Out of Retirement, One More Time: A Conversation with Professor Emeritus John W. Reed

By John Fedynsky

ucked away on the eighth floor of the Legal Research Building are some of the Law School’s best treasures. Unlike the stacks of books, the office of Professor Emeritus John W. Reed collects no dust, for it and he are full of activity. He is the Thomas M. Cooley Professor Emeritus of Law. He first started teaching here in 1949. Some of his former students include Dean Emeritus Theodore St. Antoine and Professor J.J. White. For not the first and hopefully not the last time, he was called out of retirement this semester to teach evidence.

He was gracious enough to sit for an interview about topics ranging from starting law school as Germany invaded Poland and watching his class ranks dwindle in the aftermath of Pearl Harbor to a unicorn in the Hutchins courtyard and teaching generations of lawyers here and elsewhere.

How did you end up in the law?

I’m not quite sure when or why I decided to go to law school. There were no lawyers in our family except an uncle who went to law school, practiced a year or so and gave up and went into the book business. Someplace along the way I just decided I wanted to be a lawyer and kept saying that. I never really reexamined the decision or was asked to justify it. I have never regretted it or had any doubts along the way.

When and where did you go to law school?

I went to Cornell Law School. I left for law school on the same weekend that Germany invaded Poland to start World War II. I was raised in Kansas City and had gone to college in Missouri and chose then to go east to law school, not really knowing much about Cornell as a school. Indeed, nobody in Missouri knew about Cornell in those depression years. I went to the Greyhound bus station to get a ticket to go to Ithaca and the lady behind the counter insisted that I was mispronouncing it – that it was pronounced “Utica” – and tried to sell me a bus ticket to Utica. (laughing)

What was it like being there as World War II was getting started?

Well, the first year or so we were not really in the war at all. We were engaged in lend-lease, but we were not providing soldiers. The war didn’t make

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Riding Off Into the Sunrise

By Andy Daly

This is the hardest thing I have had to write in some time. When learning on the job over the last 24 issues, I had no idea that the end would be the hardest part of the story to tell. It would be much easier if I could just do like Sergio Leone did and pan out over the Spanish countryside as my blond, scruffy protagonist self rides off into the hills of Andalucia.

Instead, I sit here trying to figure out who to thank first for the success we have enjoyed over the last two years here at the RG and then come up with something philosophical to leave you with. And trust me, I am doing more sitting than writing. Well, here goes.

I'll keep the “thank you’s” short. First, I want to thank the students, professors and administrators who kept encouraging me and letting me know that people were paying attention to what we were trying to do here. Specifically, I want to thank Maren Norton, Prof. Whitman, Dean Z., and Dean Johnson for their kind words of encouragement and help making my vision for the RG a reality.

Next, I want to thank all the students who have helped make the paper happen. There is nothing as lonely as an editor waiting for copy that never arrives. The students who, regularly or otherwise, contributed their time, effort, and submissions to this effort made sure that I was never that lonely soul. Busy? Yes. But lonely? Definitely not. Sharon, Jessie, D.C., Andrew, Matt, Steve, Phil W., Becky, Erick, Jana, Sarah R. - you deserve most of this credit - Thank you for your invaluable help and sticking with me when I needed your help the most.

Although it is terribly difficult to hand over the RG’s reins, it helps that I am turning this thing over to somebody who actually knows what he is doing. Readers and contributors alike should be proud of what Mike Murphy has done for this paper already in his first year. I am quite proud to have worked with him, and I simply cannot thank him enough for helping me exceed the lofty goals I had set for what this paper should be.

More important than her article submissions, which have gained recognition outside the law school, were Sara Klettke MacWilliams’ efforts in keeping me sane(ish). Sara will swear up and down about how she is not the “nurturing type”, but in her own unique way, she managed to help me keep it together and stick to my intuition and keep this thing rolling.

Finally, as for The Big Fedynsky, I don’t even know what to say. You have been here since day one, and I would have been run out of town if you weren’t here to provide balance, guidance, ideas, and COPY! There simply would have been no RG without John. Period.

So now for something philosophical. Sorry, I’ve got nothin’. When I’ve packed my belongings in my big blue Chevy Impala and set out back east on the morning of May 9th, I just hope that I will be fondly remembered, that this all meant something, and that I served you well as Editor-In-Chief.

(Pan out if you wish).

Thanks,

Andy
'Can I Get a Witness?' Clark Asks Students at Blue Jeans Lecture

By Michael Murphy

ave you ever made an argument you were convinced was correct, but couldn’t explain why? Professor Sherman J. Clark might have an explanation. Clark presented an underlying, reflective view of law and morality at his blue jeans lecture on Thursday, April 8, in the Lawyer’s Club Lounge.

Clark explained the subject of a series of short papers he’s been working on that attempt to illustrate hidden meaning in popular opinions, and demonstrate how high profile legal rules and institutions might be interpreted to reflect community character more broadly and accurately.

“When you hear ‘Can I get a witness?’ from a preacher, he’s not asking for an actual witness,” Clark said. “He wants an ‘amen,’ an affirmation.”

Clark asked the audience, “Why is it that it would be so much worse to kill the last mountain lion, or wolf, than to kill the last beetle? Why is it that we dislike the idea of prisoner chain gangs?” The answer, Clark said, is not found in the two typical kinds of answers we find in law and morality. “The first type of answer is a utilitarian, consequentialist view and it asks ‘What would happen if we did this?’” he said. “It’s concerned with efficiency, and utility. The normative answer asks, ‘Is this right or wrong?’ It’s concerned with moral principles.”

Clark argues that neither of these answers addresses the particular issue. He suggests a third type of answer; a more reflective type of answer that asks “What would this say about us?”

Using the chain gang example, Clark argues that a plausible argument could be made that chain gangs don’t produce justifiable deterrence or are immoral. Neither of those justifications are ultimately persuasive, since chain gangs are efficient and prisons would volunteer for them. “It’s the imagery that doesn’t sit well with us: the image of a white man with a shotgun directing the work of black prisoners in chains,” Clark said. “It’s all about what kind of a person does it make you, to do such a thing,” he added.

But, he added, “Why worry about it? Shouldn’t we worry about making people better? One thing that won’t make you happy is marginal increases in material well-being. People have large downfalls in material and physical well-being, and over a long period of time they don’t have a major drop off.”

“What does make people happy,” Clark said, “is being dedicated to a community, to themselves, and having a meaningful life. If we can use the law to develop a meaningful community life, it’s a better benefit than running eight million equations to get a small increase in marginal benefit.”

Clark suggested that society’s high profile legal rules should be examined by what messages those rules send about who makes, enforces and adheres to them.

Clark explained that his ideas tie into an Aristotelian idea of virtue ethics – the concept that we find models of people we admire and admit them, as a way to attempt to emulate them. “Being kind and positive, just a good way to act, but it makes you happier,” Clark said. “If you pretend to be kind for months and months, well, you are kind.”

Clark used the American concept of trial by jury as an example. “It’s about the confrontation ethic,” Clark said. “If we had an automatic system of determining criminal wrongdoing, that might have some appeal. But as a society, we feel someone should take responsibility for wrongdoing. A jury is where we take turns doing that. And that’s why we...”

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Stars of Entertainment Law Shed Light on Breaking In to the Industry

By Rebecca Chavez

Recently the Entertainment, Media, and Arts Law Students' Association was pleased to host Mr. Howard Hertz and Mr. Howard Abrams, two local stars of entertainment law, to speak about their experiences and how to break into the world of entertainment law. The two men began by speaking of their first jobs after law school.

Coincidentally, both had served as public defenders before falling, almost accidentally, into the area of entertainment litigation. Mr. Hertz was asked by a musician friend to represent him with regards to his first record contract. Mr. Abrams, meanwhile, found himself defending a jailed band member after having the outfit's representation passed to him by a colleague.

Both speakers extolled their public defending beginnings as excellent training for litigation in entertainment or any other type of law.

Both men then went on to relate several amusing stories regarding their famous, and sometimes volatile, clients. Mr. Hertz, who is a legal representative for such celebrities as Eminem and Marilyn Manson, had an especially funny story about how he went from being singer George Clinton's representative to the key witness against him in a contract dispute.

The speakers agreed that having clients in the public eye can make their jobs more difficult. As they are recognized everywhere they go, every little mistake gets caught, and, because of their high profile, gets prosecuted to the highest degree.

And their lawyers can't live their lives for them or control them, only counsel them to stay within the limits of the law and pick up the slack when things go awry.

With regards to "breaking in" to entertainment law the speakers stressed the importance of establishing oneself in a market where entertainment is a big business. Though both are based in the Midwest, they agreed that the powerhouses of entertainment law were Los Angeles and New York. However, more important even than location was the ability to network.

Both men got involved in the business by doing small work for entertainers well and then receiving clients who came recommended by those they had previously represented. The best way, they concluded, to establish oneself in entertainment law is by putting yourself in the path of your prospective clients and getting personal referrals.

They also counseled against getting frustrated by clients wanting to leave them once they hit the big time. Mr. Abrams, who is a professor at the University of Detroit Mercy and has written several texts on copyright, cautioned that this was an industry that "could get pretty dirty" and that early establishment of a relationship with the client was crucial.

Finally, the speakers cautioned that the entertainment industry is not large and therefore does not require the presence of many lawyers. Most firms will not hire entertainment attorneys straight out of law school. Lateral hires must prove that they have excellent research and writing skills, preferably some previous clerkship experience, and an ability to work well under pressure.

