic method, the overpaid summer jobs, and the tight curve (what do you MEAN, I got a C?); not to mention our cultivated awareness that the world is being run by people who want us to "get over" things like disenfranchisement and the inequities of majority rule. This dissatisfaction threatens to deposit us into the world with perhaps more competence and confidence than we had coming in, but I daresay no greater happiness. In my twenty years of education, the topic of "how to be happy" hasn't come up much. We are told how to be good, with the implicit message that it will lead us to "satisfaction," and if we're lucky enough, on up the ladder to "meaning". But happy? Doesn't come up. So I am imposing my own curriculum, starting now. Step 1: Gratitude.

Last week I registered for classes for what will likely be the last time in my life, not counting the courses in pottery and Conversational French II that will no doubt add meaning and satisfaction to my old age. I thought I would be giddy to be nearly done with this place, but I’m really not. I don’t feel I’ve gotten anything from this experience I should have gotten, and I haven’t appreciated or taken note of much that I have received.

So, instead of waiting until next May to send you the usual second-semester-3L mush-mouthed series of “Oh I love law school so much and I’m not just saying that because I’m scared of what my life will be like without IM and text messaging and e-mailing eight hours a day” proclamations, I’m going to do it now. Because now is when I need to hear it, so I’ll remember to live it for the next six months. I’m not talking about the quality teaching and the amazing resources and the inspiration and so on and so on. Somebody else can wax philosophic about all of that. My love is more institutional.

“Thank you, Snack Bar Ladies, for the tomato soup and grilled cheese sandwiches.”

Thank you, Hutchins Hall, for looking so much like Hogwarts. When it’s rainy and cold and I’m hung over and haven’t done my reading, I still get to walk up and down stone steps and hold onto brass handrails and look out stained-glass windows. Pretty soon my life is going to be full of beige carpet and beige mini-blinds again. I will close my eyes and picture you then.

Thank you, Favorite Purple Cushy Chair in the library. You know who you are. I’ll forgive you for the textured imprints you’ve left on my face if you’ll forgive the drool that time I fell asleep doing my Jurisdiction take-home exam. You’ve always been there for me. Except for that one time you cheated on me with that kid who doesn’t shower, but I forgive you that, too.

Thank you, Snack Bar Ladies, for all of the tomato soup and grilled cheese sandwiches. You never care how badly I just put my foot in my mouth in class, or how long it took me to write that brief. You called me by my first name when everyone else employed by the school was calling me "Ms."

Sure, I had to tell you my name every time, but you’re only human. They don’t pay you enough.

Thank you, David Baum, for bringing me water and a bagel that time I was late for my first law school exam. And for bringing me pencils and water that time I was late for my eighth law school exam. And for bringing me that extra scrap paper the time I was late for my thirteenth law school exam. I’d like to go ahead and put in my coffee order for the next time it happens: grande non-fat latte, please, with raw sugar. Thanks in advance.

See? Gratitude isn’t that hard. I invite each and every one of you to join me this week, before you run home for all of that family drama, to do likewise. You’ll have plenty of time in the years to come to think back on the wisdom and skill you gained here, and that’s how long it’s going to take you to realize you’ve gained it. For now? Take time out for the stuff you’re going to forget about. Tell your favorite stall in the downstairs bathroom how much you love him or her. Write a poem for the lounge Coke machine (be sure to tell her how flattering those new buttons are). Hug your favorite gunner.

And if you’re feeling extra generous, go to your favorite secret candy bowl somewhere in Legal Research, and this time, add candy instead of taking it. For now? Take time out for the stuff you’re going to forget about. Tell your favorite stall in the downstairs bathroom how much you love him or her. Write a poem for the lounge Coke machine (be sure to tell her how flattering those new buttons are). Hug your favorite gunner.

I promise, you’ll be a little happier.

Liz Seger is a 3L. Please send comments about this article to rg@umich.edu.
Why a Nation No Longer United?

Submitted by Aron Boros

The tone has to change. Unfortunately, I felt partisan rhetoric dominated Matt Nolan’s article last week on this subject. This is dangerous.

