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Corporate Governance and Environmental Best Practices: ELPR's Annual Symposium Sparks Debate

by Jennifer Rinker

The Environmental Law & Policy Review hosted its annual symposium on Saturday, February 4th to a packed McGlothlin courtroom. The program examined the intersection between corporate governance and sustainable environmental policies, looking to investigate answers to questions such as: Why and how do boards of directors pay serious attention to their companies' environmental practices? To what extent may directors favor environmentally-friendly policies over short-term shareholder gain? How much environmental disclosure is enough or too much?

The program featured corporate and environmental law scholars and practitioners, including Professor H. Kent Greenfield of Boston College Law School, Professor Tara J. Radin of the Frank G. Zarb School of Business at Hofstra University, Professor David W. Case of the University of Memphis' Cecil C. Humphreys School of Law, Professor Steven Ferrey of Suffolk University, and Professor Geoffrey C. Rapp of the University of Toledo Law School.

The symposium also included a session on *Front Line Perspectives*, featuring a panel of experts that confront this intersection of corporate governance and environmental policy each day. These distinguished guests included Andrew Brengle from KLD Research and Analytics, Inc., Dennis H. Treacey, an executive with Smithfield Foods, Inc., and George Wyeth with the Environmental Protection Agency. The panel was rounded out by Interlocutors Professor Ron Rosenberg, William & Mary School of Law, and Professor Mitchell F. Crusto, Loyola (New Orleans) School of Law.

The discussion thread throughout the day seemed to focus most closely on corporate consideration of the long-term consequences of corporate practices. Good environmental managers don't approach problems as they arise but develop a comprehensive approach to "put a net around the environmental 'mosquitoes' rather than swatting at each individually," said Mr. Wyeth.

While some speakers focused on the need for increased legislation and increased SEC reporting and disclosure requirements, others indicated the need for an ethical overhaul of corporate structure as concerns not only environmental but employee health and safety issues. "Corporate governing bodies cannot parse out ethical and social policy considerations from other decisionmaking," said Professor Radin, because "stakeholders are increasingly more concerned about the environmental and other practices of the companies in which they invest."

The presentation by Mr. Brengle from KLD Research brought this point home through a detailed explanation of the data gathering and information dissemination his company undertakes. KLD assembles a large volume of information on publicly traded companies from 10K / 8Q reports and numerous other sources. This information about specific corporate practices and performance in a number of areas, including environmental responsibility and compliance, is shared with investors and investment management companies for their considerations in making financial decisions for their clients. Perhaps it is this kind of transparency that will spark the systematic approaches to corporate environmental responsibility touched on by the afternoon's presenters.

The most optimistic statement of the day came from Mr. Wyeth when he said there was perhaps a Race to the Top phenomenon occurring where corporations themselves seek to be the frontrunners in environmentally responsible practices. The story told by Mr. Treacy of Smithfield Foods is one example of a company striving to achieve that

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INSIDE

SBA Ski Trip Defies Science

by Tom Robertson

Snow tends to melt above 32 degrees. As Ron Burgundy would say, "It's science." Like the fact that there are no poisonous snakes in Maine. But on the morning of Friday, January 20, in outright defiance of science, thirty-five booze toting law students loaded their duffel bags and skis into a "luxury coach," while the sun beat 70 degrees off the pavement. Destination: Snowshoe, West Virginia.

On the road, Richard the Bus Driver ran a tight ship. "If the cops pull us over," he announced over the intercom. "Everyone needs to hide their bottles." The cops, however, were unable to keep up as Richard and his luxury coach took a Formula One philosophy to the mountain switchbacks. According to Mr. Bryan Skeen (1L), "the fact we were not hurled from the mountain was truly by the grace of God."

Bob Fay rescues Ryan Browning from certain death. Photo courtesy of Courtney Bennett, who, incidentally, is fabtastic.

At the summit, the Mountain Lodge offered cozy suites, easy access to the slopes, and a concierge staff whose disposition matched the pungent odor of stale sweat that hung in the hallways. Non-skiers spent their afternoons lounging in front of the enormous (and often unlit) fireplace, while the rest pursued the thrills promised by the brochure: "Few loggers would venture into this region because of the steep, rough, and rugged terrain. Today, the Western Territory, with 1500 feet of steeps to conquer, is where adrenaline junkies head to get their fix. Are you up to the challenge?" And, indeed, many were up to the challenge, such as Evan Manning (1L) who demonstrated with his snowboard that Snowshoe is a mountain in much the same way that Bill Pullman is a leading man in Hollywood—when there are no other options and cost is an issue, it won't be spectacular, but it will get the job done.

After tearing up the slopes (and trees—see photo), the Marshall-Wythians convened at the "spa," along with the entire population of the mountain. At any given moment, the hot tub serviced about 40 people, though it was roughly the size of an 11 foot Slovakian Sea Turtle. Running the numbers, that's nearly one person per square foot, as confirmed by Courtney Bennett (2L): "I have never been so close to so many law students in a hot bath of water." Indeed.

Exhausted, fed, and disinfected with chlorine, many of the Marshall-Wythites descended upon the local discotheque. There was a live band and dance floor, complete with the requisite off-duty Australian ski patroller hitting on anything that moved. And David Bules (1L) may or may not have been sandwiched by a pair of 2L beauties, simply because he is David Bules.

Despite a late night and rumors of certain 1Ls wandering the halls of the lodge, several Wythanots rallied a second day on the slopes before heading home. The return voyage was subdued. Peaceful. Even Richard the Bus Driver seemed to hold back, as if we were fading out on an epic Whitesnake track.

Will there be a 2007 trip? What about those who stayed behind? The Advocate approached Mr. J.D. Goodman (1L) for the final word:

Adv: *What are your thoughts on missing this year's ski trip?*

JD: *I'd have gone, but I figured my $200 would be better spent on commercial outlines. What? You haven't started outlining already?*

Adv: *Please leave.*

THE ADVOCATE

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Letters to the Editor and opinion articles may not necessarily reflect the opinion of the newspaper or its staff. All letters to the Editor should be submitted by 5 p.m.on the Thursday prior to publication.

The Advocate will not print a letter without confirmation of the author's name. We may, however, withhold the name on request. Letters over 500 words may be returned to the writer with a request that the letter be edited for the sake of space.

Acrobats at PBK

by Nicolas Heiderstadt

The curtain rose. Music swelled. A young woman was borne onto the stage by two men in long robes. They placed her on a raised platform where they carefully balanced a crystal sculpture on the sole of her outstretched foot. Bending her back into a U, her feet came to rest next to her ears. The sculpture barely trembled. Four more sculptures were added, one to each hand, one to her other foot, and one on her forehead. Her limbs seemed to pass through each other as she turned herself through three hundred and sixty degrees while somehow keeping all five sculptures perfectly upright.

Finally, the sculptures were removed, and she proudly stood. The audience applauded. The act, however, was not over. The contortionist took one of the objects that appeared to be a sculpture and proceeded to dismantle it piece by piece, revealing each of the objects she was balancing to be not one solid piece, but a carefully arranged stack of glasses. Then, as the applause swelled, she made one final flourish, pouring a thin, silver stream from one glass to another.

All of the glasses were filled with water.

That was the level of showmanship that typified the performance of the Chinese Golden Dragon Acrobats when they quite literally graced PBK hall with their presence on Wednesday, January 25. One of the premier troupes of Chinese acrobats performing today, the Golden Dragon Acrobats have toured continuously for decades. They last visited William and Mary in 2004.

Most performers joined the troupe as children, some when they were as young as seven. Their years of training were evident in their polish, professionalism, and of course, their amazing physical prowess.

One astounding act followed another. Another performer balanced three metallic balls atop a six-foot pole on her forehead while simultaneously balancing on a board that rolled back and forth atop a metal cylinder. She then proceeded to step into and swing a hula hoop around her waist and three large plastic rings around each arm.

A dozen men juggled straw hats, passing them around at dizzying speed, and even chasing them around the stage as they flew in great looping arcs. At several points, the performers tossed their hats high into the air, completing double and triple backflips before catching them again as if they had never taken their eyes off of them. The women of the troupe topped that by juggling soccer balls with their feet, passing them back and forth across the stage in perfect synchronization.

The first act ended with a Cirque du Soleil-style flourish as the performers flipped and tumbled inside huge rolling hoops in an act that resembled nothing so much as an amusement park ride.

The second act brought a dizzying synchronized yo-yo act, as well as acts in which men flipped and dove through hoops that appeared to be less than two feet in diameter, and a wonderfully graceful dance during which the women of the troupe between them kept more than 70 plates spinning continuously on bouquets of hand-held metal rods.

The most nerve-wracking event of the evening was dubbed "tower of chairs." An acrobat created this tower atop a metal stand, one chair at a time, precluding any possibility of tricks like hidden locking mechanisms. Audience members in the front row of the auditorium were urged to leave their seats in case of disaster. A few brave souls stayed for a close-up view of the action, but eventually lost heart as the tower grew steadily taller and more precarious. By the finish of the act, the performer had stacked the chairs so high that his feet nearly brushed the ceiling of the auditorium as he performed one-armed handstands.

By the final act of the evening, which involved a lion dance and every member of the troupe simultaneously boarding a moving bicycle, the audience had been knocked breathless more times than any multiplex special-effects thriller could hope to achieve. They still managed, however, to find their feet for a well-deserved standing ovation.

