MLK Day at Valparaiso

Valpo Law & MLK Day

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Inside

Law Week: a respite from the daily grind
BY PAUL MULLIN
SBA President

Law school is a grind. Your week is full of early mornings and late nights. Fortunately, a short break is right around the corner.

The MOTHER of all SBA events is coming: LAW WEEK!

Law Week is just a couple short weeks away. Your SBA members have organized a schedule of events that could be the best week of this academic year.

Barrister’s Ball kicks off our week on Sat., Jan. 29. The Ball is your chance to shake that tail feather in style.

I don’t think anyone can top Joe Langerak, 3L, VUSL included speakers Maurice Gough, Director of the Chicago Fair Housing & Equal Opportunity and Constance Mack-Ward, Executive Director of the NW Indiana Open Housing Center.

3 scholars to discuss Miranda at Seegers Lecture

VALPARAISO – A panel of three distinguished legal scholars will present this year’s Seegers Lecture, “The Miranda Project,” at 4 p.m. Jan. 27, in Tabor Auditorium at VUSL.

The symposium is free and open to the public. A reception will follow at 5:30 p.m.

The U.S. Supreme Court issued the landmark Miranda decision in 1966, setting the rules for police interrogations. Since the original decision, Miranda has been a constant target of both praise and criticism, while the Supreme Court has continued refining the decision.

The panelists, each of whom has examined the Miranda decision and its history and future, are law professors Paul Marcus and Sandra Guerra Thompson and attorney Roscoe C. Howard, Jr.

Marcus is the Haynes professor of law at the College of William and Mary and author of “It’s Not Just about Miranda: Determining the Voluntariness of Confessions in Criminal Prosecutions.” Marcus currently serves as co-reporter to the National Right to Counsel Committee, a group dedicated to improving rights for indigent defendants.

Howard is a partner in the antitrust and white collar defense practice of the law firm Sheppard Mullin Richter & Hampton in Washington, D.C. He wrote “Miranda 1966-2005: A Seam of Civility.”

Thompson is a professor of law at the University of Houston and was formerly assistant district attorney in New York County. She is an elected member of the American Law Institute and author of “Evading Miranda: ‘Question First, Warn Later’

see SEEGERS page 10

Danielle Guerra/The Forum

Professor Ivan Bodensteiner moderates a discussion on fair housing at Valparaiso University's annual MLK Day activities. The focus session entitled, "Fair Housing: Part of the 'Unfinished Agenda" was sponsored by VUSL and included speakers Maurice Gough, Director of the Chicago Fair Housing & Equal Opportunity and Constance Mack-Ward, Executive Director of the NW Indiana Open Housing Center.
What do all the acronyms mean?
Explaining the state and local bar associations of Indiana and Illinois

BY MARINA RICCI
Copy editor

While most law students are familiar with the American Bar Association (ABA), many do not know the benefits of individual state and local bar associations, which could become extremely beneficial in both their law school and professional careers.

Many states have bar associations covering a wide range of interests and demographic groups fit for almost anyone who wants to join.

These professional associations provide publications written by members of the association and provide important up to date information about the law to current members and the community.

There are also personalized sections within the associations to cater to different types of members providing such sections as the young lawyers section as well as sections on different types of law such as tort law, litigation and corporate law.

California has the most number of State Bar Associations spanning from the Beverly Hills Bar Association to the Italian American Lawyers Association.

Other states such as Pennsylvania, New York and Texas also have a very large number of Bar Associations to fit a wide variety of interests.

A little closer to home, Indiana and Illinois have their fair share of Bar Associations. While Indiana has both the Indiana State Bar Association and the Indiana Trial Lawyers Association, Illinois, in addition to the Illinois State Bar Association, has many separate county associations (Cook, Champaign, DuPage, Kane, Winnebago).

Additionally, in Illinois, there are the Chicago Bar Association (CBA), the Chicago Council of Lawyers, the Illinois Association of Defense Trial Counsel, the Illinois Judges Association, the Illinois Trial Lawyers Association and the Justinian Society of Lawyers.

In many respects these associations take the place of law school social groups giving young lawyers and weathered attorneys alike the opportunity to interact and communicate with one another while also providing a service and information to the community.

These services include many community service and pro bono projects that many state bar associations undertake.