However, another characteristic common to both speakers was the fact that both were amateur musicians. It was this passion for the subject matter, perhaps, which most shaped their future careers and lies at the base of any good entertainment lawyer.
Speaker Foretells the State of the Los Angeles/Bay Area Legal Market

By Erick Ong

Who wouldn’t want to work in the “land of eternal sunshine”? Jon Escher, co-founder of the Solutus Legal Search firm in California, came to the Law School to speak about the current legal hiring trends in the Bay Area and Los Angeles. The talk was hosted by the Office of Career Services and took place in 220 Hutchins on April 13th.

Escher admitted that the prior two years when he came to Michigan, the mood surrounding the Bay Area and Los Angeles legal market was quite somber. He was pleased to report that he could not give the same speech this year, as things have improved dramatically. He noted that his lateral associate search business was up 35% and that this increase in demand stretched across many different practice areas.

Areas that have responded favorably to this upturn in the market include securities litigation and the general corporate area. Some practices, such as IP litigation and IP transactions, have remained active throughout the downturn. There is a significant uptick in the mergers & acquisitions sector and consolidation in the tech sector is fueling corporate work and demand. Entertainment law remains very active and a strong area in Los Angeles. However, Escher noted that there is still a slow pipeline of IPO business and a general hesitancy to fund growth companies.

The hiring demand is coming disproportionately from branch offices of national firms, as indigenous (local) firms are not hiring with the same urgency as branch offices. Back in 1999 and 2000, several national firms opened up branch offices in the Bay Area, planning for the day when the tech companies grow up, and would want “real lawyers” from New York. Other national firms that had branch offices in the Bay Area, beefed up their offices in anticipation of this as well. These national firms have made lots of progress, and Escher advised students to consider them.

When interviewing with a law firm, Escher noted that students could look at some factors to determine whether it is financially healthy or not:

-- Make an assessment of the firm’s overall strength in the market. Focus on revenue per lawyer numbers over a 3-5 period and on gross margins, which tell you how well the firm is run. Escher likes to see gross margins around mid-$40k.

-- Determine if there were any partner defections. This issue is pretty tough to raise in an interview but one way to keep tabs is by looking at legal periodicals and electronic media.

-- Look for a diverse client base. This can be easily ascertained by looking online at a firm’s client list. Indigenous firms were hit hardest as they were over-reliant on one industry (i.e. technology). Thelen, Reid and Priest, a local firm which is very diversified, did just fine compared to tech-heavy firms with their up- and down track records.

While several firms laid off associates from 2001 to early 2003, Escher cautioned students not to put too much emphasis on that aspect of a firm’s track record. It does not necessarily mean that firms were managed poorly, or had a draconian view of the associate workforce, but simply that the firms were unable to predict the extent of the downturn. Law firms are now hiring at levels consistent with current demand. The recovery is not seamless, but Escher noted a renewed sense of vigor among the law firms, which will lead to increased hiring for summer programs and entry level classes going forward.

Escher also said:

-- It is not a good idea to scrub through a firm’s financials and ask a lot of poignant questions with respect to firms regarding lay-offs. Do not press firms about it, but if it comes up ask how they plan on staffing the firm in the future.

-- The San Diego market was not as adversely affected, as it relies on the biotechnology and pharmaceutical sectors. San Diego is a relatively small market, but there is some increased demand.

-- For those with no ties to California, answer honestly and do not manufacture a premise, as it probably will not withstand scrutiny. A “good reason” for wanting to be in California is if you have a significant other in California or that particular California office has the type of practice in which you are interested.

-- The heavy focus on grades is a depressing trend and the downturn in the market made it more so. There are too many candidates for scarce spots, and grades provide a readily available way to screen people. Escher noted that back in 2000, he placed many people in “snooty firms with less than snooty grades.” Grades matter more today than 5 years ago and he sees that as a trend that will continue unless we repeat the conditions of a few years ago. In fact, some places even require law school transcripts for lateral partner positions!
Two Sides of Truck-dom from the Nissan Family

By Steven Boender

Over the past two weeks we've had the privilege of trying out two recent offerings by Nissan: the Titan and the Infiniti FX35. While markedly different on the surface, both vehicles bear the fruits of Nissan's self-reinvention as a purveyor of high-performing cars and trucks. In short, they do not disappoint.

First up is the Titan, Nissan's first foray into the full-size truck market. With a class-leading 305hp and 379 lb-ft of twist, the Titan is no mere import pretender - it's a full-fledged contender. However, if the numbers themselves aren't convincing, a few laps around the block will make many people big fans of the powertrain. Surprisingly, the Titan gets respectable gas mileage despite its impressive power - I got about 15 mpg on a 500+ mile trip to Chicago and back. City driving numbers will be lower, but ultimately, it's not bad for its class. Finally, the ride is smooth for a truck. It feels tighter than the Chevy Silverado, although the maneuverability feels a bit weaker than the recently redesigned Ford F-150. The off-road 4x4 version, which we weren't able to test, may ride a bit rougher than the two-wheeler we were given.

Aesthetically, the truck is a bit more hit-or-miss. The exterior is bold, with a masculine front fascia, and little details keep things interesting, especially the 18" wheels which are standard on the SE model. Inside, though, a different story unfolds. Nissan may be attempting to make a statement with the Spartan dashboard and door panels, but it's the wrong statement to make at a time when truck interiors are increasingly appointed with more luxurious materials and accessories. The materials are an especially weak point, as the plastic door panel flex as the driver's window is lowered. However, in a purpose-built truck such as this one, many owners may not be as concerned with creature comforts. Another minor complaint is the bright-orange stereo display, which creates an annoying glare in the rear window that makes rearview mirror checks a bit dodgy.

All in all, the Titan is a great first effort for Nissan. The fact that the Titan is built

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Why I Still Like U of M Law

By John Fedynsky

My escapade on this little soapbox has come full circle. The very first thing I ever published in Res Gestae was titled “Why I Like U of M Law So Far.” It was a collection of first impressions extolling some of this place’s good points – its setting, my orientation experience, the administration, the professors, the curriculum, and the students.

Now I write about why I still like U of M Law. I will return to some of my original points, which remain surprisingly unchanged, and mention some new considerations, which were surprising in their own happy way.

The Setting

The setting is still beautiful. Beyond mere functionality, the buildings that comprise the Law Quadrangle inspire. Walking around the Quad and feeling like you belong is a real joy. Despite lack of space, plugs for laptops and the like, I happen to like the surroundings. Better yet, I attach specific and mostly fond memories to so many little corners of the Quad. Some of those corners will make way for the new construction, which I look forward to seeing in the coming years. But there is a core space that generations of us have shared and will – God willing – share for years to come. I find comfort and meaning in that kind of institutional, physical continuity.

The Administration

Many people dedicate their careers to the Law School. Many go unnoticed as they busily make things happen for us. There are bumps and issues along the way, no doubt. But experience and interaction – and not just first impressions – lead me to believe, as I wrote as a wide-eyed 1L, that the administration has “the best interests of the students at heart.” For that, I thank every employee doing his or her part for us and for the Law School.

The Professors

These people are the intellectual lifeblood of our fair Law School. Many care deeply about students and about teaching despite an incentive structure that often values other things, research and publishing in particular. Clinical faculty members deserve special recognition on that score, especially those who run the legal practice program. Then there are the characters whose legends take on a life of their own long after class time, the SFF Auction, interviews on the pages of this paper, and other opportunities for student interaction have passed. Behind the name U of M Law are faces, and some of the most proudly displayed and vividly remembered are those of the professors.

The Students

Ever use “they’re good people” to describe to an old friend a new circle of friends? Your old friend nods in acknowledgment, somehow knowing exactly what you mean by “good.” That mutual understanding mirrors student culture here. We all seem to live by unwritten rules, conventions, assumptions and the like that make U of M Law not just civil, but downright friendly. Whether we come with that disposition or acquire it along the way, the vast majority of us are poised to leave with it intact. We share an unarticulated sense of what it means to be good to each other. That, good people, is an eminently good thing.

This Paper

More than anything, this little paper that could gave meaning to my law school experience. Seeing people pick up the paper is immensely gratifying. Though we never did make it on the AP wire, we are being excerpted in the Law Quadrangle Notes, which means that now alumni share part of what we try to do for the Law School.

It is no accident that Res Gestae has been around in some form since 1950, an eternity since most students are here for fewer than three calendar years. The current form is one that I hope endures, and I have tremendous faith and confidence that it is being left in good, capable hands and in a better state than when the senior staff inherited it. There was a time when Res Gestae had a reputation for being irreverent and full of inside jokes meant for only a small fraction of the readers. Suddenly, we’ve gone serious and people read us with interest, submit writings, and look to us to be a forum for all the students, which is what we should be. Perhaps the best example is that we published last year on April 1 and nobody even considered running a joke issue, let alone a joke article. There is now an immensely better vision behind and feel to Res Gestae.

Andy Daly, the outgoing editor-in-chief is most responsible for the metamorphosis. He achieved his vision for the paper by focusing on the details, managing a core group of staff members, and, most importantly, delivering a quality product every two weeks for two academic years. He often did it at his own expense, staying up late and devoting less than his full attention to other commitments. He did it quietly and graciously. He has been a fine editor, a partner and a friend. For that, I thank him deeply. He deserves full recognition. So if you see the big easy-going Irish Catholic kid from Connecticut, tell him, “way to be, Andy, way to be.”