Democrats believe generally in an economic policy that creates a level playing field for all Americans. They believe that government should look out for the disadvantaged, and protect the legitimacy of our markets and the reliability of our products. Democrats believe that Americans with the lowest incomes are the most likely to spend money, and should receive the bulk of tax cuts designed to boost the economy. Republicans, on the other hand, believe that tax cuts should be tilted towards the rich, that mammoth deficits don’t matter, and that private businesses can be trusted to preserve our shared environment and our public health.

This is an honest disagreement over economic philosophies, and both sides have valid points – so the question then becomes, why don’t we admit so? Unfortunately, Mr. Nolan’s article missed an opportunity to talk about legitimate policy differences, instead relying on distortions of John Kerry’s record, partisan grandstanding and obfuscation of his own party’s failures.

For instance, I’m sure that Mr. Nolan appreciated his tax cut of a few hundred dollars. But it’s unclear how he came out ahead, since he’s going to be joining you and me in paying down our country’s debt for the rest of his life. It’s true, of course, that everyone who paid taxes got a break, but the rich received the vast majority of the benefit. Moreover, the tax cuts favor unearned income over earned – dividends over wages. In public, the President argues that because everyone received some relief – enough for Mr. Nolan to buy a few weeks of groceries – the tax cuts must be good. He doesn’t articulate his argument that tax cuts should favor investments over labor, that they should favor the rich minority over the majority.

Where I come from, I call this disingenuous.

I heard President Bush promise that workers would be able to invest their social security contributions into private accounts, but the President’s own 2001 commission conceded that there was no feasible way to fill the multi-trillion dollar budget hole this would create. Promising workers an “ownership society” without acknowledging that it would mean dismantling social security as we know it is like pretending that a ‘missle shield’ will protect us against the threats of a new millennium. It’s just not true, and it shouldn’t be used as campaign rhetoric if it’s not.

I’m a Democrat, because I believe in a party with a big tent. I’m a Democrat largely because I feel that the Republican party has given up making genuine arguments for their policy preferences in favor of hiding behind rhetorical distractions and divisive social issues. It is the Republicans who I see pandering to fears and ignorance.

When Cheney says “if we make the wrong choice then the danger is that we’ll get hit again and we’ll be hit in a way that will be devastating from the standpoint of the United States,” I suspect that the party in power isn’t talking about issues, but scaring to the electorate.

Recently, the Republicans have abandoned their mythic ideology in favor of shortsighted politics. NAFTA is great, but it was President Bush who retreated from free trade with farm subsidies and steel tariffs. States’ rights have been decimated under the banner of No Child Left Behind, and now the Administration wants to impose its will on states that strive to respect the human right of marriage for gay and lesbian couples.

Republicans have realized that the Democratic model of energetic, involved government is the best government. President Bush has never seen a spending bill he didn’t like, signed campaign finance reform and anti-corporate corruption measures, and increased the Medicare entitlement. The positive role of government is as valued today as it was thirty years ago, and I believe it’s because the left has a conception of government that truly resonates with the people, even under dissembling rhetoric from the right.

We should all join Mr. Nolan to demand free and open debate, and frank discussions of policy preferences and worldviews. Anyone watching the debates could see which candidate was obstructing that process. How many times did we hear the President repeating the mantra “wrong war, wrong time, wrong place” rather than engaging Kerry’s legitimate policy challenges on the “road to war”?

Democrats may have erred on the side of caution instead of boldness, but the President’s supporters often ignored reality, blindly following the man despite myriad policy failures and a war with no end in sight. This mentality is dangerous for the future of American democracy. Rovian politics demand winning at all costs and undermine fair and intelligent campaigns. Republicans have questioned Max Clelland’s patriotism, spread vicious rumors about Senator McCain, and held closed rallies where attendees are required to pledge their support for the candidate who is speaking. These strategies erode democracy.

Sadly, Mr. Nolan’s wish for a fair and open debate was betrayed by the partisan nature of his essay. This response is intended not only to expose the hypocrisy of his piece, but also to suggest that while politics can sometimes get ugly we
Treat Your Last Like Your First: Recapture the First Semester Magic

By Mike Murphy

I'm just tryin' to stay above water y'know? Just stay busy, stay workin. Puff told me like, the key to this joint, the key to staying, on top of things is treat everything like it's your first project. Like it's your first day back when you was an intern. Like, that's how you try to treat things like, just stay hungry.