Probably one of the most significant reasons new young attorneys and law students join bar associations is for the networking aspect of the membership.

It is an invaluable resource to be able to meet attorneys in different fields and also interact with new lawyers and go through the process in a group-like atmosphere. Some legal employers even require their prospective employees to be members of at least one local state bar association.

Apart from the services provided by state bar associations there are also many exclusive membership benefits.

These benefits span from discounts on continuing legal education courses, travel, services, equipment, supplies and many informational resources that attorneys use on a day-to-day basis.

Both the Illinois State Bar Association and the Indiana State Bar Association have representatives at VUSL.

Illinois State Bar Association representative, Christopher Stemler, 3L, says, “The Illinois State Bar Association has really been an invaluable resource especially when it comes to networking opportunities and providing educational seminars that give law students a realistic look into the issues pertinent to attorneys today.” Marina Ricci, 1L, is also a representative for the Illinois State Bar Association.

The Indiana State Bar Association representative is Jonathan Pasky, 3L.

Most bar associations give law school students a large discount on membership fees, making fees as low as $10 a year and

see BAR ASSOCs. page 10
NEWS IN BRIEF

Students organize month-long tsunami relief effort

Students, faculty and staff at Valparaiso University are raising funds during January to support relief efforts in countries affected by the recent tsunami.

Volunteers are selling $5 blue wristbands during the University’s home basketball games in January, which began with the men’s and women’s games played Saturday, Jan. 8, against Oral Roberts.

Wristbands will also be sold during the University’s daily Chapel service and at the Valparaiso Union Information Desk throughout the month.

Proceeds from the wristband sales will go to Lutheran World Relief, which has a proven track record of development work in the hardest hit areas. Those who purchase a wristband are encouraged to wear it as a sign of solidarity with survivors of the devastating tsunami.

Those wishing to purchase a wristband or make a donation can contact the Union Information Desk at (219) 464-5415 or the Chapel of the Resurrection at (219) 464-5093.

High court: Federal sentencing system wrongly applied

The Supreme Court’s ruling that the way judges have been sentencing some 60,000 defendants a year is unconstitutional threw the nation’s federal sentencing system into turmoil Wednesday, Jan. 12, 2005.

The court found 5-4 that judges have been improperly adding time to some criminals’ prison stays.

The Court stopped short of scrapping the nearly two-decade-old guideline system, intended to ensure that sentences do not vary widely from courtroom to courtroom. Instead, the court said in the second half of a two-part ruling that judges should consult the guidelines on an advisory basis only, in determining reasonable sentences. How will that work was immediately questioned.

Courts can expect an immediate deluge of cases from inmates who claim they were wrongly sentenced. Congress may also craft its own solution, and the justices seemed to expect that.

Justice Department officials said they were disappointed in the ruling, crediting the guidelines with producing tough, uniform sentences that have helped drive crime rates to 30-year lows. They said federal prosecutors will continue to urge judges to adhere closely to the guidelines even though they will be merely advisory.

Under the challenged federal court system, juries consider guilt or innocence but judges make decisions that affect prison time based on facts, such as the amount of drugs involved in a crime, the number of victims in a fraud or whether a defendant committed perjury during trial.

The Court did not make its decision retroactive, so it will most likely affect only people whose cases are pending, or defendants whose first appeals are not yet completed, like homemaker expert Martha Stewart. Still, that’s thousands of cases.

“We’re going to have a lot of resentencings,” said Nancy King, a law professor specializing in sentencing at Vanderbilt University.

King said it’s impossible to know if the change will prompt judges to impose longer or shorter prison sentences. Judges will have more freedom to decide for themselves what a fair sentence is, without making factual findings that the high court objected to.

VU to get Doppler radar

Valparaiso University could be one of only seven sites in the country with the latest in Doppler weather radar technology by June of 2006. The technology will be the most sophisticated in the Chicago area.

The nearest National Weather Service center is in Romeoville, Ill., near Joliet, and it handles weather information for the Chicago area, but doesn’t have the new system. Porter County is just on the fringe of the Romeoville center’s radar, so the university’s new tower will be able to provide much better local weather data on events like lake-effect snows.