In closing

To the extent that reason governs feeling, these observations only begin to comprise the reasons why I still like U of M Law. One might, as I am often tempted, leave the realm of reason altogether and speak of love . . .

Res Gestae • 20 April 2004
Law School Takes My $40,000, My Sanity, One Year of My Life; and I Get...?

By Michael Murphy

When I was considering coming to Law School, one of my old undergrad professors (who had a J.D.) told me: “Law school usually isn’t just what you do with your life. It is your life.”

It was last Thursday night when I realized how far I’d fallen – some would say, how far I’d come. I was studying by way of watching playoff hockey, and I saw a commercial for the Fair Housing Act. I came to the immediate and, I feel, rational decision that I’d finally shrugged off what little sanity I’d carried with me to that point. What the hell kind of piece of legislation – that’s already a law – has an ad campaign? (Laws don’t sponsor things. There’s no NBA Restatement of Torts Halftime Report. That’s just weird.)

Further, I was taking a nap in the Regenstaele office one morning and I had a dream that I was in the wrong class, in the wrong classroom, being called on, not knowing anything remotely resembling the answers. Everyone was laughing at the time. And instead of my section-mates, the class was filled with grown up versions of my old elementary school friends. And then I got caught picking my nose. By everyone. It was seriously “Nightmare on State Street.”

What this says about my latent (and apparently massive) insecurity I’ll leave to my psych undergraduate friends (and, apparently, a professional therapist to be named later). The point is, I didn’t always have nightmares about law school.

Further, I was walking home down Hill Street and passed a construction area. A year ago, I’d have been annoyed at the backhoe blocking the sidewalk, but walked by without incident. Last week, however, I freaked out. There was a backhoe blocking the sidewalk, and anybody could have climbed up in it. There was a 6-foot pit right next to the sidewalk, not blocked off by anything. No streetlights! You can’t see that in the dark! There were shovels and picks on the sidewalk and off it, all over the place. And there were no flags or fences anywhere.

It was the most potentially tortuous 100 feet I’d seen since the Children’s Play Area at Briarwood Mall. Thanks, Tort Law. No longer can a cigar sometimes just be a cigar; it’s a potential vehicle for battery, a direct and indirect carcinogen, and a possible fire hazard.

What’s happened to me? How did it come to this? I made the decision to come here, nine months ago, the way I make most major decisions; I do a lot of research, carefully evaluate the pros and cons of each option, do a risk/reward analysis on each course of action, then completely disregard all empirical information and go with what seems like a good idea at the time.

I know. It is not the kind of decision-making process you learn about in self-help success seminars. It can occasionally drive my friends and family insane (or, rather, make them think I’m insane). My whim may have bitten off a little more than it (or the rest of me) can chew.

My roommate Pete Cunniffe, a 3L who’s graduating, is my oldest friend and has been incredibly helpful from the first day I considered going to law school. When I told him what I was thinking, he was in his fourth semester here. I remember what he said. “You’ll learn more in your first year than you do in all of undergrad. Accordingly, you’ll study more in your first year than you done in all of undergrad. But the world makes sense in ways that it didn’t before.”

Smart guy. Pete, like the other 3Ls I’ve had the pleasure of working with here at the RG, Andy Daly and John Fedynsky, have been immeasurably helpful and patient with me as I stumbled my way through the year, meandering from stupid question to stupid question. I know by now most of you are tired of the “love-in” theme of this issue, but I’m going to exercise utter disregard for your feelings and tell you that I cannot possibly thank those guys enough and wish them the best in the real world.

It may just be paying off. I feel like I can see the forest for the trees, now, when it comes to how the world works. And it’s not just seeing the torts in the street, my professors in my dreams, and the Fair Housing Act everywhere (like I’m in freaking love with it or something).

They say many students feel their third year of law school is hurtful and unnecessary. I’m a year away from that feeling, but I feel like I could be here for 10 more years and still not separate my head from my ass. There are still plenty of bad days with the good. Days where class makes me feel like I didn’t have it walking in, don’t get it now, and won’t get it ever. Days where I feel like I’ve been earmarked for public consumption (without just compensation). Days where I feel like I can’t take a crap in the morning without someone (and therefore everyone) knowing what I had to eat by mid-day. Days where, for one reason or another, all of the work and sacrifice just hasn’t seemed worth it.

But in exchange for those days, I’ve learned an amazing amount of perspective, analytical skills, and substantive material here. Even then, it has seemed like the more I learn, the less I know. Every question’s answer does

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Boender Catches the Ponys at the Magic Stick, Catches Up With Lead Singer

By Steven Boender

On Monday, April 5, I went along with several companions to see the Unicorns play a show at the Magic Stick in Detroit. As expected, the Unicorns provided a strong set of oddball pop bliss. What took us all by surprise was the first act to hit the stage, the Ponys. Hailing from Chicago, the band delivered an extremely energetic set of garage-y rock with more than a pinch of '60s soul. Instantly fans, we all scurried to the merch booth as soon as the set was finished. When purchasing the goods, I managed to score an interview appointment with Jered, the unassuming frontman of the band. What follows is my largely unprofessional interview with Jered that took place a few days later, which was transcribed entirely by hand in my admittedly subpar shorthand. Thanks to Jered for taking the time to talk with me.

How long have the Ponys been playing together?

Basically since the end of 2000 when we mostly started to get together doing stuff.

And you began with your current sound, or has it evolved a bit since then?

We’re basically into poppy and simple sounds – '60s stuff, '70s, and even a bit of '50s rockabilly stuff. We got more of a better sound when Ian (multi-instrumentalist) joined. It’s fun to play with two guitars, it sounds better and it’s less noticeable when I screw up. [laughs]

You guys are touring with the Unicorns, who are enjoying a bit of indie-rock stardom right now, being the “it” band of the moment. Have the people coming to the shows been as receptive as the crowd in Detroit?

Ummm, so far we’ve only been on tour with them for 3 shows, and we’re meeting on Sunday for another week. Detroit was definitely good. The first two shows were really young crowds, who weren’t totally into it. It’s cool though, playing all-ages shows. We’re used to playing in bars to an older crowd, so it’s definitely nice to play some all-ages shows. Basically it’s been really fun and going great so far.

Has it been a good opportunity to get some wider exposure?

Definitely the Misfits, I liked the Dead Kennedys a lot. I was into the Cramps in junior high and high school. Then I got into bands the Cramps would cover or borrow bits of songs from. Also a lot of garage stuff, the Back from the Grave stuff. Also, the Velvet Underground. I could listen to the Velvet Underground all day.

Even “Metal Machine Music?”

I don’t know about that one. What is it?

It was basically a Lou Reed solo deal that’s pretty much 70 minutes of droning noise. Even he says he can’t listen to it at all.

Jered: [laughs]

But it’s cool because it turned into this underground “Emperor’s New Clothes” thing, where if someone says they like “MMM”, you know they’re B.S.-ing you, because Lou Reed doesn’t even like that record.

Speaking of obscure music, you guys are from Chicago, which is known as a city for very artsy post-rock like Tortoise and whatnot. Did the Ponys have trouble fitting in at first, or did people like the change of pace?

When we started there, it was pretty cliquey, but now it’s pretty good. We’ve been trying to play shows that aren’t just punk/garage shows. Like the Unicorns tour, with Beans. We definitely enjoy that.

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There are two Ann Arbor 6 day workshops:
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Good luck on the bar exam!
H@x0r3d!: Protect Your Laptop!

From Phil Anchill

I’ve often been asked what’s the worst problem I’ve had working the desk in the computer lab. That would be trying to calm a hysterical 3L down after she had lost her last take-home final exam of the winter semester after working on it for 6 of the 8 hours she had allotted for it before her computer crashed. She didn’t have a backup of the file, and even worse, had never even saved it while she was working.

The look in her eyes was startling. You could actually see what was going through her mind mirrored in them. The dreams of taking the bar, moving to New York City, and working in the International Law community with members of the UN all crumbling before her because of her computer crashing.

So here are a couple of useful tips on how to avoid something like that happening to you.

#1 WINDOWS UPDATES
90% of the students at the Law School use PC laptops with a lovely little operating system called Windows. Unfortunately, the programmers and developers of this software in Redmond have a hard time keeping up with all the hackers, crackers, script kiddies, virus writers, and others who like to try and ‘break the system’. Add in tight time schedules and that they not only write millions of lines of code but they have to test it all as well, and you can get ‘holes’ in the security of the programming.

I’ve had people bring machines to me that, because of security holes, have had their systems constantly rebooting when they access the Internet to being infected with multiple viruses to having their computers unwittingly hijacked and turned into mp3, DVD, and in a couple of instances, porn servers for people to download from.

The #1 thing that you as a user can do to help prevent you from unknowingly distributing hardcore porn or getting hit with a lawsuit from the RIAA is to keep an eye on your Windows Updates.

Whenever a security hole or a flaw with the operating system is discovered, Microsoft will routinely write a patch to fix the problem, and offer it for download on their website. Also, most Windows computers will automatically be set up to download the updates when they come out, but it still requires you to tell your computer to install them. This comes as a little pop-up window in the lower right-hand corner that says, “New updates are available! Do you want to download them?” You do. Too many people say no and end up with “Hardcore Donkey Action Vol. XVI” on their system.