The Notorious B.I.G., from "My First Song" by Jay-Z

On the last day of my first semester of law school, my Contracts professor, who had come across as quite vociferously challenging, gave a sensitive and moving speech. He talked about his first semester of law school and how his (and ours) was "a magical time" that, try as we might, we'd never get back again and always take for granted. I didn't get it at the time; I get it now.

Grades and elective classes change law school. The people you see and interact with on a daily basis become just another face in the hall to which you smile and say hi.

People get on Law Review; people don't. People show up to class; people don't. People heat up overinflated senses of self; people deflate. People buy in to law school and slowly realize it's not giving them what they thought it would; people burn out of law school and realize it's not going to give them anything they want. But it takes a semester or two (or three) for that to sink in. The first semester? It's un-stratified. Homogenous. The most hawkish gunner or sleeping genius has no credentials to prove any sort of intellectual superiority – everyone's GPA is a 0.0. Nobody's screening their calls from home and breaking up with their long-distance boyfriend to have more time to try and bring up a GPA. Nobody's coasting with a pass/fail decision in place.

Remember this time? This was before the class-skipping apathy set in. We had only a growing notion that most of the time, judges and justices figure out what they think should be, and figure out how to explain law that supports their decision. This was before moot court made us argue both sides with equal passion, sometimes on the same night, making us wonder which side was "right" and which was "wrong". This was before we realized that, basically, you can use framing, interpretive devices and emotional appeals to make convincing arguments on either (or every) side of an issue.

It isn't like that all the time, of course. But it's like that more than that it was the first semester. Remember trying to understand Contracts? Cooper's 8 a.m. Civ Pro? Spending 100 bucks on Emanuel (Steve, not Lewis?) Maybe those were the days. Back when you had 100 consistent classmates and weren't completely sick of them. I don't know about you guys, but the last day of my 1L year in April was like the last day of the Real World / Road Rules Challenge. Everyone was bonded and friends forever, yeah, but also everyone was weary, foul-smelling, embarrassed about hooking up with each other and really, really really excited to interact with other people.

Nostalgia and shell-shockedness aside; I think trying to recapture some first-semester magic will result in a more satisfying finals period. Remember the 1L work ethic? When you studied without a preconceived notion of whether you're a "good" or "bad" law student? When you were willing to try different study tactics and answering strategies because you really didn't have any idea of what worked? But most importantly, the adventure inherent in the lack of a preconceived notion of finals?

I may as well bring this proverbial dead horse up again, since my friends tell me I beat it (no pun intended, infra) often: Over the summer, and there's a rag on my door to prove it. Bear with me, I'll explain). In May, I broke my foot in a tragic Michael Jackson "Smooth Criminal" (ironic, I know) dancing accident. I was on crutches for a month. I spent two more weeks with braces and a crutch learning to walk again. I try every day to remember what it was like that first day I was able to walk without crutches. Walking from my car to work, from work to lunch, and all around art fair was the highlight of my day. Not what I did at work, not what I ate, not the overpriced art I gawked at; just walking. Just something I took for granted that I had with me all the time and never noticed, but didn't miss until it was gone. When I was able to walk, I took a rag that I tied around the armpit part of my crutches and tied it to my bedroom door handle. So every morning I wake up and touch it (I know, eww) and remember that the steps I'm taking to the bathroom are something to be energized about. The way the exams you take in a few weeks, though they may seem old hat and old news by this point in your academic career, are something to be energized about.

For most of us, it's once more into the stressful breach with caffeine fueled abandon. But I urge everyone to try and recapture the feeling of the first semester final exams – where we were all equal, where we all could be at the top (or bottom) of the class, and where everything is possible. Listen to B.I.G.: stay hungry. And tear it up.

Mike Murphy is is a 2L and the Editor-in-Chief of Res Gestae. For the record, his foot feels all right, thanks. E-mail Mike at murphyrn@umich.edu.
BOOKSHELF, from Page 9

The other way around? Diamond’s lucid writing once inspired a young budding scientist to pursue a career in immunology after reading a 1993 article in the British medical journal The Lancet on the origins of smallpox. Too bad that young scientist fell in with the wrong crowd and went to law school a decade later.