The radar tower is part of an overall $8 million project at the University that involved construction of the Kallay-Christopher Hall and renovations to Schnabel Hall. The equipment will cost more than $1 million. Once it is approved, it will take 18 months to obtain the equipment and have the tower built. Only a handful of the country’s universities have any kind of weather radar and none are as small as VU.

Anthropologist to discuss New Guinea tribal art

An anthropologist who has extensively studied the native people of New Guinea will discuss their tribal artwork on Jan. 20 at Valparaiso University in connection with a current exhibition at the University’s Brauer Museum of Art.

Dr. Robert Welsch, adjunct curator in the Department of Anthropology at Chicago’s Field Museum, will discuss “Art and the Spirit World of New Guinea: Glimpses in the Ritual Lives and Cosmologies of a Tribal Society” at 6:30 p.m. in Mueller Hall on campus. The lecture is free and open to the public.

Dr. Welsch will discuss how the faith, culture and history of the New Guinea people are depicted in ceremonial objects and other artifacts.

He is curator for the exhibition “Art and the Spirit World of New Guinea” at Brauer Museum through March 20.

The exhibition features 150 objects loaned to the museum from private collections including ceremonial masks, shields, drums, figurines and a canoe, as well as a display of photographs from New Guinea.

State legislators to discuss tobacco control efforts

State legislators from Northwest Indiana will gather to talk about tobacco prevention efforts at a Jan. 21 meeting sponsored by Valparaiso University’s College of Nursing and the Tobacco Education and Prevention Coalition for Porter County.

Indiana state representatives Duane Cheney, Ralph Ayers, Charlie Brown and state senator Victor Heinold will discuss their views on tobacco control programs at the public meeting, which begins at 9 a.m. in Valparaiso City Hall.

During the meeting, the Tobacco Education and Prevention Coalition will report on its efforts in Porter County to reduce tobacco use and discuss the benefits of the Indiana legislature continuing to invest in a comprehensive tobacco prevention and cessation program.

— Bill Smith

The Forum Monthly Photo Contest

Winter recreation

The first person to correctly identify the picture above will win a $10 gift certificate to Jimmy John’s.

E-mail your responses to forum@valpo.edu

(Entries are unlimited, but participants may only win once per semester.)

December answer: Christmas tree in VUCA lobby
Supreme Court justice shows up for jury duty in state court

WASHINGTON (AP) — No one took any notice of the tall, slim man who appeared Tuesday for jury duty. Had he worn his black robe, Supreme Court Justice Stephen Breyer no doubt would have drawn more attention.

Even Marlborough, Mass., District Court Judge Thomas Sullivan Jr. didn’t recognize Breyer until he read the justice’s name on a document listing potential jurors for cases he was hearing.

“When I looked at the slip I said, ‘Oh, my God,’” Sullivan said in a telephone interview with The Associated Press.

Two cases were to be heard, one for drunken driving and another for assault. Enough jurors were picked for the assault case before Breyer’s name was called, and the defense attorney in the drunken driving case excluded the justice from that jury.

According to Sullivan, the defense attorney said, “The last thing I need is two judges on the case.”

Breyer, 66, said he felt it was important to do his civic duty and report to the courthouse, located about 30 miles west of Boston. He divides his time between Washington and Massachusetts.

“It proves that everyone can participate, and in a democracy that is important,” Breyer said.

Sullivan was impressed.

“If anyone could have made a phone call and gotten out of it, he could have. He really wanted to sit on the case,” Sullivan said. “That might put some other people to shame who were planning to try to get out of jury duty.”

2 arrested at courthouse for telling lawyer jokes

HEMPSTEAD, N.Y. (AP) — Did you hear the one about the two guys arrested for telling lawyer jokes?

It happened this week to the founders of a group called Americans for Legal Reform, who were waiting in line to get into a Long Island courthouse.

“How do you tell when a lawyer is lying?” Harvey Kash reportedly asked Carl Lanzisera. “His lips are moving,” they said in unison.

While some waiting to get into the courthouse giggled, a lawyer farther up the line Monday was not laughing.

He told them to pipe down, and when they did not, the lawyer reported the pair to court personnel, who charged them with disorderly conduct, a misdemeanor.

“They just can’t take it,” Kash said of lawyers in general. “This violates our First Amendment rights.”