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top status. After a history of negative press and litigation, including a $12 million fine for environmental damage, Smithfield Foods markedly altered its practices from the top down. Executives got on board to champion a complete restructuring of corporate mentality on environmental compliance.

Panelists pointed out that environmental activists are perhaps skeptical of the self-interested motivations of companies that make such dramatic changes, arguing the companies would cease environmentally responsible practices that go beyond mere compliance as soon as it impacts their bottom line. Others felt strongly that the businesses should take the lead in developing their own policies because the line between self-interest and public-interest in corporations is not as clear as some would have us believe. Increased stakeholder concern about environmental and other social practices is a large indicator that the agency relationship may be evolving into one that goes beyond the basic goal of increasing shareholder wealth.

Many of the papers presented on Saturday will be published in the 2006-2007 issues of the Environmental Law & Policy Review.

We Know What You Did Last Summer...

Every year the Public Service Fund, in cooperation with the Law School, provides financial support to a large number of William & Mary students during the summer so that they can pursue opportunities with government and public interest organizations. Each issue of The Advocate will feature stories authored by the sponsored students.

The Official Story of Burma/Myanmar

by Nini Tin

I spent this past summer in a place with pagodas, $1 cab rides (that I would try to negotiate down to, say, 75 cents) and some of the friendliest people I've met on my travels. Professor Warren put me in contact with the United Nations Office on Drugs and Crime in Rangoon, Burma, and I was lucky enough to land an internship there.

Working with the United Nations was an eye-opening experience, but working with the United Nations in a country where rule of law and democracy are distant dreams was a huge challenge. Everything had to be handled diplomatically, because the repressive government could (and often did) make aid work very difficult if faced with language that could be interpreted as criticism towards them. There is quite a bit to criticize, too—Burma has been called an "outpost of tyranny" along with countries such as Iran, North Korea, and Zimbabwe. Its generals routinely ignore international human rights norms as well as its own treaty organizations, resulting in torture, systematic rape, extrajudicial killing, forced labor, and forced relocation, just to name a few.

Of course, this was never in the Burmese papers—because there was no free press, the most informative Burmese newspapers would report that so-and-so general had hit a hole-in-one at the national golf course. So, the UN office relied on its own satellite connection to get real news (from international sources) on Burma, as well as unmonitored access to the internet. This is where my work began. I spent the summer researching and compiling international criminal law, especially concerning terrorism, human trafficking, and corruption. My work on corruption did not really get anywhere—it was an unspoken rule in the office that corruption, though prevalent and interesting as a legal topic, was something we had to work with if we wanted to push other agendas, such as implementing programs to prevent trafficking of women and children. I also enjoyed working on anti-terrorism laws, but, as the cliché goes, "one man's terrorist is another man's freedom fighter," and trusting a brutal military dictatorship to pick and choose "terrorists" was not quite to my taste.

However, I learned quite a bit about the international community, as well as international law, from UNODC. I worked extensively on a human trafficking project that was just starting up in the south west region of Burma, and in doing so, did things I never would have been able to do in law school—draft project proposals, learn about the nitty-gritty of development work and finesse a document so it would look attractive to both donors and the government. Burma is a source country for traffickers; because people there are so poor, they are lured to Thailand and China with promises of jobs, only to be betrayed and basically enslaved once they reach their destination. UNODC's pilot project thus focused on reforming trafficking laws, educating law enforcement and communities on recognizing trafficking, and working with other NGOs to help return and reintegrate the victims to their communities. It was good work, and I was happy to be a part of it.

Despite everything I've written, Burma is a wonderful place. People are very polite and always eager to help—though you may see poverty and desperation in their eyes, they will always extend a welcoming hand. It's also a beautiful place to visit. Ancient pagodas and beautiful Asian palaces vie with sultry, hot nights on majestic lakes to make an entirely unique travel location.

EDR Report

by Ian Hoffman

Before I enrolled in law school, I met an employment attorney who loved her job. Although she made jokes about working for "the man" (she usually represented the employer), she expressed great satisfaction with her work. In addition to having the opportunity to litigate, consult and negotiate, she enjoyed the personal dimensions of employment law. The stakes are high when someone's job or job conditions are on the line. The emotional investment of all the parties in the workplace created satisfying work for her.

Thus, I was happy to receive public service funding to work for a state agency dealing exclusively with employment law—the Virginia Department of Employment Dispute Resolution ("EDR"). I interviewed for the position at the 2005 Government and Public Interest Job Fair hosted by the University of Richmond, coordinated through OCS. Before accepting the position, I read other students' Extern Reports located in the OCS office, which were helpful in their unanimous praise for EDR. Finally, because of the narrow substantive focus of the agency, I decided to split my summer, spending the first half with EDR and the second half with a judge.

EDR is quite unique in its purposes and scope. According to the agency's web site, the mission of EDR is "to provide state employees and agencies with a range of equitable and effective services... to prevent, manage and resolve workplace disputes." In addition to providing mediation and training services aimed at preventing and resolving workplace disputes, EDR oversees the state employee grievance procedure.

All Virginia employees (i.e., VDOT, Dept. of Corrections, public university officials) have the right to access the grievance procedure, through which they can voice concerns about job conditions or disciplinary actions. If a grievance qualifies, it may result in a grievance hearing—an adjudicatory procedure before a Hearing Officer (essentially an administrative law judge). During this hearing, the grievant can present evidence to the Hearing Officer, including the calling of witnesses. The agency against which the employee is grieving is also represented at the hearing and may call and cross-examine witnesses as well. After the hearing, the Hearing Officer will issue a ruling, which can be appealed in the appropriate Virginia Circuit (Trial) Court.

I was able to observe one grievance hearing and witnessed the emotionally charged nature of employment law. An employee of a state mental hospital was disciplined for misplacing a set of keys, which resulted in the escape of a patient (who turned herself back in to the hospital several days later). Though the sanction against the employee had already been reduced significantly, she still chose to grieve the sanction. She felt she had done no wrong in the situation and wanted to clear her name and reputation within the hospital, where she had worked for over ten years. The Hearing Officer affirmed the agency's sanction.

My primary responsibility at EDR was to conduct research for a large scale agency position paper. EDR was interested in creating a document describing the role of the agency and its benefits to the state. Once completed, this paper could be used by the Virginia General Assembly in discussing the future role of the agency. My research focused on comparing EDR with analogous agencies in other states and attempting to find quantifiable data on the cost-savings benefits of

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Just Who is the Bar Disciplining?

by Kelly Pereira

Drive your kids to school was the first message of Professor Moliterno's lecture on "Politically Motivated Bar Discipline." A ride to school resulted in Moliterno's learning on the radio of the bar disciplinary proceedings surrounding a former attorney for the Department of Justice, Jesselyn Radack.

On December 7, 2001, Radack was contacted for an advisory opinion on whether or not "American Taliban," John Walker Lindh, should be given his Miranda rights. Lindh had recently been captured in Afghanistan and was unaware that his parents had obtained counsel on his behalf. After researching the topic, Radack answered affirmatively throughout an exchange of approximately fourteen emails.

Radack's advice, however, was rejected, and Lindh was subject to interrogation without counsel on a Navy ship. Typically, when the advice of the ethics committee is rejected monitoring occurs. Much to Radack's surprise, her supervisor informed her that there was to be no more contact.

When Lindh's case reached trial, the district judge ordered the production of all documents regarding the issue of counsel. Radack was contacted by the defense counsel who informed her that only three emails had been produced. Radack acknowledged that there were more documents, but when she attempted to retrieve the hard copies she found only three.

Radack consulted a trusted U.S. attorney who recommended that she seek the documents through the technical support staff and keep copies for herself. Radack was able to recover the documents in this way, and she kept one copy for herself and produced a copy for her supervisor who said he would handle the disclosure.

A few days later, Radack's supervisor confronted her with a unscheduled performance review. The scathing undated and unsigned review was to be placed in her personnel file if she did not voluntarily resign. After six years with an unblemished record, Radack resigned.

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ADR methods in employment law. After much research, it became clear that EDR is quite unique in its role; some states have grievance procedures or mediation centers, but no state seemed to have an agency that offered the wide array of dispute resolution measures offered by EDR. I also learned that in spite of constant adages that ADR methods save money over litigation, little research has been done to conclusively prove this assertion. In fact, some studies show that private ADR methods can be equally as expensive as litigation in the judicial system. Nevertheless, EDR is a state agency and operates at no cost to the parties (though it does cost the state that funds it). No research had been done on the cost-savings of a state agency aimed at preventing workplace disputes and litigation. Thus, while my research laid the groundwork for analyzing the quantifiable benefits of EDR, much more would need to be done to present a clear picture of the cost-savings of the agency.

My secondary responsibilities included conducting smaller scale research for EDR Hearing Officers and Consultants. One such research task resulted in a writing sample I subsequently used in law firm interviewing. The agency sought to pin down and understand the preclusive effect of a Hearing Officer's ruling. In other words, if a state employee brings a grievance, "loses" at hearing, and appeals the ruling to a state or federal court, what preclusive effect does the agency's ruling have? Performing the research allowed me to learn a great deal about preclusion doctrines and administrative law. Additionally, I was able to consult with the director of EDR who gave me excellent feedback on the memo drafting process.