Letters to a Young Poet, Rainer Maria Rilke (originally written 1903-1908)

I am a bona fide shill for Rilke, and I’ll do it again here. Pick up this tiny little book and take a swim in the sense of humanity, decency, and hope that it gives you. The 8th letter typically gets quoted the most often, but the whole thing is worth becoming familiar with.

Barbarians at the Gate, Bryan Burrough and John Helyar (1990)

When Professor West tells you on day one of E.O that corporate law is really about personalities and relationships, this is what he means. A business book for people who couldn’t care less about corporate America, this piece of journalism recounting the amazing battle over RJR Nabisco at the height of the late-80’s takeover craze reads like a novel and damn near makes you want to hit the books on securities regulation. Well, not quite. A great read about ego, greed, and the history of the Oreo.

And finally, two books to be careful with... not easy reading for the holidays, but worthwhile to reflect on:

Dominion, Matthew Scully (2002)

From the religious right (another Republican speechwriter, one of W’s, this time) comes a devastating book of man’s inhumanity to animals and a moral examination of the human creature rather than a “animals are just like us” piece. Warning, this is an upsetting book that you’ll struggle to read through, but the author’s treatment comes from the heart and speaks to many who might otherwise think the subject is strictly the province of the tree-hugging left.

We Wish to Inform You That Tomorrow We Will be Killed With Our Families, Philip Gourevitch (1998)

As you might guess from the light, whimsical title, this isn’t a book to be read with a cup of hot cocoa and A Charlie Brown Christmas on TV in the background. It’s worthwhile nonetheless, and dissects the unspoken hellish Rwandan genocide into its fragile human components, a cautionary tale of prejudice run amok and the unwillingness of the outside world to take a stand. Much more than simply a travelogue of horrors, like Dominion, this book is fundamentally an exploration of human nature.

REATIONS, from Page 4

This is consistent with what student Osvaldo Vazquez described as Scalia’s “inordinate amount of faith in an effective political process and a tolerant majority.” This was the root of his answer to a question about political gerrymandering – he said that it’s been done since the beginning of time, and although yes, the Court does have a role in protecting the political process, there is just no standard for measuring acceptable vs. unacceptable political maneuvering. “If you can find how much is too much, put it in the mail and I’ll sign on,” he said. Let no one say that the man lacks the ability to insert a good dose of sarcasm here and there.

As for minorities, he said that by and large, minorities are more concerned with the majority passing laws against them, so our large and cumbersome bureaucracy works in the minorities’ favor. And since the majority is usually a tolerant and caring one, the system does have its own protections. However, one would guess that his confidence lies primarily with the people and not their representatives, since he admitted that we’re lucky if our legislators even know the title of the bill they’re voting on.

Some students expressed some reservations about all the tough questions, and thought that we might have seemed disrespectful. However, Dean Caminker said that Scalia told him that he was impressed. “He specifically says that sometimes he teaches classes in which students are unwilling to ask tough questions, or even reluctant to ask questions at all,” the Dean said. Well, we certainly did not have that problem. He added, “(Scalia) specifically said he was appreciative of the fact that the students comport themselves well, maintaining a high level of civility in the discourse.”

Afterwards, students had time to reflect on what Scalia’s visit taught them. David Sack said, “he made clear his reasoning method, which, though not perfect, is relatively consistent... rather than viewing him as a cold-hearted conservative, I now see him more as a bureaucrat. For better or for worse, I think that’s how he views himself. As he said, interpreting the constitution is lawyer’s work, not politician’s work. As much as that is possible, I think it’s a sensible approach to his job as Supreme Court justice.”

Others saw the implications of his jurisprudence in a much more insidious light. Nadine Gardner said that “listening to Justice Scalia deeply saddened me because it underscored just how bigoted and disengaged he is from the rest of our nation... when considering the Court’s future impact on social minorities’ rights, including women, people of color, and LGBT individuals, it frightens me that President Bush considers Justice Scalia as a model for his future Supreme Court nominations.”