Dan Bagnuola, a spokesman for the Nassau County courts, said the men were “being abusive and they were causing a disturbance.” He said he did not have the name of the lawyer who complained.

Americans for Legal Reform monitors the courts and uses confrontational tactics to push for greater access for the public. The pair said that for years they have stood outside courthouses on Long Island and mocked lawyers.

On Monday, however, Kash said he was due in court to answer a drunken driving charge from a year and a half ago. The men are due back in court on the disorderly conduct charge next month.

Attorney convicted of using credit card scam to pay for law school

LOS ANGELES (AP) — A lawyer has been convicted of using a credit card scam to pay his way through law school.

Christian Ehlers, 29, a 2001 graduate of Loyola Law School, was found guilty Tuesday of conspiracy, fraud and other federal offenses in a scam authorities said cost credit card companies $1.2 million.

Prosecutors said Ehlers and two friends obtained hundreds of cards using bogus names and Social Security numbers, rang up phony purchases on stolen store equipment, and then, posing as stores, collected reimbursement from the credit card companies.

The two other men pleaded guilty.

Ehlers was admitted to the California bar in 2001 and his status was still listed as “active” Wednesday.

Prosecutors said the charges carry up to 175 years in prison. Sentencing was set for Feb. 5.

Rehnquist returns to Supreme Court part time

WASHINGTON (AP) — Chief Justice William H. Rehnquist is back at work part time at the Supreme Court, but there is no word that he is ready to return to the bench.

Rehnquist missed about 25 court arguments in November and December while receiving chemotherapy and radiation for thyroid cancer. A Supreme Court spokeswoman said Wednesday that the 80-year-old chief justice returned to the building late last month.

Few details have been released about Rehnquist’s condition. The chemotherapy-radiation treatment is common for the aggressive and life-threatening type of thyroid cancer.

“It’s pleasantly surprising that he is able to come back to work. It implies that the tumor is somewhat under control,” said Dr. Kenneth Burman, a thyroid specialist at Washington Hospital Center who is not involved in Rehnquist’s treatment.

The new information about Rehnquist’s work schedule sheds little light on whether his retirement is imminent. The court hasn’t had a vacancy in more than a decade, a modern-era record.

Rehnquist had been away from court since Oct. 22 when he was hospitalized and then underwent a tracheotomy to help him breathe. At the time, Rehnquist said he expected to be back at work in a week. He later had to acknowledge that was unrealistic.

A lawyer has filed a class action lawsuit against the University of Arizona for not using stem cell research to treat cancer.

The lawsuit, filed on behalf of a patient who died of cancer, claims the university's decision to forgo stem cell research is a violation of the patient's rights.

The patient's family claims the university has a duty to use stem cell research to treat cancer, but instead chose to focus on research into other diseases.

The lawsuit seeks unspecified damages and an order requiring the university to use stem cell research to treat cancer.
A dream of peace

BY AZRA ZAI Di
Staff Columnist

I have a dream. I dream for 2005 to bring peace to a region defined by years of war and conflict. I dream for peace in the Middle East, and with the recent death of Yasser Arafat and the newly held Palestinian elections, peace is closer than imaginable. But it will not happen. There can be no lasting peace as long as Israel continues to build its security fence. The West Bank is being transformed into a city of cages or enclaves where the only way out is through a series of special roads, tunnels, and bridges manned by Israeli officers who have the power to deny outside access to anyone they please. Outside these cages, Palestinians are further frustrated by Israeli-only roads, heightened scrutiny by guards, expanding Jewish settlements, and a stronger military presence. The eminent Hebrew University sociologist, Baruch Kimmerling, has called Gaza “the largest concentration camp ever to exist.” Norman Finkelstein has claimed that “Once the wall is complete, Gaza will rank only the second largest concentration camp ever to exist.”

This nightmare is fast becoming a reality for thousands of Palestinians. Locking up Palestinians in these walled cages, taking away their sources of income, keeping their kids from attending school, and limiting their freedom will not result in peace. History has never shown these tactics to work. Instead, these will incite the Palestinians even more and unite them in the fight against Israel. The International Court Justice has branded the wall illegal and has advised Israel to seize with its construction. However, with the backing of the US, Israel has refused. Until this problem is resolved, the death of Arafat or the new elections will do very little to bring stability to the region.