My experience with EDR confirmed what other employment attorneys have told me: because people hold such high personal and emotional stakes in their workplace, the resulting legal work becomes very interesting and satisfying. Though I am still not certain I want to pursue employment law as a profession, the experience I gained at EDR was extremely valuable. Additionally, the funding I received from the Public Service Fund contributed greatly to my ability to pursue an unpaid summer job with the government. Thus, I am greatly appreciative of both EDR and the Public Service Fund.

GOT TALENT?

Phi Delta Phi Legal Fraternity is proud to present the return of the annual Law School Talent Show on Saturday, February 18th at 9pm. Come to the Campus Center's Little Theater for food, drinks, and a helluva good time! See your classmates display their hidden talents and their sense of humor as they wow the audience and our celebrity judges with great feats of strength, musical prowess, and hidden aptitude for showmanship. Tickets are $8 in advance and $10 at the door - on sale starting February 6th.

If you would like to showcase your talent, please contact Anne Louise Mason at almaso@wm.edu or Katie Falk at kgfalk@wm.edu with your name, your act, and your enthusiasm.

-Anne Mason

William & Mary Receives Distinguished Visitor: Dr. Shirin Ebadi

by Nicole Travers

On January 28, 2006, Nobel Peace Prize winner Dr. Shirin Ebadi visited William & Mary to discuss her life, work, and religion in a lecture entitled "Islam, Human Rights, and Democracy." Dr. Ebadi was the first female judge in Iran, and served as president of the city court in Tehran from 1975-1979. When the Iranian Revolution gave rise to the Islamic Republic of Iran, Dr. Ebadi was forced to resign her position as judge. She was, however, active in both writing and activism, and was able to open a law office in Iran by 1993. She has made a practice of taking up cases for liberal and dissident figures against the government of Iran. She is also active in supporting children's rights by taking up child abuse cases, and founding two non-governmental organizations in Iran: the Iranian Society for Protecting the Rights of the Child, and the Centre for the Defense of Human Rights. She also drafted the original text of a law against child abuse which was adopted by the government of Iran in 2002. In 2003, Dr. Ebadi became the first Muslim woman to be awarded the Nobel Peace Prize for her work in support of global human rights. She continues to represent political prisoners and dissenters in Iran, and lectures at the University of Tehran.

Dr. Ebadi was joined at Phi Beta Kappa Hall by Dr. Shireen Hunter, director of the Carnegie Project at Georgetown University's Alwaleed Center for Muslim-Christian Understanding, and Dr. Linda Malone, Marshally-Wythe Foundation Professor of Law and Director of the Human Rights and National Security Law program at William and Mary School of Law. Speaking in her native Persian with the help of an interpreter, Dr. Ebadi began by warmly supporting cultural exchange between the United States and Iran, particularly the growth of Middle Eastern studies in American universities.

The bulk of Dr. Ebadi's lecture concerned a basic question which she first put to the audience: what is the relationship between religion and democracy? In Iran, she said, the majority view in the government is that all humans are beholden to God's laws and duties, and that the parliament of Iran's sole purpose is to interpret divine law into constitutional law. The challenge between religion and democracy is the source of much discord in Iran. Many government figures in the Middle East believe that democracy, and therefore human rights, are incompatible with Islam, causing the undemocratic conditions witnessed in many Islamic countries today, said Ebadi. Dissent to this prevailing view is easily suppressed, she claimed, because most individuals are more willing to take on earthly rather than divine opponents, and an Islamic government may claim that any dissent to its work and teachings is tantamount to dissent to Islam itself.

Ebadi, however, expressed her personal belief that Islam and democracy are compatible, citing the teachings of the Prophet Muhammad, who, she said, encouraged the democratic process in his counsels, as well as respect for women and children. She focused on what she called the "undesirable" status of women and children in many Islamic countries—women who are unable to "control their own destinies," and children who are "treated as expensive toys" in contrast to her own view of Muhammad's teachings. The outlook subjugating women and children, said Ebadi, is promulgated not only by the paternal heads of the family, but by women as well, who raise their children to be disdainful of women's and children's rights. The status of women and children, she added, is different in different Islamic countries, leading to confusion as to how the "real" Islam treats its faithful.

In order to encourage compatibility between Islam and democracy, said Ebadi, Islamic regimes must issue law reflecting not only Islamic culture, but the needs of the times. The government, she said, "must not impose their ideology behind the mask of religion," and must not treat views in opposition to their governmental ideology as opposing Islam itself. Instead of silencing the voices of the people, she said, Islamic governments should encourage debate, and encourage their citizens to challenge them through Islamic issues. Finally, she said, all governments should attempt to focus on the common denominators between their religions, instead of pointing to the differences between them to incite disagreement, violence, and war. "Islam is not a religion of terror. Those who kill in its name abuse the name of Islam," stated Ebadi. "The acts of the people and the acts of religion are separate things." A greater understanding of Islam as a religion, Islamic government and Islamic people can help "bridge a gap" between the western and eastern worlds, instead of promoting violence and bloodshed. "In war," she warned, "no one will win."

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Radack found work in a private firm, but she coincidentally heard a radio broadcast which stated that no new Department of Justice records had been produced in the Lindh case. Shortly thereafter, *Newsweek* contacted Radack, and she allowed her emails to be published. As a result, Lindh was offered a plea bargain in which he pleaded guilty to only one of the ten pending charges against him.

The Department of Justice initiated an investigation of Radack. The investigators disclosed the proceedings to Radack's employer who fired her. Within one month, Radack was facing bar ethics violations in both Maryland and the District of Columbia for allegedly violating her client's privilege.

It was at this stage of Radack's story that Moliterno began his investigation of politically motivated bar discipline in this case and in general. Moliterno found a historical record replete with politically motivated bar discipline from the early 1900s attack of lawyers with "foreign names" through McCarthism and the Civil Rights movement. Disciplinary procedures, varying from disbarment to inability to pass the bar in the first place, have been obstacles to lawyers who have defended unpopular clients or have expressed unguarded personal views.

Moliterno found the common markers of this phenomenon to be: (1) a perceived threat, (2) a lawyer taking a position that seems to aid the threat, (3) an unmeritorious claim against the lawyer, (4) that would not likely have been brought under normal circumstances, and (5) brought by the bar itself or some powerful actor with an interest in the threat.

In terms of Radack's discipline, Moliterno argued that charge of violating her client's privilege is without merit. A lawyer's duty to disclose a confidence has two major exceptions. First, when law other than the model rules prevails. Second, with the consent of the client.

Moliterno argued that having the United States as a client is a different sort of situation from the average client. Private client confidences should only be broken when the law requires, but government confidences (at least according the D.C. bar) may be broken when the law permits. Further, the issue of lack of consent is at odds with the federal Whistleblower Protection Act and 28 U.S.C. 530(b).

Despite the dubious charges against her, Radack's status is relatively unchanged. The Maryland Bar did not dismiss the complaint against her until February 2005, while the D.C. Bar's action is still pending. Radack has no permanent employment but has taught as an adjunct professor at American Law. In June 2005, she was elected to the Board of Governors of the D.C. Bar Ethics Committee.

In closing, Moliterno urged that politically motivated bar discipline needs to stop. He noted that there was seemingly a long gap between the backlash against Civil Rights era activist lawyers and the Radacks of today, but the practice is largely unrestrained.

Off the Beaten Path: Twelve Gauge Therapy

by Zach Terwilliger

I don't know about y'all, but between the flu going around inside and the balmy temperatures outside, I am having a difficult time not staring out the window of the library. This desire to be outside has been exacerbated by the onslaught of perennial Marshall-Wythe joys like Client E (yes, it goes to E), Bushrod, and note editing. While I have suggested before that we need to take a break and revert back to our primeval roots and go camping, drink bourbon, and go camping while drinking bourbon, this mid-winter blah period calls for something much stronger. No, not white lightning[1]—skeet shooting.

What is skeet? Excuse me while I adjust the wad of Redman Goldenblend currently pushing out my cheek. Skeet is a shooting sport in which participants shoot shotguns at clay-pigeons. For those of you who do not exercise your Second Amendment rights on a regular basis, a shotgun is a firearm that shoots shells filled with hundreds of little pellets, and it is designed to hit fast moving targets like ducks, Hillary Clinton campaign buttons, and quail. Clay-pigeons are actually just clay discs that are thrown in patterns that simulate the flight of game birds. Thus, the sport of skeet shooting involves shooting a shotgun at little clay discs which are thrown by an automated machine anywhere from 20-50 yards away.[2]

There is nothing more stress relieving than the feeling of the thump of a 12 gauge shotgun against your shoulder as you watch a clay disc disintegrate against the backdrop of bluebird sky. Going to the skeet range is part of my pre- and post-exam routine. It is all the release of the driving range or batting cage, but to the fifth power.

No, I am serious.

This is one of those things where, pardon the phrase, you can't knock it till you rock it. I have taken many first-time shooters to the skeet range, and they immediately become hooked. If you do not believe me, just ask fellow 2L Paul Lafata. Paul, after spending his entire life on the west coast and four years at U.C.-Berkley, had been deprived of the opportunity to grab a box of Winchester AA's[3] and pound away at little clay discs. After going to the range for the first time at age 22, he is now addicted.