If you’re not sure about whether or not you are updating, you can go to http://windowsupdate.microsoft.com and the website will scan your computer and let you know what critical updates and security patches you do not have and let you download and install them. I recommend you do this about a couple times a month, or whenever there is a big virus scare going on. Speaking of viruses, this brings us to:

#2 VIRUS PROTECTION
You all know what a virus is. The question is: how do you protect yourself? By having anti-virus software installed, updated, and running.

The University of Michigan offers FREE anti-virus software called VirusScan that gets updated once a week that you can either download from http://www.itd.umich.edu/virusbusters or install off the Blue Disk.

But whether you use the UM software or whatever flavor comes with your computer, keep it updated and make sure it runs at least once a week. If you have a virus on your computer that sends a lot of traffic across the network, you can have your network access rights suspended until it’s cleaned off.

#3 BROKEN HARDWARE
You probably spent $1500 to $2500 on your computer, so take care of it.

A suggestion would be to invest the $40 or so into a computer bag instead of carrying it around in your backpack. Computer bags are made to make sure that your laptop doesn’t bang around that much, and are padded for when you accidentally swing it into a wall. In your backpack, you have it bouncing around with your requisite 40 pounds of law textbooks, which can cause pieces inside the laptop to become loose or break off. Not to mention that there isn’t much space between the plastic casing on your screen and the screen itself.

Another biggie is external wireless cards that go into your computer. If you’re packing your computer up into a backpack, at least take the card out of the computer. Ultimately, it’s a circuit board between two thin pieces of metal. When you have thin metal being repeatedly hammered by previously mentioned 40 pounds of textbooks, bad things happen.

#4 BACK UP YOUR WORK
This is the last thing I’ll mention, but probably the most important. Back up your work. Make several backups. Keep them in a couple of different places.

Try keeping a copy of everything backed up on the W:\ drive, on a couple of floppy’s (always use two, floppy disks are notorious for going bad at random times), and/or onto CD.

Looking back at this, I see that I’ve probably gone over my word count allowance, so I should wrap things up. On behalf of myself and the Computer Lab Guy chain, I wish you all a good summer and I’ll see you in the fall.
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Whatever You Do, Don't Panic: Profs Offer Final Exam Tips

By Sara Klettke MacWilliams

With finals exams around the corner, here are a few tips, tricks and strategies from some people who know more about them than you - our fair faculty:

Organize

“Organize your answers. Write clearly. Go to your strengths. Show me what you know. Think Boldly.”

Michael Barr, Jurisdiction and Choice of Law; and Transnational Law.

Be Clear

“When you assert that fact X is “pertinent” to an argument you are making, explain, at least briefly, why it is pertinent. One of the most frequent problems I encounter is being unsure why an exam writer regards something as germane; and the frustrating part is that, unlike in class, I can’t just ask.”

Bruce Frier, Contracts

“Be explicit.”

Frank Wu, Civil Procedure

Once it’s Over, Don’t Look Back

“Never, in any circumstances, engage in autopies after taking an examination. Remember the Rubaiyat of Omar Khayyam:

“The moving finger writes, and having writ, moves on; Nor all your Piety nor Wit,
Shall lure it back to cancel half a line,
Nor all your tears wash out a word of it.”

A.W. Brian Simpson, Property; English Legal History

Study

“The number one exam tip, of course is not to listen to tips, especially from law professors. But here’s the number-two tip. For weeks or so, your JOB is to take exams. Appreciate what a privilege this is; some people are out there doing road work while your leisurely unemployed self gets to do mere brain work that improves your knowledge, your skills, your status, and your income prospects. So treat exams like a privilege and a job, not as drudgery and not as a hobby. Work every day from 9 to 6. If you’ve kept up and you focus, that will be more than enough time; if not, more time is unlikely to help you significantly anyhow. And don’t study much less than that either - if you do, you might later regret having squandered the privilege. This strategy might not improve your exam performance, but surely that’s not the point.”

Mark West, Japanese Law

“Too many students study their notes and outlines and texts before exams. They are like computers with stuffed hard drives and no engines. Go over old exams with other students and pose questions to each other. First it may tell you what you do not know or understand. Second it will help you organize your knowledge so that a likely hypothetical case will call forth the appropriate information. Studying old exams has the further benefit of telling you the most probable subjects for examination. In Contracts or Property there are more than ten or twenty large recurring issues. For example, I will bet that there is no bankruptcy exam in the entire country that does not have a preference question and there are few contracts tests that do not somewhere deal with consideration.”

J.J. White, Payment Systems

Think First

“Spend at least half your time thinking about the question, making notes and outlines, etc. No more than half actually writing out your answer.”

James B. White, Rhetoric, Law and Culture.

Read the Question and Answer Only That Question

“In my experience, a lot of students who don’t do as well as they thought they had find out later that they never read the questions carefully.”

Jim Krier, Property

“Think before you write.”

Reuven Avi-Yonah, International Tax; Transnational Law; Tax Policy Workshop

“Read the question carefully, and answer the question that is asked.”

Don Regan, International Trade Law.

“Read the question and answer that question, not some other question.”

Lawrence Waggoner, Trusts and Estates I and II

“If I ask you to draft a concurring opinion that would reach the same result as Marshall did in McCulloch but on narrower grounds, than I don’t want a discussion on why Marshall’s answer was wrong, or right, or of what Marshall’s preconceptions were, or of why McCulloch was crucial in American constitutional development. What I want when I ask that question, what I really, really want, is the draft of a concurring opinion that would reach the same result that Marshall did in McCulloch but on narrower grounds.”

Richard Friedman, Intro to Constitutional Law

“Sympathetically engage the question and figure out what it is asking and what directions it is trying to push you. Just as you cannot fight the hypo in class, do not fight the question on the exam.”

Peter Hammer, Contracts; Cambodian Law and Development

This piece originally ran in the April 15, 2003 Res Gestae.
Pictures to Prove it:
The 2003-2004 Year in Photos
By Steve Sanders

Apparently convinced that student government should be more exciting as well as more effective, the new LSSS team decided that a committee designed to further the equality of gays, lesbians, and transgendered people would be incomplete without someone willing to stand up for the view: gays, incest, bestiality—what’s the difference?

At a recent LSSS meeting, this committee member argued that gay people shouldn’t have protection against discrimination. Instead, he said, protection should focus “on groups that are actually enduring discrimination now, such as families.”

Disclaimer: I’m taking all this from the LSSS minutes of April 5, 2004. And by the way, if you found these minutes in your e-mail, you could be forgiven for thinking someone had messed up and sent you minutes from a meeting on April 5, 1994, since the topic was whether discrimination against gay people is a good or bad thing. But I digress.

A small group of bitter-end opponents has been trying to derail the LSSS constitutional amendment. I don’t know whether they come to their position through politics, religious dogma, sexual insecurity, or whatever. But I do think they’re off-base bringing families into the debate.

To my mind, we ought to have more, not less, discrimination against some families. Specifically, we need much more discrimination against bad heterosexual parenting.

See, unlike some of my gay brothers and sisters, I myself have no interest in raising children. Thus, I feel I’ve made the responsible decision not to actually have children. I wish more people thought like I do.

A few Saturday nights ago, I went out for dinner to my favorite little Italian place. All I wanted was some peace and quiet, my book, a glass of wine, and some food. What I got was a nearby table of three hetero couples, chatting obliviously over their tiramisu, while the brood of restless urchins they had packed into their respective SUVs for this dubious night on the town fidgeted, climbed over chairs, danced in the aisle, and generally behaved like they were home in their rumpus room.

Don’t misunderstand. I have the highest regard for good parenting, and am fortunate to have many examples (my sister and brother-in-law, various faculty, numerous college and law school friends) close at hand.

Still, from what I see around me, too many people, having decided to have kids, don’t seem interested in the responsibility and sacrifice that used to be part of parenthood. Like teaching your children how to behave in public. Or hiring a sitter because you have the sense to realize that, by dragging 4-year-olds to nice restaurants, all you’re going to do is make them and the people around you miserable. (You, of course, will be too busy kibitzing over your cannoli to notice.)

So what’s up with these parents?

Well, if you believe the religious right, they’ve got their hands full worrying about the threat to heterosexual marriage that two lesbians across town might fall in love and decide to spend the rest of their lives together. Who has time for good childrearing when homosexuals threaten to breach the institutions—a 50 percent divorce rate, rampant adultery, old couples who pick through their meals at Ponderosa for 45 silent minutes because they’ve run out of anything to say to each other—that some straight people have spent so much time building?

Do I mean to imply that gay parents are superior? Maybe, maybe not. Health authority Jane Brody wrote last year in the New York Times that extensive research shows “children raised by gay parents are not significantly different from those raised by straight parents.” But she added, “if anything, gay parents might do better, having gone to considerable trouble to become parents and being determined to raise children who respect themselves and others while remaining tolerant of diversity.”

All I can say is that the gay people I know who have kids are just so damn happy to have them that they’re invariably model parents. The whole family is on their best behavior at all times. After all, if someone gets out of line and the nation actually notices that gay people are raising children, President Bush and the Republicans in Congress will propose a constitutional amendment to take the kids away.

So what does all this have to do with the retro LSSS amendment? Only the fact that any red-herring rhetoric about “protecting families,” rather than gay people, is dishonest.

My guess is that, if the people fighting the LSSS amendment ran the world, the nearly 168,000 same-sex couples nationwide who have created families by

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Looking Back on Year One:
And What Does It All Amount To?