I dream of peace, but I see obstacles in its way. Let’s hope I am wrong.

TortSniffer:
The new nomenclature and how it will make your life better

From Appalachian State University School of Law to Yale Law School and every institution in between, if you are a law student then you have undoubtedly come across those smirking, feeble-minded individuals who, upon learning that you have chosen to pursue a most noble endeavor in the field of law, feel quite compelled to drop their “best” lawyer joke square in your lap.

And it always goes something like this...

“What did the paramedic say to the lawyer?”

“Quit tailgating!”

This overblown notion that every lawyer has a compulsion to chase ambulances needs to be stopped, and I have the solution: TortSniffer.

Yep, let’s not deny that some of our peers are hypnotized by ringing sirens and flashing red and blue lights. But for those of us who are bent otherwise, a simple shift in terminology will defeat the impulses of outsiders to crack such lousy jokes.

Compare “Smith is a good-for-nothing ambulance chaser” with “By George, Smith is turning out to be the most brilliant TortSniffer this firm has ever known!”

Behold, the power of semantics!

Spread the word.

Chad Montgomery is The Forum’s Production Editor.
**The FORUM**

**VIEWPOINTS**

**The DEAN'S CORNER**

Law school rankings: Part II

In last month’s column, I began a two-part discussion of U.S. News rankings. I chose to write on this topic, not to bash the rankings (which is easy to do and done often), but to respond to a practical question sometimes put to me by students: “What are we doing about our ranking?”

The discussion requires two parts because I first had to explain precisely what the U.S. News rankings do and do not measure. I also wished to review practices some other schools engage in, but which we will not, either because they involve serious misallocations of law school resources or are ethically questionable.

As I noted in last month’s column, one source of the rankings’ troublesome nature is the fact that there is a lot of volatility. The ranking of a school can change, sometimes dramatically, from year to year.

This encourages us (and other schools) to dwell on the rankings and it distracts us from more important things. Regrettably, this variability is inevitable but which we will not, either because we involve serious misallocations of law school resources or are ethically questionable.

So, what are we doing about our ranking?

And this really is a key question for all of us. As long as you do your part, I do mine, the faculty theirs, and the alumni theirs, this school will grow both in substance and reputation.

U.S. News may persist in plaguing legal education, but it need not vex us. We know what is important and what is not important, and we know where we are going as an institution. By taking the actions that we should be taking in any event, we are working together to reach our shared goal.

**And it is the responsibility of you, our students, to pursue your careers and successes vigorously, both for yourselves and for the law school as a whole.**

**Jay Conison**

Dean of Valparaiso University School of Law. He can be reached at jay.conison@valpo.edu.
VIEWPOINTS

It’s regional time for Mock Trial

BY TARA WOZNIAK
Mock Trial Team

Very few lawyers will step inside a courtroom. Fewer lawyers will stand in front of a jury and zealously advocate for their client. And fewer still are actually good at it.

Think about it—twelve people sit staring at you. They watch your every move, they critique your every step—they are in charge of determining your client’s future.

Your job is to reach these people, to connect with them—to let them live the life your client lived, to let them see the truth through your client’s eyes. These twelve people will hang on your every word if you can convey three things: passion, confidence, and that you really believe your case.

Do you think you have the passion? Do you think you want to be a litigator? Are you waiting for these next two or three years to pass so that you can get into a courtroom? Why are you waiting?

The VUSL Mock Trial Team offers students the opportunity to enhance and showcase their trial advocacy skills at national competitions against other law schools.

New lawyers who have participated in their law school’s mock trial program are far more experienced and prepared to make the transition from the classroom to the courtroom than their colleagues.

This is an exciting year for the VUSL Mock Trial Team. For the first time in VUSL Mock Trial history, the Team will send five teams to compete in three national competitions during one school year.

Last October, the VUSL Mock Trial Team made a good showing in their first appearance at the National Trial Advocacy Competition in Lansing, Michigan. This February, the Mock Trial Team will send four teams to compete in two regional competitions, the National Trial Competition (NTC) in Chicago and the Association of Trial Lawyers of America (ATLA) Competition in Pittsburgh. Last February, a VUSL team placed 5th at the ATLA Competition, one spot shy of advancing to the semi-finals.

Last month, the Team hopes to continue on this track of success.