Now I know what you are thinking. Great, sounds awesome, but I don't have a gun or a clue how to shoot one. We at Marshall-Wythe are blessed to be in close proximity to one of the twelve public shotgun ranges in Virginia. Old Forge Sporting Clays, located in Providence Forge, Virginia, is only 25 minutes west on Route 64. Old Forge rents guns, sells ammunition, and has very reasonably priced lessons. They are more than willing to take individuals who have never shot before. In fact, if you want to go, I will drive with you to Old Forge and give you a free lesson.

Old Forge has a skeet range and a sporting clays course. Sporting clays is the shotgun version of golf. Shooters walk a course, which is made up of between eight and 16 clearings in the woods, each of which has a different clay-pigeon flight path. For example, one "hole" might have a clay bird that flies right to left followed by another bird which flies away from the shooter, or a station could have a "rabbit" where the clay disc is actually rolled along the ground

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[1] Moonshine.
[2] It is just like *Duck Hunt* for old school Nintendo, but a little louder.
[3] A type of shotgun shell.

Legal Mad Libs

by William Durbin and Rajdeep Singh Jolly

In this issue, *The Advocate* launches what it hopes will be a humorous and long-standing new feature, Legal Mad Libs. Each issue will bring you a new source of law Swiss-cheesed for your completing pleasure. We supply the text riddled with blanks requesting various parts of speech, you fill in the blanks with words corresponding to those requested parts of speech, and, *voila*, hilarity ensues. Play with your friends! Or, if you don't have any friends, play it while weeping softly to yourself over a bowl of bran flakes. Any way you play it, Legal Mad Libs is a lesson in grammar, law, and Dada poetry all rolled into one!

For the inaugural run of Legal Mad Libs, the Features editors have selected that most treasured American legal document, the Bill of Rights. We hope it proves both informative and stimulating. Complete the list below and, when you're done, turn to the back page to fill in the blanks. A sample, completed by the Features editors, is done for you there.

<u>AMENDMENT I</u>
1. NOUN:
2. NOUN:
3. VERB ENDING IN –ING:
4. VERB ENDING IN –ING:
5. NOUN:
6. NOUN:
7. VERB:
8. VERB:
9. PROPER NOUN or PLURAL NOUN:

AMENDMENT II
1. ADVERB:
2. NOUN:
3. NOUN:
4. ADJECTIVE:
5. VERB (TRANSITIVE):
6. PLURAL NOUN:
7. VERB ENDING IN –ED:

AMENDMENT III
1. VERB ENDING IN –ED:
2. A PLACE:
3. NAME OF PERSON IN ROOM:

AMENDMENT IV
1. NOUN:
2. ADJECTIVE:
3. PLURAL NOUN:
4. PLURAL NOUN:
5. PLURAL NOUN:
6. VERB PRESENT TENSE:
7. NOUN:
8. NOUN:
9. VERB ENDING IN -ED:

AMENDMENT V
1. NOUN:
2. VERB ENDING IN –ED:
3. ADJECTIVE:
4. ADJECTIVE:
5. NOUN:
6. ADJECTIVE:
7. FAVORITE HOLIDAY OR TIME OF YEAR:
8. NOUN:
9. NOUN:
10. VERB ENDING IN –ED:
11. NOUN:
12. ADJECTIVE:
13. ADJECTIVE:
14. NOUN:

AMENDMENT VI
1. ADJECTIVE:
2. NOUN:
3. ADJECTIVE:
4. NOUN:
5. VERB ENDING IN -ED:
6. PLURAL NOUN:
7. NOUN:
8. NOUN:
9. NOUN:

AMENDMENT VII
1. ADJECTIVE:
2. NUMBER:
3. NAME OF PERSON IN ROOM:
4. VERB ENDING IN -ED:
5. NOUN:
6. ADVERB:
7. PLACE:

AMENDMENT VIII
1. NOUN:
2. VERB ENDING IN -ED:
3. ADJECTIVE:
4. ADJECTIVE:
5. PLURAL NOUN:

<u>AMENDMENT IX</u>
1. PLURAL NOUN:
2. PLURAL NOUN:

<u>AMENDMENT X</u>
1. PLURAL NOUN:
2. PLURAL NOUN:

Legal Mad Libs

THE BILL OF RIGHTS

AMENDMENT I

Congress shall make no _____1_____ respecting an establishment of _____2_____, or _____3_____ the free exercise thereof; or _____4_____ the freedom of _____5_____, or of the _____6_____; or the right of the people peaceably to _____7_____, and to _____8_____ the government for a redress of _____9_____.

AMENDMENT II

A(n) _____1_____ regulated _____2_____, being necessary to the _____3_____ of a _____4_____ state, the right of the people to keep and _____5_____ _____6_____, shall not be _____7_____.

AMENDMENT III

No soldier shall, in time of peace be _____1_____ in _____2_____, without the consent of the owner, nor in time of war, but in a manner to be prescribed by _____3_____.

AMENDMENT IV

The _____1_____ of the people to be _____2_____ in their _____3_____, houses, _____4_____, and effects, against unreasonable _____5_____ and seizures, shall not be violated, and no warrants shall _____6_____, but upon probable cause, supported by _____7_____ or affirmation, and particularly describing the _____8_____ to be searched, and the persons or things to be _____9_____.

AMENDMENT V

No _____1_____ shall be _____2_____ to answer for a capital, or otherwise _____3_____ crime, unless on a presentment or indictment of a _____4_____ jury, except in cases arising in the land or naval forces, or in the _____5_____, when in _____6_____ service in time of _____8_____ or public danger; nor shall any _____9_____ be subject for the same offense to be twice put in jeopardy of _____10_____ or limb; nor shall be _____11_____ in any criminal case to be a witness against _____12_____, nor be deprived of life, liberty, or property, without _____13_____ process of law; nor shall _____14_____ property be taken for public use, without just _____15_____.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a _____1_____ and public _____2_____, by a _____3_____ jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by _____4_____, and to be informed of the nature and cause of the accusation; to be _____5_____ with the _____6_____ against him; to have compulsory _____7_____ for obtaining witnesses in his favor, and to have the assistance of _____8_____ for his _____9_____.

AMENDMENT VII

In suits at _____1_____ law, where the value in controversy shall exceed _____2_____ dollars, the right of trial by _____3_____ shall be _____4_____, and no fact tried by a _____5_____, shall be _____6_____ reexamined in any court of the _____7_____, than according to the rules of the common law.

AMENDMENT VIII

Excessive _____1_____ shall not be _____2_____, nor _____3_____ fines imposed, nor _____4_____ _____ and unusual _____5_____ inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain _____1_____ shall not be construed to deny or disparage others retained by the _____2_____.

AMENDMENT X

The _____1_____ not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the _____2_____.

Here is a sample for your consideration.

AMENDMENT I

Congress shall make no homunculus respecting an establishment of intensity, or rocking the free exercise thereof; or contemplating the freedom of the bathroom, or of the ruler; or the right of the people peaceably to disappoint, and to tease the government for a redress of the Brooklyn Bridge.

AMENDMENT II

A haphazardly regulated belly button, being necessary to the man-eating tiger of a godlike state, the right of the people to keep and eat spermatozoa, shall not be expectorated.

AMENDMENT III

No soldier shall, in time of peace be transcended in the Green Leafe, without the consent of the owner, nor in time of war, but in a manner to be prescribed by Professor Hardy.

AMENDMENT IV

The llama of the people to be hearing-impaired in their man-eating ants, houses, fractals, and effects, against unreasonable boogers and seizures, shall not be violated, and no warrants shall twitch, but upon probable cause, supported by peristalsis or affirmation, and particularly describing the lower intestine to be searched, and the persons or things to be inflated.

AMENDMENT V

No bonobo shall be spanked to answer for a capital, or otherwise platitudinous crime, unless on a presentment or indictment of a pulchritudinous jury, except in cases arising in the land or naval forces, or in the testicle, when in green service in time of Secretary's Day or public danger; nor shall any Turk be subject for the same offense to be twice put in jeopardy of chicken or limb; nor shall be fabricated in any criminal case to be a witness against liquid soap, nor be deprived of life, liberty, or property, without clam chowder-esque process of law; nor shall infantile property be taken for public use, without just beer.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a punctilious and public frog, by a scary jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by hermit crab, and to be informed of the nature and cause of the accusation; to be jumped with the computers against him; to have compulsory Super Nintendo for obtaining witnesses in his favor, and to have the assistance of beer for his famine.

AMENDMENT VII

In suits at viscous law, where the value in controversy shall exceed six dollars, the right of trial by Rajdeep Singh Jolly shall be fermented, and no fact tried by an ends-in-themselves formulation of the categorical imperative, shall be recklessly reexamined in any court of the brothel, than according to the rules of the common law.

AMENDMENT VIII

Excessive William Durbin shall not be manhandled, nor vestigial fines imposed, nor overwrought and unusual ova inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain ducks, shall not be construed to deny or disparage others retained by the highways.

AMENDMENT X

The tuxedos not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the tables.

The Shift is Complete

by Michael Kourabas

There never really was a debate over newly-confirmed Justice Sam Alito. The confirmation hearings were not debate; they were a formality—something that has been implicitly admitted by Senators on both sides of the aisle. The Judiciary Committee Chair has even indicated that nominees understand that, post-Bork, you say no more than what is required to receive confirmation. By today's standards, that is close to nothing.