If nothing else, Justice Scalia sparked some fascinating conversation between students, and hopefully encouraged a few more of us “ivory tower-ites” to think of our judiciary as a more human system. Whether you come away liking the humans in charge is, as always, up to you.
UNISEX, from Page 2

as a secret Delta Force mission. Like Halo, or Solid Snake (ahem) from Metal Gear, or something. Enter the secret enemy hideout and locate the porcelain target area. You have a time limit; as you step up to the target area, be aware that the fate of the free world rests in your capable hands. Your Alpha-1 objective in this first-person shooter is to snipe the pool of water with your biological weaponry. If you misfire, alarms will go off and the rabid zombie guard dogs will come for you in the night. And you don’t want that.

Girls will contribute to the nastiness as well. When encountered with an unclean bathroom with pee all over the place, everything in the female body instantly becomes focused on the intense need to keep a bare butt as far away from all that as possible. But we have to pee. So what do we do? We hover. For all you math majors out there, being as far away from the toilet as possible = more errant pee, which contributes to a downward spiral of uncleanliness that no one wants to deal with. Even disgusting boys. We would therefore like to remind both sexes to pee in the toilet. If you see pee, please don’t add to it, grab a sani-seat or the nearest janitor.

The key to proper Unisex Bathroom Usage is, in a word; courtesy and respect. Treat the shared bathroom like it’s your bathroom at home. Wait. Don’t. We’ve seen your bathroom and it is nasty. Treat the shared bathrooms like you’re in your girl or boyfriend’s parent’s bathroom for the first time, and his or her dad is waiting for you to be done. Use that nervousness and fear to compel you high and far to reach the most basic levels of personal cleanliness, and take pride in a job well done.

Thanks for your attention and we’ll see you... in the bathroom.

Um, nevermind. Just don’t pee on the seat, okay? Damn.

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Question on the Quad:
What’s one thing you’d change about Michigan Law?

“Location. Move it to the East Coast.”
Deon Falcon, 1L

“Whining students do not constitute a compelling state interest.”
Bayrex Marti, 2L

“Require my professors to actually answer questions.”
An Anonymous (!?) 1L

“More class offerings. More professors. A more balanced student body, not just liberals. Even though I guess it’s hard to achieve that when smart people are naturally liberal.”
Daniel Martinez, 2L

By Dan Clark and Jay Surdukowski
atrocities in Kosovo. Yet, Chomsky argues that if we look deeper, we would see that NATO really bombed Kosovo to establish its credibility as a military alliance. He similarly bids us to look at Bush’s attack on Afghanistan – because here too we would see the “refraction of the real facts through ideological prisms.” He argues that international law should still provide the standards by which America should act, and that any legitimate use of force must be met with a very heavy burden of proof. The doctrine “illegal but legitimate,” he concludes, is a dubious one for a state which conveniently seeks to justify its abuse of power.

After listening to his talk, I concluded that his angry rhetoric must be at least partly responsible for sideling him from American political discourse. If I understood him correctly, he points out among other things that Robert Kennedy led an “international terror campaign against Cuba,” that Henry Kissinger is more guilty of genocide than Milosovics, and that Bush’s view of authority is “drawn from Carl Schmidt,” the leading German philosopher of law during the Nazi period. Besides cringing at such rhetoric, I found it ironic that Chomsky laments our restrictive culture of “good vs. evil” - and yet he takes free advantage of this very same tradition. His efforts to link Bush with Hitler and Kissinger with Milosovics make him no better than the leaders he chastises for throwing labels of “anti-American” around. More than that, implying that logic can justify the morality of a terrorist attack on the US because - well - we did the same thing to them, will certainly not help us get over the very polarizing boundaries that he himself argues inhibit our public dialogue. Indeed, it is hard to avoid the impression that no matter what direction US foreign policy would take – for Chomsky it will forever be the “evil” American empire that is responsible for the world’s misery.

His rhetoric aside, I was compelled by the spirit of my First Amendment class to listen and think through his arguments. But here too my head is spinning on assumptions that he seemed to take for granted. For example, in imploring us to rely on standards of international law, Chomsky apparently assumes that an adequate framework for such law is in place. Yet, I thought this was a crucial point of contention in American foreign policy debate. Indeed, a key debate leading up to the invasion of Iraq – as well as Kosovo - was whether the current international legal framework had an adequate means of enforcement. Whether you agree or not, can Chomsky assume this debate away?