By Matt Nolan

Looking back on the first year of law school, here are the most important things I feel I've learned:

1. If you wait long enough anything can and will happen. I didn't get a Rose Bowl in undergrad at Michigan, chose here for law school, and voila! Now I've got one. Now if we could get into the NCAA Tourney for March Madness...

2. Michigan law students are brilliant. After spending a year with the brightest and best I feel much more confident in our generation's ability to lead and succeed, except for the fact that...

3. Michigan law students aren't really all that smart. Well, we are - but we also are a lot more human that I was expecting before coming here. Law students study more than the average undergrad, but they also go out, bowl, drink, watch TV, kill time with internet games, take naps, sleep through classes, and everything else we (or at least I) thought we'd stop doing when you came to law school.

Is it intense? Yes. Do we work extremely hard? Yes. Is it half as bad as the horror-stories we all heard before coming here? I don't think so.

4. Ann Arbor has many different identities, which is why I think so many people love it. It can be an arts town, a sports town, a studious town, and relaxed town, all in one. To those from NYC it's small-town America; to those from Hesperia, MI it's all a big city could ever offer.

5. Arguing about clauses in insurance contracts and debating the merits of bankruptcy disputes can actually be fun. Try convincing anyone outside the law school of THAT one.

6. Life is lived in shades of gray, and it is lawyers and judges who define what's ok within that gray. That makes me uneasy and comforted at the same time.

7. Law professors really are smart.

8. U of M lawyers really do want to make a difference.

I'm not sure how much this is true of lawyers in general at other law schools, but it seems that the vast majority of U of M law students really are here because they have a cause/concern/fight they want to take on and win.

Of course, if that's true, why are we all looking for firm jobs next summer?

9. The Statute of Frauds is my bitch. (right Jordan?)

10. Nobody is ever happy with their grades. If you have a 2.9 you want a 3.1, and if you have a 3.7 you want a 3.8. We all have at least one grade we'd love to do-over, and we all have one that the professor must have written on the wrong student's exam.

And some final thoughts:

To the 1Ls: See you in the fall.

To the 2Ls: Send me money from your "paying" jobs.

To the 3Ls: Congratulations.
much difference really until Pearl Harbor. But after Pearl Harbor, almost every day there would be one or two people gone from the class, having been drafted. At the end of the year we had no graduation ceremony because there were not enough people left to justify such a ceremony. We had a reception at the dean’s house and that was it.

From a class size of about 125, we were down into the thirties or less by the end of the academic year. So, the war did make a big difference in the year ’41-’42.

So it was in your third year that Pearl Harbor happened?

Yes, yes, December of that year.

What was it like on that day at the law school?

It was a Sunday, and I was not around the law school that particular day. But I was at a meeting in the middle of the campus. We emerged from the meeting in the early afternoon and only then heard that the attack had taken place. There was a lot of conversation, but nobody knew quite what to make of the sketchy reports. It was almost unbelievable. We knew only that there had been the attack, not how catastrophic it was. Of course, immediately thereafter everybody began to think about his draft status, because we knew that people would be immediately called up for service.

Did many of your classmates go and enlist voluntarily?

Yes, yes. Most were drafted, but a fair number enlisted. I, myself, was not in the service. Though called up twice and volunteering once, I was turned down each time on physical grounds—a heart that was not quite sound and eyesight that was bad, among other failings. If I had tried once more in the last months of the war, I might have been accepted because they were scraping the bottom of the barrel. I graduated in 1942 and went into practice in Kansas City. There was great opportunity everywhere because all the junior partners and senior associates were being called up, and there was a lot of work that needed to be done. The law firms were scrambling, and I was offered a job. So I fought the Battle of Kansas City.

So you were a hot commodity then, coming out of law school?

I think everybody was who hadn’t gone into military service. Some firms were taking women for the first time. There were no women in the firm I joined, but it hired three very quickly at about the same time I came.

After graduation, how long did you spend practicing?

I spent four years in with the Kansas City. The war ended in the Pacific in 1945. The partners, the veterans were all coming back. My status in the firm changed in terms of the level of work that I was assigned because the returning lawyers assumed their rightful place in the hierarchy of things. I was given less challenging things to do—less challenging than what I had been doing while they were gone. So there were three or four of us in the firm in similar position and we discussed leaving the big firm (25 lawyers was a big firm at that time) to start a practice of our own.

While I was considering that, I received inquiries from some law school deans about whether I’d be interested in teaching. A faculty member at Cornell apparently had given my name to these people at a time when the law schools were gearing up to receive the flood of veterans returning under the G.I. Bill.

I thought, well, I’m about ready to make a change anyway. So I won’t lose anything if I try to teach and don’t like it. I can come back and go into practice someplace. I accepted an invitation to go to the University of Oklahoma Law School and instantly liked teaching, and I have never considered doing anything else.

How do you like the research? Do you enjoy that too?

Anybody that looks at my vita will know that I have not been a productive scholar. I did some good work early on and then found myself more and more involved in things that were away from the library—administrative activities like school and university committee assignments, alumni and continuing legal education activities, and so on. I’ve always felt guilty that I did not come up to the standards of the Michigan faculty in terms of amount and quality of research. Once you get away from it for a while— I was a dean for four years and served as director of the Institute of Continuing Legal Education—it really is hard to get back to it unless you’re more self-disciplined than I was and am. So I’ve done these other things, but not the kind of work that passes for scholarship these days.

How is it that you ended up at Michigan?

After two years at Oklahoma, the dean there suggested that I would be well advised to pick up a graduate degree in law. Law teachers with graduate degrees were (and are) rather uncommon except in lesser schools, and Oklahoma was a lesser school. Degrees were more worshipped there than they were in the front-line schools. I had been a tax lawyer in Kansas City and I was teaching taxation. But I was also teaching in other areas, primarily litigation, and I thought research and additional exposure to this subject area would be a good thing. I went off to Columbia for a year on a fellowship to work in the field of civil procedure, which became the area of my dissertation. While I was there, the then dean of the University of Michigan, Blythe Stason, came calling and asked if I would be interested in the possibility of a position at Michigan. And so I came to Ann Arbor for interviews. An offer led to my joining the faculty in the fall of 1949.

Continued on Next Page
What was your first impression of the place, if you recall?

The first impression was that it was magnificent architecturally, though I had become used to that in a similarly collegiate gothic facility at Cornell. I thought, this is great - this is like where I went to school!

The second thing I realized was that it was an extraordinarily warm, welcoming and congenial faculty. That was a great attraction. The reputation of Michigan was such that there was no question but that it would be a good place to come to. So it was an easy decision. But the thing that was most appealing was the opportunity to join that faculty, a great, great group.

In the fifty years since, how has that faculty changed? Do you still get that warm feeling?

A little less, mostly because of the great growth in size. It’s harder to be intimate in a faculty of fifty with maybe that many more visitors and adjuncts than it was with a faculty of twenty-five only and only one or two administrators. We were, most of us, in one another’s home, all across the faculty spectrum, at least once every year for dinner and so on. We knew each other well.

In the early eighties, I was at Harvard for a semester and there was a reception to introduce the visitors and the new faculty. One of the Harvard wives said to my wife, “Now where is it you’re from?” And Dot said, “From Ann Arbor.” And she said, “Oh, that’s the school where everybody likes everybody, isn’t it?” I thought it was remarkable commentary on both places.

I’ve not been a part of the regular faculty since 1987 when retired under the age rules of the time. So I’m not really clued in to how things are at the moment. But I have the feeling that there is a little less harmony because of differences in philosophy about what law schools should be and what the law is all about. But if there is less congeniality, full civility remains. When compared with other front-line law schools, Michigan is as pleasant a place as one could find.

Where do you think those philosophical differences emerge? Can you give perhaps an example?

There’s a danger of oversimplification, but there are faculty members who believe we do not proceed enough in the direction of preparing people to be practicing lawyers, who use their skills straightforwardly in the service of clients, as opposed to those who would study law as an instrumentality of social control and therefore speak more broadly of law in the context of sociology and economics and history and psychology and philosophy and the like. This movement was led by the people at Yale a long generation ago. We now do more than Yale ever did at that time, and the school is far richer for it. But the question is where the line should be drawn. And I believe that’s where there are some differences among the faculty.

What were the students like back in 1949?

Let me start with 1946 at Oklahoma. Most of the students were just returning from service. Their educations had been placed on hold and now they anxious to get through quickly. So there was great seriousness of purpose and intensity.

When I was in law school almost all of my class had came directly from college. After the war, nearly everyone had been away for a while in service, which added a level of maturity and to some extent dedication and seriousness. Over the years since then, a lot more students have done something else before coming to law school - employment, graduate study, travel, whatever. The consequence of that for the teacher is a student body that is a little more sophisticated, brings differing perspectives to bear and the classroom becomes richer because of those experiences.

I taught at San Diego a few years ago and one of my classes was a night class in evidence. I had three policemen in the class and two news reporters. Obviously when we talked about matters of criminal prosecutions the police had some interesting perspectives to offer. When we got to the question of privileged communications and whether there should be a privilege for informants, I had hot advocacy from these newspaper reporters. All of which made the classes more interesting and more thoughtful than if everyone had simply come right from college.

Is there one class you remember vividly in the many years you’ve been teaching – one set of students?