Competing VUSL students for the Spring 2005 semester are as follows: NTC Team 1: Nicholas Gaeke, Forrest Owens, Megan Gilbride, and Adam Bancroft; NTC Team 2: Andrew Smith, Ghislaine Storr, Tara Wozniak, and Ruth Delgado; ATLA Team 1: Kristin Nesbitt, David Payne, Erin Gallagly, Elizabeth Glick ATLA Team 2: Jessica Greyerbiehl, Dan Evans, Sean Campbell, Megan Moore, and Meghan Bass.

If you’re interested in finding out about the VUSL Mock Trial Team or trying out for the 2005-2006 school year, we highly recommend that you observe a practice. To do so, please email tara.wozniak@valpo.edu. Try-outs will be held in either March or April.

Keep your eyes posted on the Wesemann Weekly for additional information.

Tara Wozniak is a 3L at VUSL

The fat footnotes of a Law Review note

Fat footnotes: A hallmark of any successful piece of academic legal writing. And as you are reading this issue of The Forum, twenty-four notewriters are finalizing their own footnotes as they prepare to hand in the final drafts of their notes on Wed., Feb. 2.

Soon, the long, demanding task of writing a note will be over for the Volume 39 notewriters.

The notewriting process began last August when the notewriters, only days after receiving their acceptance letters, were told they had to select a topic and learn the Bluebook.

Neither one is an easy task: hundreds of law review articles are written each year and they had to find a topic not covered by any of those articles and the Bluebook seems to have a rule for everything.

Last semester, the notewriters spent hours, too numerous to count, researching their topics and writing drafts. They had to turn in a topic proposal in early September, a background in October, and an analysis in November.

The notewriters successfully met each deadline, and after each deadline they had a week to rest as the editors read their notes and filled out evaluation forms. Receiving the evaluation forms from the editors was usually not an encouraging experience. Many were told by the editors to re-organize sections, to look up Bluebook rules, and, of course, to fatten the footnotes.

The notewriters finally had a break from working on their notes in December. But it really was not a break as they had to study for finals.

The notewriters also did not get to enjoy a note-free Christmas break. Their first deadline in 2005 was the first Friday of classes when they were required to turn in a complete working draft.

The editors are currently looking over the complete working drafts, but unlike previous drafts, these determined notewriters will not be taking much of a break now.

There are cites to Bluebook, transition sentences to write, contributions to finalize, and, of course, footnotes to fatten before the Feb. 2 deadline.

But in less than two weeks the process will be done; each notewriter will have turned in a note—an accomplishment worthy of recognition.

On Feb. 2, I hope you will join me and the law review editors in congratulating them.

Julie Van Groningen is a 3L at VUSL.

The Mock Court goes national this spring

Moot Court Honor Society

Beth Garrison

As a Moot Court member, a selection of members are asked to represent VUSL nationally at a specific interschool moot court competition. These competitions are selected each year by the Moot Court Executive Board.

In recent years, several Moot Court members have excelled. In 2003-2004, Rod Phares (3L) won Best Oralist at the Pace Environmental Moot Court Competition; Leah Mabery, ’04, and Katie Wolf, ’04, were semi-finalists at the McGee National Civil Rights Competition; Julia Riecken (3L) and Chris Benner, ’04, finished second at the Appellate Advocacy Competition, and Paul Kelly won the Best Oralist at the Vale Interschool Corporate Moot Court Competition.

This year’s competitors include: Jonathan Pasky (3L) and Stephen Starks (2L), traveling to Chicago for the Leffkowitz Trademark Moot Court Competition; Ghislaine Storr (3L) and Andrew Smith (2L), traveling to Palo Alto, California for the National First Amendment Moot Court Competition; and Rod Phares (3L) and Elizabeth Tosh (2L), competing in the McGee National Civil Rights Moot Court Competition at the University of Minnesota.