The ramifications of, and justifications for this can and should be debated. Some argue that a President has earned the right to nominate whomever he pleases. The nominee, members of this school of thought agree, ought to be qualified. Beyond his or her qualifications, however, inquiries ought to be limited and the nominee is given broad privilege to decline comment on crucial social and political issues during the confirmation process.

Others state that a Supreme Court Justice wields an unrivaled amount of power to change the trajectory of the country, and his or her positions on pivotal issues ought to be examined and vigorously debated.

The matter of a Justice's influence on the social and political makeup of the nation can hardly be disputed, especially today. Chief Justice Roberts, Bush 43's first nominee, replaced the old Chief Justice Rehnquist, a hard-line political conservative. Roberts, probably of the Scalia-Thomas mold, was, as a practical matter, a wash, insofar as his nomination will affect any significant changes on the bench.

Judge Alito, on the other hand, will replace Justice O'Connor. As everyone knows, O'Connor cast the deciding vote in numerous important 5-4 decisions, ranging from affirmative action to abortion. In some crucial instances, though she was appointed by the conservative-to-end-all-conservatives, President Ronald Reagan, O'Connor has sided with the politically more liberal faction of the court (See *Grutter v. Bollinger* and *Stenberg v. Carhart*, for two examples).

Judge Alito's personal opinions are more controversial, and arguably more important, than his decisions as a judge. As a lower court judge Alito was bound by precedent. Thus, on issues like abortion, Alito's decisions were bound by *Roe v. Wade*, and later by *Planned Parenthood v. Casey*. As a Supreme Court Justice, however, Alito will have opportunities to overturn precedent.

Thus, it is important that Alito's personal views and political beliefs be fair game. Those that defend the nominee's silence on these issues argue that a judge must preserve the image of political ambivalence, and that weighing in with his own personal beliefs would tarnish this image. The court is supposed to hover somewhere above the political realm; but does anyone doubt the political associations and views of the current Justices? With the departure of O'Connor, the neutrality proposition is dubious at best. Moreover, the more politically charged—and divided—our country becomes, the less likely it is that a justice's "judicial philosophy" has any relevance. There should be no mistake about it: a judge's opinion is political, and his or her judicial philosophy is often just a tool; a means to an end when useful.

Thus, what does Justice Alito believe? For one, Alito was a member of the much maligned Concerned Alumni of Princeton as an undergraduate, a group eminently concerned with the increasing presence of women and minorities on the Princeton campus. Alito is a Reagan Republican, and is the final, pivotal piece in a conservative campaign to overhaul the makeup of the courts, launched by President Reagan's attorney general, Edwin Meese.

The Meese philosophy essentially advocates a return to the "original intent" of the framers of the constitution. This philosophy has proven useful (somehow) in limiting constitutional grants of individual rights, as well as providing for sweeping executive powers. The latter point—that of a "unitary executive"—is one that has been glossed over in the national conversation. It is, however, of crucial importance, and is the animating feature in the current administration's political philosophy.

As an example of his dedication to this principle, Justice Alito has asserted that the President's interpretation of a bill when he signs it—captured in a "signing statement"—is equally as important as Congress' intent in drafting and passing the bill. In Alito's own words, this would "increase the power of the executive to shape the law." This has frightening implications, as it blurs the line between the executive and legislative branches of government and effectively emasculates the legislature.

This executive power is amplified during "war time"—the unbridled authority is justified by the "clear and present danger" of shadowy terrorist enemy. But it is also prone to abuse. The raison d'etre of the current administration has been, rather deceptively, to wage a war on separation of powers such as this country has never seen before. To that end, it has sought the appointment of judges, at all levels, who exhibit broad deference to the executive branch.

If we were to truly return to the late eighteenth century, it is doubtful that we would find men eager to grant such authority to a single man. Suspicions of a centralized federal government dominated much of the constitutional conversation, arguably producing what we today hail as a true separation of powers with the ability, and certainly the responsibility, to monitor and check each other. Our first president even resigned after his second term, despite massive popular support, for fear of being construed as a republican king.

Now that Alito has in fact been confirmed, only time will tell whether the Reagan-Meese-Bush II vision is complete. It will be interesting to see how this court, particularly Scalia, Thomas, Roberts and Alito, modify their philosophies if a Democrat is elected president in 2008.

Shooting Skeet: Therapy with a Bang

Continued from pg. 7

to simulate the erratic running of a rabbit. This type of shooting is extremely exciting because each shot is different and simulates a different hunting situation. Again, this is one of those things that you really should try at least once—especially since there really are not that many public ranges that are not only willing to take novices but also welcoming to them. If you are worried that you might not be able to handle the thump of a shotgun, fear not. The shells that are used for target shooting are manufactured to reduce recoil and feel like nothing more than the push of a line drive softball swing.

GETTING THERE

Alright, nuts and bolts time. Old Forge Sporting Clays can be found on the web at http://www.vasportingclays.com/clubs/old_forge.htm. The cost of shooting is as follows: gun rental, $5; box of shells, $5 each (you will most likely buy two); and the skeet, or five-stand range as they call it, $10. A round of 50 sporting clays is $20.[4] The Range is open from Wednesday to Sunday, 9:00 a.m. to 5:00 p.m.

Directions to the range are as follows: From I-64 take exit 214 and head south on Rt. 155. At the stop light, turn right on Rt. 60 and travel approximately one mile, then turn left onto Rt. 618 (Atkins Road). The entrance to Old Forge Sporting Clays is approximately 300 yards ahead on the right.

If anyone goes to Old Forge and does not have a good time, I will personally refund the cost of your shells. I know that many times what I think is fun does not appeal to everyone, but don't just take my word for it—ask Joe Skinner, Steve Cobb, Matt Roessing, Jason Wells, Seth Winter, or Evan Manning, each of whom has been to Old Forge and had a *blast.*

[4] That is half of what most greens fees are, and this is way more fun than paying $12 for popcorn and a soda.

Sex and the Law: V-Day/D-Day

by Nicole Travers

Over the past week, I've found myself thinking more and more about Valentine's Day. As a law student—and therefore a natural misanthrope—I have always been firmly within the "Valentine's day is for suckers" set, citing facts and figures about commercial greeting card companies, the Christian absorption of pagan holidays, and the caloric content of those chalky little hearts that say "luv u" on them.[1] Valentines Day is usually for me a portent of disaster,[2] and whether I am single or attached, I usually spend my V-Days at home, celebrating the only real relationship in my life—the one between me and a bottle of modestly priced New Zealand Sauvignon Blanc. This year, however, I've managed to find myself a significant other who is, by some miracle 1. real, 2. not psycho, and 3. not a law student/married/married to a law student. So as Valentine 's Day approaches, I find myself reluctantly coming around about my absolute hatred of this holiday.

Valentine's Day began in ancient Rome as the celebration of Lupercalia, the feast day of Lupercalus, the God of Fertility. This festival involved skinning goats and throwing the hides at young ladies, which to my mind does not really inspire thoughts of love and fertility, but hey, when in Rome, right? The Catholic Church was not of this lenient mindset, and in an effort to preserve the lives of innocent goats throughout the Catholic world, Pope Galasius instituted the feast of St. Valentine[3] in its place, on February 14, 496 CE. Valentine's Day was not associated with romance until around the 14th century, helped by a legend that St. Valentine had helped other jailed Christians in Rome to marry clandestinely. In the modern era, Valentine's Day has been wholeheartedly embraced by the greeting card industry, the chocolatiers and florists of the world, and De Beers. The holiday is, however, rejected by most singletons and people with limited card/chocolate budgets as ridiculous and invented.

For me personally, the events of Valentine's Day tend to be tantamount to the events one usually associates with Friday the 13th. If I do get flowers delivered to me, they invariably arrive broken and dead courtesy of Federal Express. If I send a card or letter, it gets lost in the mail. If I have a date, he'll get stricken by a bout of food poisoning halfway through the night, causing him so much embarrassment that he never calls me again. Is it any wonder that I tend to spend this most horrid of days in front of the dependable television set, praying for it to be over so I get back to a normal routine? I am, however, determined that this coming V-Day go without a hitch, despite my woeful past Valentines' history.

So what's to be done? I'm not willing to follow the cliché of roses/cheap chocolates/lacy pink hearts, but I want to break my streak of V-Day bad luck. I think we can start with recognizing a few simple truths about Valentine's Day.

First, V-Day isn't just a holiday, it's an obligation. Similar to the diamond engagement ring, it is meaningless in and of itself, but when it comes to a significant others they always seem to expect it as proof of your undying devotion to him or her. In the absence of an obligatory gift, you clearly do not value your Other as much as the other poor ignorant saps who are

out there emptying their pockets for a bouquet every February 14th, Eventually, your Other will dump you in favor of one of those ignorant saps, leaving you and your admittedly full wallet to wonder what went wrong.

Second, Valentine's day is rather cheesy. Buying Whitman's Samplers and drugstore roses to celebrate romance is a bit similar to heading to Fredrick's of Hollywood in order to save your marriage. In the end, all you're doing is buying stuff, and once all the stuff is gone, you're only left with what you had in the first place. It's no good putting a hot pink shellac on your relationship. If it's a good one, it doesn't need any candy coating in the first place. If it's bad, you need a lot more than Valentine's Day to make things work.