Well, yes, it’s the first class that I had here. They entered in 1949. They graduated in 1952. So we had our first three years here together. I remember more of them by name than I can remember recent students by name. Part of that of course is that they were high achievers, and I keep running into them around the country (though it now makes me feel old to realize that most of them are retired by now). I must concede a bias in their favor because they generously endowed a scholarship in my name.

As their parting senior gift?

No, their fiftieth reunion gift.

You’ve visited in many schools, haven’t you, over the years?

Yes.

Do you want to give a brief list of some of them? You’ve mentioned a few.

I was a semester at Harvard and a year at Yale. I taught a summer at Chicago and a winter term at San Diego. I taught a summer term at NYU early on. And I have been a regular member of the faculty at Colorado, Michigan, Oklahoma and

Continued on Next Page
Wayne State. And a couple of summers at the Salzburg seminar in Austria.

Any one of those experiences stand out?

I was telling somebody the other day that when I was at Yale, in 1963-64, I had been there only a few days when one of the members of the faculty asked me what I was teaching. I told him civil procedure and evidence. He knew my history and knew that I taught taxation, and he asked, "Why aren't you teaching tax here?" And I said, "Well, they asked me to come here to teach procedure and evidence." He said, "That doesn't make any difference. You should've told them what you want to teach – nobody here is told what to teach."

I had come from Michigan, of course, which was a fairly orderly place. The dean would call us in and say, well I know you're going to teach such and such next year, that's your main course, but I need to have you teach commercial law also. It almost never occurred to any of us to raise a question about that. We would just do what was needed. To go from Michigan to Yale's near anarchy was eye-opening. It produced, first of all, a kind of liberated feeling and some benefits, but also some unease. And so it was comfortable to come back to a little more order in Ann Arbor. That experience made me happier to be at Michigan but also aware of some things that ought to change – and did change in due course.

You were dean at both Colorado and Wayne State?

I didn't learn my lesson at Colorado, or I wouldn't have done it again at Wayne. (laughing)

So was it a challenging experience, would you say?

It was no mistake to do either one of them. I enjoyed them. First of all, I got acquainted with new arenas in the law school world – dealing with alumni, university administrators, local bar associations, professional groups like the ABA and the Association of American Law Schools and the ABA, being concerned about student life, and raising money. Most of those experiences I enjoyed.

I didn't enjoy the personnel part of things, especially faculty evaluation. And as a faculty member most of my life, I know that no dean can keep the faculty pleased 100 percent of the time. So the personnel part of dean ing I didn't particularly enjoy, but the rest of it I did.

I enjoyed the Wayne State deanship in particular because of the character of the Wayne State student body, which has many students who are the first in their families to have access to higher education, let alone professional training. Those students are thrilled to be there, honored to be there. Students in top tier schools like Michigan sometimes give the impression of having a sense of entitlement since, by definition, they have been consistently outstanding in their pre-law years. Large numbers of the Wayne students were openly excited to be successful and felt they were honoring their supportive families. To see their reactions was very moving.

Going back to teaching, how did you find an interest in evidence?

I simply was assigned to teach the course. (laughs) I hadn't tried any cases as a young lawyer. I was a tax lawyer. The dean said, "I need to have you teach evidence." And so that was it.

Here at Michigan?

No, that was at Oklahoma – one of my first courses. I enjoyed it but didn't expect to concentrate in it. Civil procedure was going to be my field. I was a graduate fellow in civil procedure at Columbia and wrote my dissertation on compulsory joinder of parties.

Through the years, I continued to teach procedure, but I also taught evidence regularly and came, in due time, to consider it my primary interest. I find evidence a delightful and fun course to teach. The situations are almost invariably interesting. It's no wonder that television and movies and the stage all deal with lots of lawsuits because most lawsuits are inherently intriguing.

Most of the time here before I went to Colorado in the mid-sixties, I was teaching three main courses: taxation, civil procedure and evidence. When I came back, I dropped out of tax and taught civil procedure, evidence and litigation seminars. For many years, I managed the annual advocacy institutes that were first done by the Law School and then taken over by the Institute of Continuing Legal Education. With as
many as 1,500 lawyers in attendance in Hill Auditorium, we presented the nation's best-known trial lawyers, who engaged in trial demonstrations with comparative cross-examinations. Those institutes consumed a lot of my time for many years, writing the scenarios, assembling the casts, and presiding over the sessions.

Has it been a challenge keeping up with the evolving federal rules of evidence?

A challenge, but an interesting one. The adoption of the federal rules in 1975 simplified the law by giving us something closer to a common source, and it changed the way evidence is taught everywhere.

You were in a sense called out of retirement this semester to teach evidence, is that true?

Yes.

Was that a call that you were happy to receive?

Yes. I delight in being in the classroom. The scheduling was a little difficult because of other things I was committed to, but I delight being in the classroom. The only downside is the grading of final exams. But the rest of it is great pleasure.

When was the last time you taught a regular course here at U of M?

It was the fall term of 2000.

How do your students strike you this semester?

As cordial and interested. I have been unhappy with my teaching in that I find I'm lapsing into more lecturing than I would like and engaging the students less than I should. Somebody has said that the purposes of the case method are to scare you to death in the first year, work you to death in the second, and bore you to death in the third. And I expect that the mostly upper class students in Evidence don't particularly mind being lectured to part of the time. Occasionally lately I've just stated the case or the problem myself and discussed it myself. I have a friend who once said that he had developed the Socratic lecture. That is to say he asked the questions and then he answered them. I am afraid I've done more of that than I should.

You also have an interest in judicial selection?

Yes.

How do you feel about the current debate raging in Washington?

Discouraged. My particular interest in judicial selection, however, has been at the state level, particularly Michigan. Michigan's judges are chosen supposedly by partisan nomination and nonpartisan election - which itself is a bit crazy. But since the governor can fill interim positions by appointment and the interim people run with a ballot designation as "judge" whereas those who are not incumbents have no designation and almost never win, probably a majority of judges reach the bench by way of a largely unfettered judicial appointment system. I firmly believe it does not work to Michigan's advantage.

At the national level, the process of presidential appointment with the advice and consent of the Senate is a good system. Lifetime appointment on good behavior is also wise; it protects judges' independence. At the trial level, the federal process works quite well. The problems come at the appellate levels, where the courts play significant policy roles. Many of their decisions come close to being on the legislative side of things. When there are strong policy differences on hot button issues, the selection process does not work nearly as well. Michigan and the Sixth Circuit are at the heart of it right now.

There are nominations of Michigan lawyers to vacant judgeships on the Sixth Circuit that are being held up by the Michigan Democratic senators, partly because the President has nominated people they are reluctant to approve, but also - and probably more importantly - because the preceding Congress held up some Clinton nominees without even giving them hearings. It's a catfight, and the judiciary is paying the price. I don't know what the answer is. My personal sympathies are with the Democratic senators in this matter; but when the Senate balks, the system breaks down. There's got to be an accommodation between the legislature and the executive.

You're affiliated with the International Society of Barristers. Would you tell us about that?

Yes, I'm their administrator and editor. About 35 years ago, there began to be concern among some trial lawyers that all the trial lawyers organizations were oriented too much to the particular classes of clients they represented. The members of the Association of Trial Lawyers of America, for example, were almost entirely plaintiffs' lawyers; all of their programs, their literature, and their purposes were designed to help plaintiffs in lawsuits. The Defense Research Institute consisted of lawyers who ordinarily represent insurance companies and other target defendants; their papers and seminars were all about how to defend lawsuits. The most prestigious of the organizations, the American College of Trial Lawyers, included both plaintiffs' and defendants' lawyers, but there seemed to be a least informal quotas as to how many from one side of the table and how many from the other.

So this group that became the Barristers Society said that, advocates being advocates for all parties who need them, there ought to be a less cause-oriented place where they could come together and talk about issues that are common to all. The group put together the International Society of Barristers. They used the term Barristers, not to adopt the English dichotomy, but rather to
distinguish the Society from other groups like the American College that included the term “trial lawyers. I don’t know whether they were aware of the fact that the acronym of Society of Barristers is S.O.B.

It’s an honorary society, and Fellows must be nominated by a member of the society.

They’re screened by their peers and by at least a half-dozen trial judges before whom they’ve appeared. They must be excellent advocates of unquestioned integrity, and they must be “amicable of disposition,” a quality relatively uncommon among trial lawyers. A rule of the annual meetings is that they may not talk about their cases. But there is an exception. They can talk about cases they lost – so there is not a lot of shoptalk.

Their spouses attend the sessions also and the programs, therefore, are directed not just to lawyers, but to intelligent, questing people in general.

A speaker at the most recent meeting, for example, was a justice of the Ontario Court of Appeals who apparently is going to be appointed to the Supreme Court of Canada, talking about human rights, herself a Holocaust survivor. A man named Bryan Stevenson from the Equal Justice Initiative of Alabama, dealt with the provision of legal services to the poor. A woman who is Ansel Adams’s biographer and curator of his photographs, spoke about him and his vision, not about the law at all. Do you remember the widely published photograph of the Vietnamese girl who, napalmed, was running frantically from the attack, her clothes burned off and her hands outstretched? Now the head of a peace and justice foundation after her horrible ordeal in Vietnam, she spoke movingly of her experiences and her hopes for the world. With this kind of program, the Fellows go back home with their memories refreshed as to the ideals with which they became lawyers, and particularly trial lawyers.

Your official title is Professor Emeritus?

Yes.

Please tell our readers what that means.

