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U.S. Solicitor General Paul D. Clement describes the events that made the U.S. Supreme Court's 2005 term "historic" during a talk at the Law School earlier this year.

U.S. Solicitor General: O'Connor, Alito, Roberts made for "historic" Supreme Court term

The U.S. Supreme Court's 2005-06 term was especially significant historically and had two distinct parts to it that made it seem like two terms instead of one, U.S. Solicitor General Paul D. Clement told a Michigan Law audience last fall.

Clement, speaking in a program sponsored by the student chapter of the Federalist Society, noted that with the death of Chief Justice William H. Rehnquist and the retirement of Justice Sandra Day O'Connor the Court had "a remarkable change in membership." The arrival of Chief Justice John G. Roberts in September 2005 and Justice Samuel Alito in January 2006 brought the first change in personnel to the Court in some 20 years, he noted.

In addition, the session had the unique dynamic of O'Connor hearing cases and writing decisions after she had submitted her resignation but was remaining on the Court until her replacement was confirmed. Attorneys arguing before the Court with O'Connor on it did not know if a decision would be rendered soon enough to stand or if they might have to re-argue their case after O'Connor retired.

"You were arguing before nine members but you didn't know if the case would be decided by an eight-judge court," Clement explained.

O'Connor participated in about one-fourth of the Court's cases during the 2005-06 term, and "she was in the majority on all 20," Clement reported. Indeed, he noted, two of the decisions were 5-4, and the Court issued them anyhow while O'Connor's vote still could be included.

"Because of the change in personnel, there was a palpable sense that this was an historic Court [term]," Clement explained. The term included a series of "firsts" and "lasts," like the first decision of O'Connor's last term, her last opinion, the first question asked by Roberts or Alito, the first decision by either of the new justices, the first hints of any overall Court shift.

Interestingly, the first half of the term, while O'Connor remained on the bench, included "a surprising number" of unanimous decisions, Clement reported. During the second part of the term "more decisions were by a sharply divided court."

For example, he said, the Court upheld New Hampshire's parental notification law in the first abortion case the Court had heard in several years, and O'Connor wrote the opinion. The Court also decided unanimously against the State of Georgia in a case involving the federal Americans with Disabilities Act, and the decision was written by usually staunch federalist Justice Antonin Scalia, Clement noted.

After O'Connor's departure, decisions often were more closely divided, Clement continued. The Court split 5-3 and issued half a dozen opinions in *Georgia v. Randolph, Scott* in deciding that one spouse could authorize a warrantless home search over the other spouse's objection.

In several of these split decisions, Justice Anthony M. Kennedy provided the

decisive vote while urging moderation, as he did by joining the 5-4 majority in limiting the scope of the Clean Water Act and concurring in the 5-3 decision in the *Hamdan* case that overturned using military tribunals for terrorism detainees and upheld the Geneva Conventions' application to such suspects.

At the time Clement visited the Law School, in late September, the Court's 2006-07 docket had not been completed enough to fully analyze the upcoming term, Clement said. But he noted that there are some "very important" cases coming before the Court during the term, among them cases involving abortion, the use of race in K-12 school districting, a challenge to federal refusal to regulate greenhouse gases, and the size of and proportionality of punitive damages.



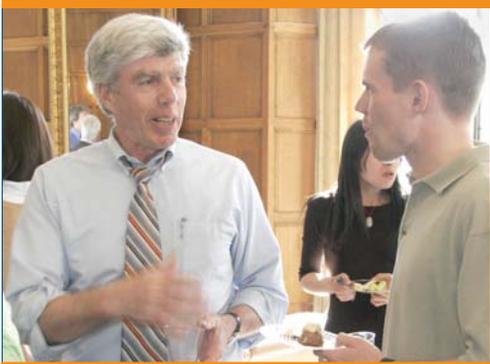
U.S. Solicitor General Paul D. Clement

Inspiring Paths speakers discuss careers



Left, Scott Garland, '95, senior counsel in the Computer Crime and Intellectual Property Section of the U.S. Justice Department, describes the variety of work that he may do in his job, ranging from trying cases anywhere in the United States to working on legislation, policy development, designing programs, training agents, working with undercover investigation, or a host of other activities. "You can do all of these things at the Department of Justice," he explained. Garland was the first speaker in the Office of Public Service's Inspiring Paths lecture series, which presents speakers who discuss their public service, government, and/or pro bono work and the career paths they have followed. Right, Michael Posner, president of Human Rights First and the second speaker in the fall series, describes his organization's immigration and asylum work, what he called the "post 9/11" agenda, and efforts to "support and amplify" the voices of human rights organizations around the world. At the time of Posner's visit, Human Rights First was working to defeat the bill to retain interrogation options for the commander-in-chief and the CIA that otherwise are forbidden by Article 3 of the Geneva Conventions. "I'm an eternal optimist," he explained. "Who would have imagined the end of the Soviet Union, peace in Northern Ireland, the end of apartheid in South Africa?"





Shared interests bring together faculty, students

Faculty members who teach and work in the international arena and students interested in the same subjects got a chance to get acquainted and share views last spring at the International Law Students' first-of-its kind reception. Faculty members and students shared refreshments and informal conversation at the gathering, hosted at the Lawyers Club. As these photos attest, conversation was lively and engaged faculty members and students alike. Among the Michigan Law faculty and administrators who attended and enjoyed chatting with students were, from top:

- Assistant Dean for International Affairs Virginia B. Gordan, who also is administrative director of Michigan Law's Center for International and Comparative Law.
- Professor Steven A. Ratner, a specialist in the law of war, the intersection of international law and moral philosophy, and issues facing new governments and international institutions in the post-Cold War era.
- Clinical Professor Nicholas J. Rine, who directs Michigan Law's Cambodian Law and Development Program and supervises summer interns in their work with human rights NGOs and government ministries in Cambodia.
- Charles F. and Edith J. Clyne Professor of Law A.W. Brian Simpson, a scholar of the history and development of human rights law and English legal history who works closely with the London-based AIRE Center, a human rights legal services NGO that operates primarily within the European Community.