Finally, Valentine's Day is needlessly exclusive. Those who aren't in a relationship on Valentine's Day tend to feel left out, as if everybody else in the world got invited to some spectacular party except for them.[4] All of the commercialism that goes into V-Day seems to be aimed at those in relationships, ostensibly saying "hey, at least you're not like that single girl over there… what a loser." I approximate that a single Valentine's Day can have a bitterness half-life of five or more years given the right situation.

All is not lost, however. I think that law students are in the best position to celebrate what Valentine's Day ought to be about by giving ourselves the most precious gift we can give—our time. Let's face it, we law students can go for weeks where the only meaningful conversations we have are between us and our laptops.[5] So on Valentine's Day, take a little time to be with the people you most want to spend time with, be it a significant other, some friends, family, or that bottle of sauvignon blanc. Honestly, it's the best they can expect from us until we get our student loans paid off, anyway. As for me, I'll be hiding under the bed as usual, waiting for the day to be over. But at least this year, I'll have some company.

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[1] According to Nick Heiderstadt, "those little candy hearts are called 'conversation hearts,' which always struck me as odd, and perhaps a little sad, if they're supposed to represent actual conversations. I mean, 'luv u' 'call me' and 'hot stuff' don't go very far, do they? At least, not past the very early stages of a relationship. Maybe we need ones that say more practical things, like 'walk dog,' or 'read book,' or 'dialectical materialism.'"

[2] The least of which involved getting caught in a fistfight during a late night screening of the movie *Hannibal*. It gets much worse from there.

[3] Actually no one really knew who St. Valentine was, even in those olden days.

[4] And even if they know that Valentine's Day isn't worth it, somehow they still feel as if *this* year it would be different.

[5] For me, these meaningful conversations consist solely of expletives, but hey…meaningful is as meaningful does.

The Punjabi Uncle/Aunt Scheme

by Rajdeep Singh Jolly

My brother and sister-in-law are expecting their first child—a baby boy. My objective in this essay will be to familiarize readers with the Punjabi uncle/aunt scheme.

I belong to a Punjabi family. Most Punjabis live in the Punjab region of South Asia, but large numbers of them have settled abroad. Punjabis have a reputation for being brawny and hard-working; some even have a reputation for being gun-loving alcoholics. Perhaps it is not surprising that Punjabi Sikhs have been called "the Texans of India."

The Punjabi language is similar to Hindi and Urdu but sounds more abusive than its polite and poetic counterparts. Happily, many of the familial designations outlined below overlap with familial designations in Hindi and Urdu.

As my big bro's baby brother, I will be a *Chaachaajee* to his child. From the child's standpoint, *Chaachaa* not only means "paternal uncle" but also signifies that I am younger than his father. The word *jee* is an honorific particle that is attached to proper nouns to signify respect; and so, from the standpoint of my future nephew, a *Chaachaajee* is "a respected, young paternal uncle" My future spouse will be a *Chaacheejee*.

Suppose that I had a younger brother and that my younger brother had a child. With respect to that child, I would be a *Thaayaajee*. From the child's standpoint, *Thaayaajee* not only means "respected paternal uncle" but also signifies that I am older than his father. My future spouse in this situation would be a *Thaayeejee*. With respect to my future children, my brother and sister-in-law will be a *Thaayaajee* and *Thaayeejee*, respectively. (The scheme gets more confusing, and space does not permit an exhaustive summary: there are *Maaserjees* and *Maaseejees, Bhuajees* and *Fuferjees*, and *Maamaajees* and *Maameejees*.)

Friends have asked whether it would be appropriate for them to call me *Chaachaajee*. The appropriateness of an action might involve the extent to which that action offends the religious or cultural sentiments of another; the appropriateness of an action might also involve the extent to which that action comports with technical norms that govern it. Under no circumstances would it be offensive for someone other than my nephew-to-be to call me *Chaachaajee*. On the other hand, although it would be funny for, say, William Durbin to address me as his "respected young uncle," it would be technically off-the-mark.

Contrast *Chaachaajee* with *Saalaa*, which means "brother-in-law." Suppose there is a male and that I marry his sister. Being my brother-in-law, that male would be my *Saalaa*; this designation would be morally and technically appropriate. Suppose now there is a male, and that I am not married to his sister. If I were to call that male my *Saalaa*, it would be morally and technically inappropriate. You see, in some circumstances, calling a man your "brother-in-law" implies that you are taking liberties with his sister.

Needless to say but worth saying anyway, I look forward to being a *Chaachaajee*.

Condemning *Kelo v. New London*

Why the Recent High Court Decision was Both Illegal and Immoral (Part Two of Two)

by Dan Hobgood

In the first part of my essay, which appeared in the last edition of the paper, I explained that the Supreme Court's recent decision in *Kelo v. New London* is incompatible with the takings clause in the Constitution, the fundamental law of our land, and the philosophic concept of property rights. Nevertheless, critically, the fact that *Kelo* cannot be reconciled with the takings clause, etc., is ultimately immaterial if the attainment of individual liberty as an overarching goal isn't an ethical one. After all, if personal liberty is something morally repugnant, it therefore follows that individualistic social policies *ought* to be eliminated. Hence, to condemn *Kelo* (pun of course intended), it is not enough in the end for somebody to prove only that individual liberty is lawful; additionally, he must prove that individual liberty is *moral* as well.

In an effort to justify individual liberty on moral grounds, many, if not most, would probably appeal to "Natural Law" theory in the spirit of 12th-century Catholic theologian St. Thomas Aquinas. However, Natural Law theory as inspired by St. Thomas will not suffice—and is about as harmonious with individual liberty as *Kelo* is. Since Thomas' underlying premise was the untenable, *supernatural* notion that liberty is good because a Supreme Being who created everything "says so," his case for freedom, alas, is logically comparable to the similarly faith-based argument current-day Islamic terrorists offer for injuring and killing infidels. Furthermore, individual liberty is irreconcilable with Thomas' altruistic view that mankind has a duty to provide for the collective well-being of people in society—an assertion lending itself not to a *principled* commitment to freedom but, rather, a pragmatic, unstable one based on what will most ideally bolster a purported "common good." If individual liberty is to be morally justified, unwaveringly, what is needed on its behalf is a *non*-religious, factual rationale—one which dictates that self-interest is a *virtue* and not a vice. As it turns out, fortunately, such a rationale has already been made available to us. This is thanks, in full, to the greatest philosopher of our modern era: 20th-century novelist and commentator Ayn Rand.

Via her philosophy, Ayn Rand showed that liberty was morally justified, not by "divine law or congressional law" as historically alleged, but by the very implications of what morality itself is. Being the study of what choices a person should and should not make, the subject of morality, Ms. Rand observed, is only relevant to people because they have choices to make in the first place. In a subsequent analysis of these choices, Ms. Rand further observed, it becomes clear that one particular choice happens to be an inescapable alternative on which all other choices depend: the decision, in Shakespeare's poetic words, "to be—or not to be." Accordingly, Ms. Rand realized, a person's option in this foremost regard, whether explicit *or* implicit, automatically provides a frame of reference defining how he ought to behave: somebody who chooses to pursue life should do that which will help him live, while somebody who for whatever reason chooses to die should do that which will bring about his timely death. In any event, though, Ms. Rand was objectively able to conclude, an individual's fundamental choice, as literally a self-centered, self-*ish* proposition, calls for him to follow whichever of the two paths he at any point deems is in his best interest. Thus, it can properly be inferred that liberty is moral—because, in order for people to act for themselves, as they should, they need to be unimpeded from doing so.

By this juncture, in conclusion, it should be clear that what "neither precedent nor logic supports," to quote Justice Stevens' opinion again, is the tyrannical decision the Supreme Court made in *Kelo v. New London*—a decision that is both morally bad and un-American. Just how pressing it is that the Court rectify this grave, *Dred Scott*-caliber error cannot be emphasized too strongly or too often. Quite simply, the ideological survival of our country and its ethical status are jointly at stake.

Praising *Kelo v. New London*

by Joshua Heslinga

To ensure that apathy is not mistaken for agreement and to provide a little balance, I offer this brief counterpoint in defense of *Kelo v. New London*. Rest assured that I will not attempt to explain anything definitively and that this is a one-part essay.

People come together in society to achieve things that they cannot achieve individually—law & order, social experiences, etc. Democratic societies derive their legitimacy from the consent of the governed. Large societies depend upon republican government, where representatives make decisions. Needless to say, not everyone will agree with the collective choices.

The *Kelo* decision and its aftermath exemplify how democracy is supposed to work. I imagine few people are thrilled to cut the heartstrings upon which Susette Kelo and her opinion page supporters play. Sometimes, however, societies must make difficult decisions. The city of New London concluded that its economic future depended on development and that development required seizing the land of those unwilling to accept a buyout. In *Kelo*, the Supreme Court recognized that elected leaders should make such economic and political decisions.

The Declaration of Independence expresses principles upon which our country is based. It is a statement of political philosophy that should be studied and (to some degree) revered but it does not pretend to be a document of day-to-day governance. It does not have the force of law, and the rights that it identifies should not be defined by the unelected, life-tenured residents of the cloister of the federal judiciary.

Mr. Hobgood apparently wants to live in a world where a small group of people gather in secret, then announce what individuals' rights really are (or maybe just whether a particular law comports with their vision of individual rights). This hardly seems desirable or like what the Declaration's signers had in mind.