It means essentially that you have retired from a faculty position without having embarrassed the school or yourself too much. Some emeriti move to warmer climates; others stay here and engage in various activities, scholarly or not – and occasionally teach when needed. Those of us in residence are scattered about the Legal Research Building, with a plurality here on the eighth stack level.

One story you reportedly shared with your students is how you heard Thurgood Marshall argue Sipuel v. Board of Regents. Please tell our readers about that.

When I was a beginning teacher at Oklahoma, Ada Lois Sipuel (later Fisher) applied for admission to the law school. On order of the Board of Regents, the school denied her application on the sole ground that she was “colored.” Litigation, sponsored by the NAACP, produced a ruling that she was entitled to a legal education either at the University of Oklahoma or at an “equal or substantially equal” Oklahoma school.

In a matter of days, the legislature created the Langston University Law School, and Ms. Sipuel was invited to apply. Langston was an all black university some miles north of Oklahoma City, but the law school was sited in Oklahoma City. Committee rooms in the capitol building were declared classrooms, the law library in the building was designated the school’s library, and a faculty of well-credentialed Oklahoma City lawyers was named to teach the courses from a curriculum copied from the University of Oklahoma catalog.

Ms. Sipuel declined the offer and renewed her application to the school in Norman. She was turned down again, which led to another suit, in which the issue, under the law of that time, was whether the new school was equal or substantially equal to the University of Oklahoma’s school. The trial, held in Norman, was conducted masterfully by Thurgood Marshall and involved an array of leading figures in the law school world as expert witnesses: the deans of Harvard and Penn and faculty members from Columbia, Chicago, Wisconsin, and Berkeley, among others. Only two – former deans at Duke and Oklahoma – testified that the two schools were substantially equal. All the others derided the newly created school.

How did the faculty feel about the case? Did it feel divided or under siege?

No. Neither the dean nor the faculty – which, by the way, then included my emeritus colleague Olin Browder – was supportive of the action of the Board of Regents. One faculty member who was called as a witness on some point was so outraged and expressed himself so emotionally that, as I recall, he was threatened with contempt; at least a recess was declared to let him cool off. No, we were not divided nor did we feel under siege, because we were confident that the law would move in the right direction despite setbacks from time to time.

How did the case evolve?

Well, at first there was one of those setbacks. The local court – perhaps not surprisingly, given the time and place – held for the state, that Langston was equal or substantially equal to Oklahoma. That was reversed on appeal, of course. When the ruling finally came down that Ms. Sipuel had to be admitted, the Regents directed the law school to seat her on the back row of classes, separately, with a sign in front of her that said “colored.” Although this stage of the matter occurred after I had gone off to Columbia, I am told that on her first day, she sat as ordered, with the sign in front of her. On the second day, however, when she

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entered the classroom, she discovered that the students themselves had moved the sign to the teacher’s desk and she was seated in the midst of them. In due course she graduated and, in a kind of sweet irony, she ultimately became a regent of the University of Oklahoma. Sadly, she is now deceased.

Do you have any other stories like that you might want to share? Anything connected to Michigan – perhaps an interesting anecdote?

(long pause) This is not serious. One of the things that I miss is a once active group in earlier days called the Barristers. No relation to my International Society of Barristers. Some characterized it as a drinking society, but they did beneficial things like raising money for scholarships. Annually in the spring they sponsored a benefit dance called the Crease Ball. I assume it was so named because people got their clothes pressed for the occasion.

It was always a big deal to figure out how to publicize it. One year, when Professor Estep’s 8:00 o’clock class came in, there was a horse with a paper cone on its forehead in the Hutchins Hall Courtyard. The theme of that year’s dance was the title of James Thurber’s “The Unicorn in the Garden.” Mr. Estep called on Jim Buchanan, who was president of the Barristers at that time, and said, “Mr. Buchanan, what’s going on out there?” He figured it had to do with the Barristers. Buchanan said, “I really don’t know.” Mr. Estep said, “I predict that the dean will arrive as usual at 8:30, and at about 8:35 the dean’s secretary will appear here and ask for you.”

He was wrong by about five minutes. At about 8:40, she came in and said, “Mr. Buchanan, the dean wants you to see you.” The dean asked Buchanan, “What’s this all about?” He said, “I honestly don’t know, Mr. Dean, but I think I know how to find out.” So he went and called a classmate named Ted Swift, who later became a leading lawyer in Lansing. Ted said, “Well, it’s for advertising the Crease Ball and, yes, I know that the dean would want it out of there. Here’s the number of the farmer who provided the horse and I told him to expect a call from you.” So Buchanan went to a phone and called the farmer and the farmer said, “Yes, I’ll be there to pick up the horse.”

At about 10 o’clock the horse was still there. Again the dean’s secretary summoned Mr. Buchanan. He said, “Mr. Dean, I don’t know what happened. I was told the horse would be removed. I’ll follow up.” He called the farmer again and the farmer said, “Oh yes, Mr. Swift told me in advance to wait for your second call.” (laughs)

And so the advertising posters all around had “The Unicorn in the Garden” theme, and the episode produced one of the largest ever crowds for the Crease Ball.

What hobbies do you have?

Music, primarily. I played the violin a lot when I was young. I played in the Cornell Symphony and some others, but for many years now I haven’t played at all. Choral music has been my principal love. I was a choir director for more than 40, and I still sing in a choir. I have been on the board and served as president of the University Musical Society, which presents the concerts at Hill Auditorium. Music is essential to me.

Had you entered teaching at a later stage, do you think you may have entered the area of law and music?

Probably not. (laughs) What I like about my connection to music is that it is as a sheer amateur and it’s great fun. When I’m with professional musicians, many of whom are my dear friends, I see that they are occasionally unhappy because of the pressure and competition. So I don’t think I would have gotten into music, or even the music side of the law.

Well we’re about at our end. I always like to ask everyone if they have any sort of final remarks or one particular message they might like to send to our readers.

The one thing that concerns me, not about the Law School but about the profession that you’re all going into, is that during the past twenty or thirty years, the law has become much more a business. With advertising, specialization, emphasis on the bottom line, and lawyers serving more as instrumentalists than advisors, the law has become less a learned profession and more a commercial business with emphasis on the bottom line.

My observation is that a lot of lawyers who are in the middle of their careers and beyond are disillusioned. One of the things I like about my International Society of Barristers is that when we get together, the underlying questions are “Why did I become a lawyer?” “Are there ideals that I had that I have lost?” “Am I really serving my own ideals and my own vision of what a lawyer should be?” I don’t know whether the law schools can play a large role in this. You can preach all you want. You can lecture all you want about ethics and morals and, more importantly, about professional responsibility in the sense of being of service, considering the law as a service profession. But preaching doesn’t do it. It’s got to be done by role models, by mentoring; but law firms these days are so focused on the bottom line that the mentoring aspect of law practice has diminished greatly.

I was paid a very low salary when I first started, even by that day’s standard – $100 a month. It was not peanuts, but on the other hand it was barely enough to live on. But in my first couple of years in practice I was learning both skills and professional responsibility day by day with oversight from the partners. But now, new lawyers often are paid very large amounts of money and the firms need to be able to bill for their time. The
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rather relaxed, possibly inefficient mentoring that used to take place - inefficient in the sense of billable hours - is incompatible with that need. I have the feeling that it’s made the law a little less rewarding as a profession – more rewarding financially, but less rewarding ultimately in the emotional, social, and even spiritual sense. I find that many lawyers are hungry for a return to that.

I am a short-term pessimist and a long-term optimist about the profession. I think I see signs that we are more and more aware of the decline of professionalism and are wanting to reverse the trend. There is more emphasis on pro bono activity and on providing legal services for the underserved. Courtroom civility is a new emphasis as Rambo-style tactics fall into disfavor. Organized mentoring groups such as the American Inns of Court are picking up some of the slack. And I know hundreds of lawyers who give great amounts of their time to law improvement and reform through associations of lawyers. They spend so much time in matters of the public interest that I sometimes wonder how they can afford the hours away from billable work. They truly are committed to serve the public interest.

That’s one of the reasons I am an optimist – at least in the long term. Someone said, “Hope has an agenda but not a timetable.”

NISSAN, from Page 6

and sold solely in America demonstrates the company’s commitment to becoming a major player in the full-size pickup market, and as a first step, the Titan is likely to succeed. They’ll by no means jump ahead of sales champion Ford in a single bound, but the blue oval boys are definitely looking over their shoulder at the competition in the last domestic-dominated market.

The second offering passing through our grubby little hands is the Infiniti FX35. An entry into the increasingly crowded crossover/station wagon/whatever market (think Lexus RX330), the FX35 stakes its value proposition on horsepower and styling (noticing a trend here?). Once again, it’s a success in the former, and less so in the latter (did I say something about a trend?).

On paper, the FX35 looks like a surefire winner: all-wheel-drive, 280hp, a host of creature comforts and all the safety gadgets one could want. On the surface, however, it’s a bit less clear-cut. The styling has been called everything from “radical” to “shoe-like”, and I think it’s a bit of both. It’s by no means a run-of-the-mill AWD station wagon, that much is certain. After a few days, though, the styling grew on me. Who says cars all have to look alike, anyway? Kudos to Infiniti for thinking unconventionally.