Chomsky furthermore seems to assume that U.S. foreign policy – by virtue of its power to act on its own self-interest – is morally flawed in comparison to other countries. Yet, do not all countries act out of self-interest? Chomsky taunts as an abuse of power a State Department argument from 20 years ago that “most of the world cannot be counted on to share our view, and often opposes the U.S. on important international questions, so we must reserve for ourselves the power to determine how we will act.” But this seems to express an important concern to those pushing preemption - if a global majority opposes an American interest, is America’s interest necessarily wrong?

Whether you agree with Chomsky or not, his talk was an occasion to reflect on and savor the academic and political freedoms that we all enjoy. The Academic Freedom Lecture is given in honor of three professors who during the McCarthy era were not as fortunate - who could not enjoy the freedom to speak out. At such occasions, we are also reminded of the equally important responsibility we all share to listen and learn from each other. Listening to Chomsky, we can all agree on the importance of seeking open and honest discussion about how best to use our power in what is apparently an increasingly dangerous and complex world. Chomsky urges us to take up this opportunity - this responsibility – to use our freedoms wisely. All we need is the will to take advantage of the opportunity our freedom presents us.

CHOMSKY, from Page 3

SCALIA, from Page 1

“Why would you want your important social policy crafted by nine lawyers with no constraints rather than by your elected representatives?” Scalia asked, rhetorically.

There were many light moments during Tuesday’s lecture as well. At one point Scalia referred to those that would burn the flag as, “sandal wearing bearded weirdos,” and said that the morning after he voted to uphold the right to burn the flag, his wife was humming “It’s a Grand Old Flag” when he went down to breakfast.

When asked in person about the social climate and relations on the court, Scalia said, surprisingly, that his best friend on the court is Justice Ginsburg. Every year, the Ginsburgs and Scalias (with kids and grandkids) get together for New Year’s – he said he probably spends more social time with her than any Justice.

“Justice Ginsburg is a wonderful woman,” Scalia said. “She’s usually wrong, but she’s wonderful. Our differences are intellectual, and we don’t take them into our personal relations,” he added.

Also of note is Justice Scalia’s claim to be the host of DC’s longest-running poker game – he claims it’s been monthly since 1983, and that Justice Rehnquist still plays every month. When asked who won, he replied, “well, the Chief is a very fine player… but it probably evens out over time.”

UNITED, from Page 14

should not lose hope for a future where policy matters.

The President has an opportunity to showcase his compassion, and not just his ideology, by speaking to all Americans and truly leading us to once again become the United States. I hope he takes it.

Aron Boros is a 2L. Please send comments about this article to rb@umich.edu.
Preparing for Fall 2004 Laptop Exams

Students who are planning to use their laptops to take in-class essay exams must install, test, and activate the latest version of the Electronic Bluebook (EBB) software on their laptops by the DEADLINE: Monday, December 6, 2004, at NOON.

The EBB Website address is: http://cgi2.www.law.umich.edu/EBBTest/Home.aspx.

Theodore Shaw
An open discussion with the Director-Counsel and President of the NAACP Legal Defense Fund

Tuesday, November 30
12:15 - 1:15 pm, 250 HH

Are You A Student With Children? Were You Out Of College For A Time Before Coming To Law School?

If the answer to either or both of these questions is "Yes," you will want to attend an informal discussion on "How to Survive Law School as an Experienced Adult."

Thursday, December 2
12:20 - 1:10 p.m.
218 HH

Send Your Student Organization Announcements to rg@umich.edu

LIBRARY HOURS

Nov. 24: 8 a.m. - 6 p.m.
Nov. 25: Closed
Nov. 26 - 27: 8 a.m. - 6 p.m.
Nov. 28 - Dec. 21: 8 a.m. - midnight

HOLIDAY/INTERIM 2004-2005

Dec. 22 - 23: 8 a.m. - 6 p.m.
Dec. 24 - Jan. 2: Closed
Jan. 3 - 7: 8 a.m. - 6 p.m.
Jan. 8 - 9: Closed
Jan. 10 - 11: 8 a.m. - 6 p.m.

The American Constitution Society presents...

A Meet-the-Faculty event with Professor Sarah Cleveland

Tuesday, November 30, 12:15-1:10 p.m., 236 HH