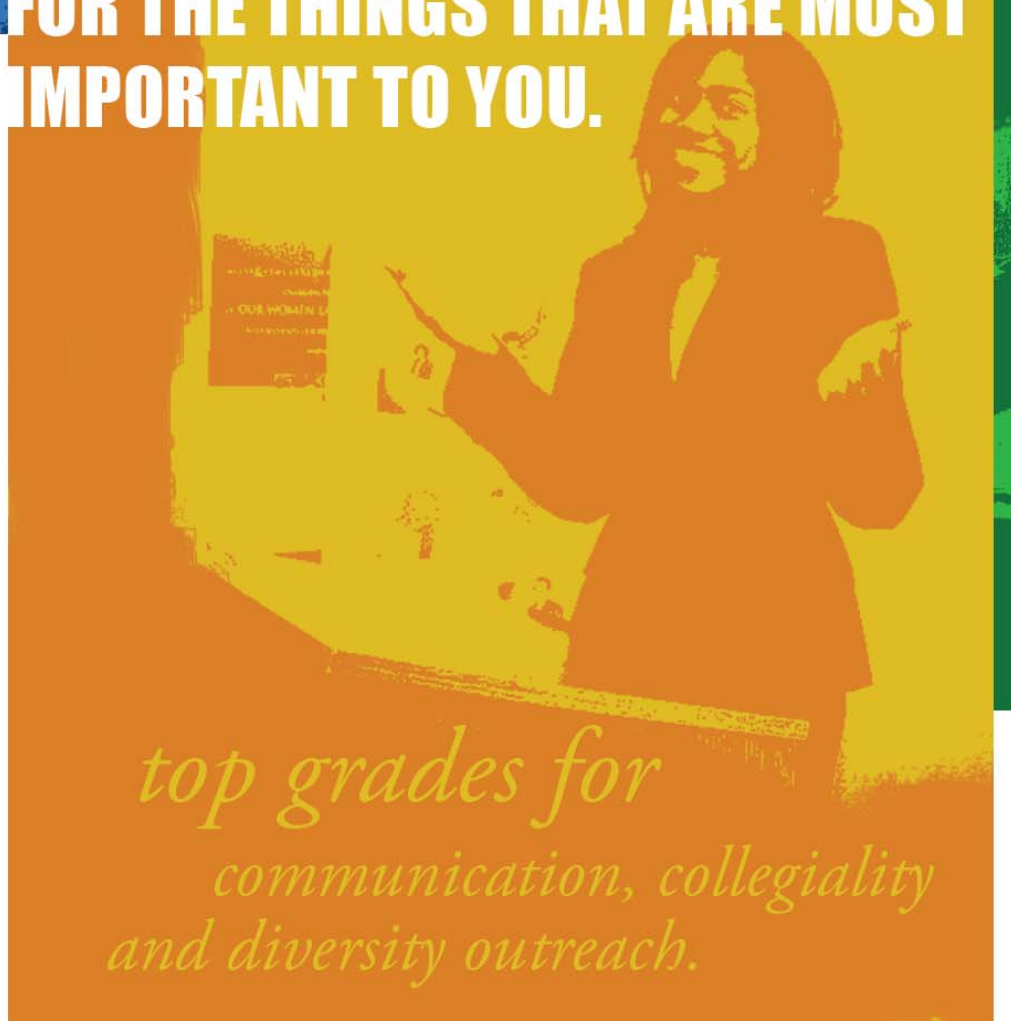
Events after the *Kelo* decision show that democracy can work and that property rights are alive and well. Political leaders at all levels of government have denounced decisions like that made by New London, choosing to side with the Kelos of the world. States have enacted laws and constitutional provisions aimed at controlling government's use of eminent domain. The public is now far more aware of the issue. Even businesses are getting into the act -- BB&T recently announced that it would not lend money to developers who plan to build commercial projects on land seized from private citizens through eminent domain.

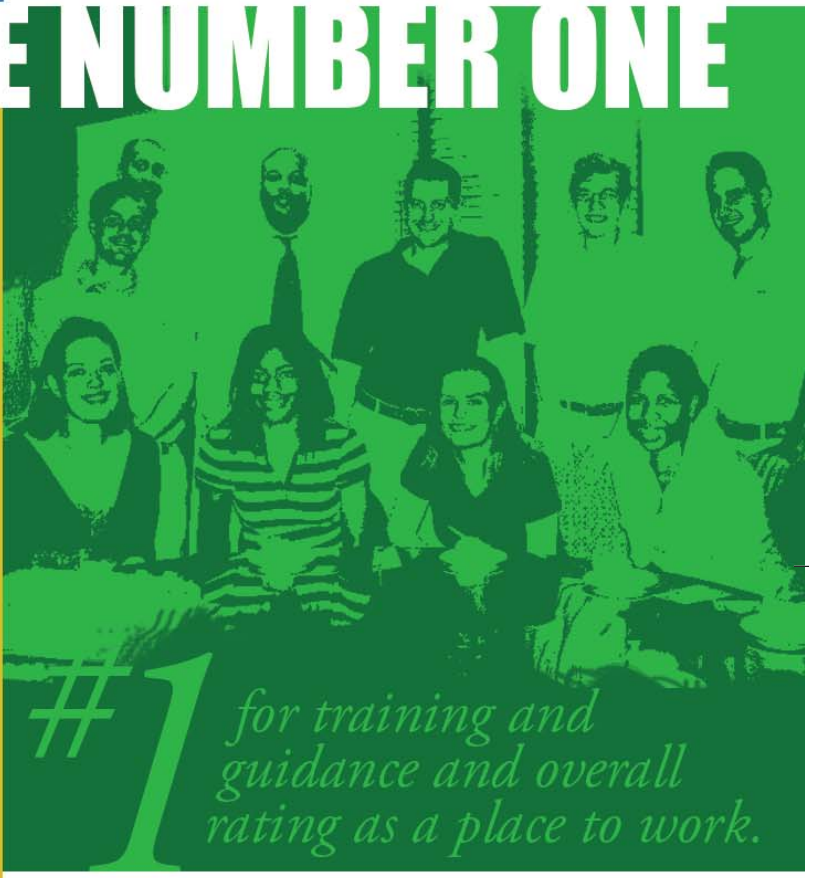
All of this may be less efficient than a Supreme Court edict, but it is certainly more legitimate.

So, if you're bored, track Dan Hobgood, me, or any other law student down and debate the wisdom of a societal decision, the scope of individual rights, the merits of governmental or private action, or whether property is really the concept around which our lives should be ordered. Virtue lies in debate and democratic action.

WE'RE PROUD TO BE NUMBER ONE

FOR THE THINGS THAT ARE MOST IMPORTANT TO YOU.





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Farewell to Ask a Canadian

by Matt Dobbie

Hello, and welcome to the final edition of "Ask a Canadian." Don't worry! I'm still going to write for *The Advocate*; we're just changing the format. I've decided to do this for a number of reasons, primarily because I felt the old format was getting stale. It was getting harder and harder to write, and I think the shtick was getting old. I'd come up with things I'd like to write about, but they didn't fit the column. Now with a new format, I will be able to put those things into print. So, this week will feature two articles from yours truly: the first being the last "Ask a Canadian," and the second being the inaugural edition of my new column, "Canadian Bacon."

Everyone knows that the Germans love David Hasselhoff. Do Canadians have a similar love affair with a B-level celebrity?

—Amy Liesenfeld, 2L

No, we Canadians do not have some celebrity that we love for no discernable reason. However, we do take a certain shine to any and all Canadians who make it big in Hollywood. Celebs like Mike Myers, Jim Carrey, Rachel McAdams, Kiefer Sutherland, Evangeline Lilly, and Eugene Levy are far more popular back home in Canada than they are stateside. We're quite proud that our countrymen have made it big "down south." Whenever they appear on television, someone in the room will inevitably say, "He/She's Canadian, eh?" with such pride their voice, you'd swear they are related.

Incidentally, buddy Euro would also do this for Croatians. Growing up, I swear he told me Toni Kukoc was Croatian at least 10,000 times. So much that whenever I hear Kukoc's name, a little voice in my head says, "He's Croatian." Thanks a lot, Euro, because that's not incredibly effing annoying.

Anyway, the "he's Canadian" trend is one I continue down here—as any of you who've watched television with me can attest to. Sadly, I actually hate doing this, but it's like some weird reflex I can't control—almost as if the Canadian government has implemented some weird *1984* George Orwell style brainwashing. The only reason I know that the government hasn't brainwashed me is that, if they did, I'd be saying it in both English and French.

My other favorite Canadian entertainment quirk is how excited we get whenever Canada is mentioned in an American television show or movie. That one episode in *The Simpsons* when the family travels to Canada was front page news back home. Not front page of the entertainment section—front page of the national paper. War, politics, and the economy all took a back seat to the exciting arrival of an animated fictional family. Even my mother, who hates *The Simpsons*, made a point of watching the show. Sadly, she ended up being disappointed by the episode, as Canada wasn't featured "much" and the show was over-hyped. I know what you're thinking—the entertainment media sensationalized something? Hard to believe, I know, but it's true.

I was recently surprised to discover that the beaver, not the moose, was the national animal of Canada. What made your country select the beaver as its national animal?