On the road, it’s simply a screamer. With an exhaust note seemingly stolen from Nissan’s 350Z, the great-sounding stereo is almost superfluous. However, in regular driving, the exhaust isn’t so loud as to be obnoxious. The acceleration is smooth and reacts nearly instantly: highway merges are a snap at almost any speed, especially with the quick downshift response of the 5-speed automatic transmission. Cornering response is pretty standard for a vehicle of this size, though a bright spot is that you feel minimal body roll – none of that “is this thing going to tip over?” feel of many SUVs. Parking-lot navigation, though, leaves a bit to be desired. The turning radius means that suburban drivers may take a few attempts at hitting a parking spot before getting used to it.

The interior is exactly what you’d expect from a $40,000+ luxury SUV. Lots of leather, power seats, power tilt/telescope steering wheel, and all the usual suspects. A nice touch is the easy process for folding down the rear seats – a simple flick of the lever is all that is required, and the seat backs spring down. The heated front seats also made me happy in this typically-frozen neverending Michigan winter, and the side bolsters came in handy when taking hard corners. The intuitive controls of the marriage-saving dual-zone climate control were also appreciated.

In the end, Infiniti has created an SUV that’s extremely fun to drive. It’s rougher ride and unique styling will probably prevent it from unseating the Lexus RX300 as luxury crossover sales champion, but many buyers unimpressed by the tame nature of the RX may be lured in by the FX’s promise of power and excitement.

WITNESS, from Page 3

require a unanimous jury. If gives each juror ultimate responsibility. Each juror knows that their vote to convict counted.”

Clark’s method of reasoning has been used in Richard D. Friedman’s work about the Confrontation Clause of the Sixth Amendment of the Constitution, recently cited by the Supreme Court in their recent decision in Crawford v. Washington. The Confrontation Clause guarantees the right of a criminal defendant to “be confronted with the witnesses against him.” Previously, the Confrontation Clause could be overcome by showing that a particular statement, although made by a witness out of court and not subject to cross-examination by the defendant, was reliable. The court adopted a new interpretation; the Clause provides a categorical rule that a testimonial statement cannot be offered against a criminal defendant unless the defendant has had a chance to cross-examine the person who made the statement.

“It’s not just the right to confront,” Clark said. “It’s the right and responsibility to be confronted.”
The UM Lawyer's Life, etc.

by Tally George

(ANSWERS ON PAGE 28)
When I was younger, there’d be shows that weren’t just one style. You’d have a punk band, then, I don’t know, and emo band or something. There was more variety. It’s fun to play shows like that, with different people.

Do you find that more challenging, playing to people who may not get where your coming from, or be into bands with similar sounds? And does it feel good to face those people and see a positive response, in the face of the fact that they really don’t generally like your type of music?

Yeah, it definitely feels good. There are definitely nights where it hasn’t gone so good. Usually 2 or 3 different crowds show up, then if people like it they enjoy it, and if they don’t, they can just grab a drink and sit in the back. [laughs]

Yeah, I was one of those people during Beans’ set. I just couldn’t get into it.

Yeah, I definitely like Beans. He was bummed about the sound issues in Detroit. Minneapolis was a great show for him. He was really good to hang out with on the tour. He likes to drink, which is good.

Indeed. Back to Chicago – is there a place you guys consider your home base, where you play most often?

We used to play at the Beat Kitchen a lot. Then the booking agent moved to Subterranean, so we play there now. We play shows at the Empty Bottle and Double Door too. We’re trying to play more random places – we played for like 6 months at the Beat Kitchen and it got a little old. We’ve played Chicago a lot, but we don’t want to bore people. Right now we need to stay down a bit.

So are there any plans in the works for the next record in the near future?

Not in the near, near future. But probably soon because once you finish a record, it takes a long time to get out.

“Laced With Romance” took 11 months to get out once we’d finished the recording. I definitely want to get back to the studio though. I like recording; it’s fun for me.

Seeing as you’re based in Chicago, you may as well enjoy the summer, and then hit the studio when the weather’s too bad to drive around the country in a van.

[laughs] Yeah, that’s a good idea actually – waiting until winter. Maybe we’ll do that. Thanks.

What can I say, I’ve got managerial skills. Here in Ann Arbor, we’re pretty close to Detroit, yet no one really goes out there. What did you guys do there to keep busy during off-time when you were recording the record?

We went to the Magic Stick and the Lager House a lot. Also, we went to a couple parties. Some friends had a show at Small’s so we went there. I definitely like the Magic Stick.

Yeah, although they’ve gotten a bit hoity toity with that new bar set up.

Yeah, I noticed that. They’ve got a glitter bar now. It’s too nice now.

They get that award for being the best dive bar in the country and then they go and glitz things up.

Yeah, it seems like it changes every time we’re there. We’ll show up and there will be a restaurant there, and now there’s an art gallery. It’s so funny because that street is like the hipster/yuppie area, but then the rest of the surroundings are f*cked.

I noticed on your site that you got a great review from, of all places, Entertainment Weekly. That’s got to feel pretty good.

Yeah, we were stoked. The label hired us a media person who I think just bothered them until they took the record, and they ended up liking it. It’s so funny because the review was right next to a Fleetwood Mac review and they gave them a B- or something.

You guys totally punked Stevie Nicks.

Jered: [laughs]

A common theme in the press about the Ponys is the uniqueness of your voice. The funny thing is that every writer compares you to someone different – Robert Smith, Ian Curtis, Ian McCulloch, etc. Do you care to chime in on the debate?

Well, Richard Hell is the only comparison I really see. Maybe Charlie Feathers, with the yelping and stuff.

Is it a conscious thing, or more natural?

It kind of just started happening. I never sang before this band. It’s the only thing that really works for me. The only way I can stay on-key. [laughs]

I noticed that your drummer used to be in the Mushuganas, who were from a town near where I grew up, and that you’ve played in some punk bands. Was the change of pace deliberate?

Yeah, we’ve both been in punk bands. Now we want to play well and not necessarily go balls-out all the time. We’re trying to be more music- than energy-inclined. We’re really focusing on just playing better.

Are there any plans in the works to compile your singles and early stuff on CD?

It’s not something we’ve really discussed. It would be cool to put out some of our b-sides and demos and some funny stuff we’ve just recorded at home. It’s one of those cool things that I’d like if I were a superfan. I guess we need more superfans before we do that. [laughs]

Finally, I have to mention the song, “I Wanna F*ck You”, which I thought was
fantastic in that it exhibited, and this is a term I made up so it's not very good, but it was a sort of “earnest carnality.” It wasn't detached ironic sexuality like The Darkness, or some hip hop bravado stuff. Was that a conscious effort, to bring a little bit of honest libido into the mix?

Hahaha. I like that. “earnest carnality.” That’s good.

You can use it for the title of your b-sides compilation.

Yeah. We basically wrote that song just to see what our friends would think. We were only playing for about 10 people at the time, just our friends. I never thought it would actually come out or anything, but we like playing it.

Seriously, I thought it was great. Usually people beat around the bush, or settle for double entendre, but you just came out and said what 99% of pop music uses way too many words to say. Anyways, thanks for taking the time for the interview. Good luck with the rest of the Unicorns tour. And thanks for putting up with my un-professionalism.

GAYS, From Page 16

raising children in their homes (according to the 2000 census) would have less than no protection.

They would have no marriage to provide legal rights and long-term security. No tax breaks. No “family” rates on health insurance. If one partner died unexpectedly, the kids and the deceased’s estate might both go to someone other than the other mommy or daddy.

Meanwhile, we’d all continue, through our taxes, insurance rates, and other things, to subsidize “family-friendly” policies that remain open, in many cases, only to certain privileged families.

So don’t be misled by people whose opinions on this issue are impervious to facts or reason. In the service of family and morality as they see them, their only goal is to make a certain group of families - along with the gay, lesbian, or gender-nonconforming members of every other family — less safe and less equal.

The Headnotes Spring Jam 2004

Tuesday, April 20
7 p.m.

Lawyer’s Club Lounge
(after the LSSS BBQ)

Res Gestae Totally Wants You

Res Gestae is losing several starters to graduation, and has room for writers, artists, photographers, copy editors, advertising managers and opinionated people.

If you want to get involved, send an e-mail to rg@umich.edu and watch your inbox for more information!

Women’s Law Students Association (WLSA)

General Meeting
Tuesday
April 20th
218 HH
12:15 p.m.

Thanks for Reading, and Have a Safe and Restful Summer!
MURPHY, from Page 9

seem to be “it depends,” and come with a set of further questions to try and clarify that answers, which comes with a further questions and a set of policy issues and precedent to be balanced. And let’s not even bring up Future Interests in Property, other than for me to make a very public and very desperate plea to my professor that, for humanity’s sake, she take it easy on us.

Nah. Do whatever. I’ll be fine. For the record, everything does work out. I won’t be litigating for food; I’ll be here this summer, with a job that allows me to both enjoy the work I do every day and afford the “dinner” at Dominick’s after that day is done.

Finally, I have a confession or two to make to you all.

I lied.

I’ve taken a few liberties, here and there. It’s been months since I’ve eaten Ramen. Okay, years. But my computer did die and my car is a piece of crap. But this year hasn’t been a disappointment in any way, shape or form. And the experiences I’ve had and the people that I’ve shared them with have been (at various times) amazing, heart-breaking, hilarious and meaningful; but mostly, worthwhile.

That professor was right; Law school isn’t just what we’re doing with our lives; it is our lives.

But you know what? Life is good.

See you next year.

Res Gestae Wishes a Fond Farewell to its Graduating 3Ls:

Sara Klettke MacWilliams
Andy Daly

John Fedynsky