—Leon Webster, 2L

While I will admit that at first glance the beaver is a strange choice as a national animal, we do have our reasons for choosing it over the moose—even if some of you (read, Matt Gaetz) think that moose walk the streets of our cities. I assure you that this is not the case. Most Canadians have never even seen a live moose. But I digress.

While most countries choose some bold and exciting animal—the U.S. has the bald eagle, Russia has the bear, Spain has the lion—Canada has a small furry rodent that builds dams. By the way, the award for dumbest national animal choice is a dead heat between France (rooster) and Estonia (barn swallow). Neither country can rationally defend those choices, and Canada is no exception. I once had a teacher try to tell me the beaver was our national animal because it was "industrious." This was the worst explanation for a symbol/mascot I'd ever heard, with the possible exception of my middle school's mascot being the Dolphins "because they swim in schools." Of course, my principal looked just like an Ewok, so I think our problems started at the top.

The actual reason for the choice carries some historical significance. When Canada was first settled, beaver fur hats were incredibly popular in Europe. Apparently, the "fur is murder" campaign had yet to catch on. Most, if not all, of the major cities that dot the western part of my country were originally fur trading posts, with beaver pelts as the primary commodity. The fur trade, and the trade of beaver fur in particular, was the economic driving force that led to a good portion of Canada's settlement. We pay homage to that period in our history by making the beaver our national animal.

Want to know the worst part about this? I had a friend go see *The Chronicles of Narina*, which, of all things, features a talking beaver. During the movie, my buddy leaned over to the person beside him, pointed at the beaver onscreen and said, "He's Canadian." I rest my case.

Hello, Canadian Bacon!

by Matt Dobbie

As some of you may or may not know, the Winter Olympics kick off this Friday, giving us 17 days of skiing, ice skating, and curling. As the resident Canadian (translation, the guy who knows a lot about winter sports), I figured a short preview of the Winter Games was in order. At first I contemplated going through every sport, explaining it and giving my medal picks, but I then realized (a) that was lot of work and (b) most of the sports were really boring (the exceptions being skeleton and ski jumping—which I'm convinced people just watch because the possibility exists that athletes might actually die while competing). So, I've decided instead to focus on the sports that really matter: curling and ice hockey.

I know you're sitting there wondering if I'm serious about curling—and yes, I am. I love hockey, and will drop almost anything to watch Team Canada play, but I'm honestly just as excited about the prospect of watching curling. It's been almost two years since I've last seen a curling match, and I'm pretty pumped about that drought coming to an end. Curling is actually pretty popular back home – it gets good ratings on television, and a lot of people play. For those of you not familiar with the game, it scores like bocce ball or lawn bowling—for every rock you have between the button (the center of those circles, and yeah, there really is a button frozen into the ice) and your opponent's closest rock, you get one point. A curling match lasts ten ends, the winner obviously being the team with the highest score.

There are several things I really like about curling, aside from the obvious intense drama and high athletic skill of the competitors. The first is television coverage. Like golf announcers, curling broadcasters always talk in hushed, calm, deliberate tones —as if to suggest that this is a sport of deliberate and focused concentration. This is, of course, completely destroyed about 30 seconds later, when the competitors toss the stones and start yelling at their teammates to sweep harder. At that point the sport loses all semblance of respectability. I love the idea that part of an Olympic sport is yelling at a man with a broom to sweep faster (the correct term

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Canadian Bacon:Curling and Hockey make the Winter Olympics Twice as Nice

Winter Sports from page 14

to shout is "hurry" or if they're slacking "hurry hard"—and yes, I realize it does sound like dialogue from a lousy porno flick).

The other thing I love about curling is that it's little more than a hobby for everyone who does it. They all have other jobs, which the announcers back home always tell us about.

One announcer might say, "Here's Mike Harris, the skip of the Ontario team. Chip, did you know he's a butcher back home in Barrie?" Chip would then respond with some horrible quip like, "I did, Brian, and I think we're going to see him carve up this Saskatchewan team like one of those great T-bone steaks he carries." At which point both announcers give that fake, kind of annoying "only because I'm on television" laugh. High comedy. I think the other athletes in the Olympics secretly hate the curlers. Other athletes train their entire lives in absolute devotion to their sports. Curlers, on the other hand, have day jobs, regular lives, and often drink while competing.

Now, as great as curling is, it doesn't even come close the magnificence and greatness that is hockey. As you probably know, we Canadians absolutely love hockey, and nothing is bigger than when our best compete at the international level. For example, in 1972 during the Summit Series (an eight-game series between Canada and Russia), my entire country shut down during games. Schools were let out, businesses closed, everything. The gold medal game during the Salt Lake Olympics was watched by over 10 million Canadians (that's like 1/3 of the country—the highest rated telecast ever in Canada). This year, like all years, we expect to bring home the gold. While we are the favorites, it will by no means be a cakewalk. So, in the interest of introducing you to the game, and perhaps giving you good conversation material for the next two weeks, I will break down the contenders, in order of their chances of winning gold (and yes, I'm aware that 95% of you don't give a rat's ass about this, but I do and it's my column).

Canada—We are the definitive favorites. We're the defending champs with far and away the deepest team. Although it's not the team I would have liked to see in Turin—I feel Eric Staal and Jason Spezza should both on the team over Todd Bertuzzi (he of the terrible hit two years ago) and Kris Draper. We still have the best line-up from top to bottom, the best defense (despite our rash of recent injuries on the blue line) and great goaltending. We should win, but when you consider the format of the tournament (one game knock-out playoffs), if we have an off game and one of the other countries comes up huge, the slight possibility exists that we could get eliminated.

Sweden—The Swedes are always dangerous, but they have been beatable because their goaltending has been questionable. That might change this year, though. The starter going in is the Toronto Maple Leafs' back-up Mikael Tellqvist, but waiting in the wings is hot-shot Rangers rookie Henrik Lundqvuist. Lundqvuist could be the great goaltender that the Swedes have been searching for since, well, forever. They already have the best player in the world (Peter Forsberg), the best international player (Mats Sundin, a personal favorite of mine and the Leafs Captain, who always comes up big in these tourneys. I don't know it if it's the big ice or the style of play, but in that three crown uniform, he's almost unstoppable), and arguably the best defenseman (Nicklas Lidstrum). Add in a great goalie, and they become the second best team in the world.

Czech Republic—The Czechs have the best goaltending in the tournament; the 1-2 combo of Domink Hasek and Tomas Vokoun make them extremely dangerous in a short tournament. With Jagr (the NHL's leading scorer and likely MVP at this point), Hemsky, Prucha, Straka, and Hejduk, they've got just enough scoring up front to

This is curling, the only sport involving competitive sweeping.

scare you. With their goaltending, plus top-heavy scoring talent, in a short tournament they are a very dangerous team .

Russia—Russia should be the co-favorites with Canada, but two things stop them: goaltending and the Russian Ice Hockey Federation (RICF). The RICF is incredibly screwed up—there's massive infighting and a huge amount of internal politics. The players hate the coach and there is a huge chemistry problem on the team. With those problems any other team in the world would be dead in the water, except the Russians. Their staggering amount of talent allows them to contend almost in spite of themselves. Led by the two most exciting players in the NHL, Ilya Kovalchuk and Alexander Ovechkin, the Russians are probably the biggest enigma in the tournament. They could go undefeated and win out, or they could lose every game. I really have no idea.

Slovakia—Four years ago in Salt Lake City, the Slovaks had to fight to be mentioned in the same breath as the other countries on this list, and they were the odd man out in the "top six teams get byes" format used last time around. What a difference four years make. The Slovaks have a very talented offensive core (the Hossa brothers, Gaborik, and Nagy) and a tough defense (Chara, Mesazaros, and Visnovosky). The goaltending is not quite at the same level, but Avalanche back-up Budaj might just be good enough for them to do some damage. While they may not win gold, I think Turin is going to be the coming out party for Slovakia's hockey program.

Finland—Sixteen months ago, the Finns were in the finals against Canada in the World Cup with a real shot to win. Now, well, things are vastly different. That difference is one man: Miikka Kiprusoff. Kipper is the best goalie alive right now, he was the man (in every sense of the word) in the World Cup, but he is staying out of the Olympics to rest for a possible Flames Stanley Cup run. With him, the Finns had a chance at gold. But without him, they're a talented team that will play hard but won't medal. That tells you all you need to know about goaltending.

United States—The U.S. team is in a transition, their golden generation (Hull, Weight, Tkachuk, Hatcher, Chelios, Modano, Richter) is aging or retired. The new generation has yet to fully arrive. This team is made up of guys over 35 or under 25. That's not what you need to win a tournament of this magnitude. Their goaltending is questionable, even more so considering they inexplicably left the best American goalie (Ryan Miller of the Buffalo Sabres) off the team. The Americans won't be an easy win, but they are not going to be a major factor in this tournament. Four years from now, I think it will be a very different story.

So to sum up—Canada is the greatest, America not so much. See you in two weeks, and I promise a lot less hockey next time around.

3Ls and Alumni danced the night away at the 100 Nights Celebration on Friday, February 3. Photos courtesy of Jennifer Rinker.

100 Nights to Go!

On February 3, 2006, the class of 2006 gathered to celebrate their last 100 nights of law school before graduation. Amid the food, drinks and dancing came the news that the commencement speaker for 2006 will be former Supreme Court Justice Sandra Day O'Connor. Congratulations, 3Ls!