Also Jessica Baum (3L) and Jon Sayas (3L), traveling to Buffalo, New York, for the Wechslar National Criminal Law Competition; Joe Langerak (3L), Paul Kelly (3L), Kristin Lacey (2L), and Mike Ruff (2L), traveling to Wilmington, Delaware, for the Vale Interschool Corporate Moot Court Competition; Beth Garrison (3L) and Julia Riecken (3L), competing in the Rendigs National Products Liability Competition at the University of Cincinnati; and Derick Steele (3L), Josh Brown (2L), Cortney Schaffer (2L), and Kelly Vanderwall (2L), traveling to the University of Wisconsin for the Evans Constitutional Law Competition.
Supreme Court of the United States
http://www.supremecourt.gov

Chief Justice William H. Rehnquist
Justice John Paul Stevens
Justice Sandra Day O’Connor
Justice Antonin Scalia
Justice Anthony M. Kennedy
Justice David H. Souter
Justice Clarence Thomas
Justice Ruth Bader Ginsburg
Justice Stephen G. Breyer

Clerk's Office:
U.S. Supreme Court
One First Street
NE, Washington, DC 20543
(202) 479-3211

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U.S.C. § 2. At the end of each Term, all cases pending on the docket are continued to the next Term.

Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U.S.C. § 6103.

Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

7th Circuit Court of Appeals
(Indiana, Illinois & Wisconsin)
http://www.ca7.uscourts.gov

Hon. Joel M. Flaum, Chief Judge
Hon. William J. Bauer
Hon. Richard D. Cudahy
Hon. Richard A. Posner
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U.S. Court of Appeals
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219 S. Dearborn Street
Chicago, IL 60604
(312) 435-5850

The Forum January 2005

Recent Supreme Court Rulings:

CIVIL RIGHTS & CONSTITUTIONAL LAW

• Termination Does Not Violate Rights


Opinion Delivered PER CURIAM

Summary: Respondent, a former police officer, sued petitioner, City of San Diego, alleging that the city violated the officer's right to freedom of speech by terminating the officer for making and selling videotapes showing the officer engaged in sexually explicit acts.

Upon the grant of a writ of certiorari, the city appealed the judgment of the United States Court of Appeals for the Ninth Circuit which held that the officer engaged in protected speech. The videotapes showed the officer stripping off a police uniform and masturbating. The officer sold the videotapes through an Internet site with a user profile identifying the officer as being employed in law enforcement. In spite of city orders to the contrary, the officer continued to market the videotapes, and the officer was terminated.

The officer contended that his off-duty conduct was unrelated to his employment and constituted protected public employee speech. He argued that the termination was a violation of his First and Fourteenth Amendment rights to freedom of speech. The U.S. Supreme Court held, however, that the city was justified in terminating the officer whose conduct brought the mission of the city police department and the professionalism of its officers into serious disrepute.

While the officer's speech did not relate to the workings or functioning of the police department, the speech was nonetheless clearly detrimental to the department. Further, the officer's expression did not qualify as a matter of public concern and thus the city, as a public employer, was entitled to restrict the officer’s speech to allow proper performance of the city's public functions.

The judgment of the 9th Circuit finding that the officer's speech was protected was reversed.

Recent Cases Denied Certiorari:

PATENT LAW

• Supreme Court to Hear Drug Patent Dispute

Merck KGaA v. Integra Lifesciences I, Ltd. 2005 U.S. LEXIS 614 (U.S. 2005)-03-1237
(Jan. 7, 2005).

Summary: Justices agreed on Jan. 7, 2005, to hear a dispute regarding how far a patent can go to thwart a rival drug company's efforts to conduct research. The Court will decide whether a competitor's patent prohibits Merck KGaA from beginning research on an anti-cancer drug, even if the drug could not be marketed until the patent expired. The patent, held by Integra Lifesciences, is due to expire in 2006.

Integra sued when Merck began to set up experiments, a first step toward a decade long process. Merck argues that it is entitled to the head start based on a Food and Drug Administration (FDA) exemption for studies that are reasonably related to a future drug application. Merck contends that a win would promote the innovation of cutting-edge treatment while still respecting patent holders. The DC Circuit Court of Appeals ruled that the FDA exemption did not apply to Merck’s research and that it was Congress’ intent to promote only the growth of generic drugs.

CIVIL PROCEDURE

• Supreme Court Denies to Hear WorldCom Suit

(Jan. 10, 2005).

Summary: The Supreme Court let stand a lower court ruling that said that the California Public Employees’ Retirement System (CalPERS) must proceed in federal court, rather than state court, with its securities fraud lawsuit on behalf of WorldCom, Inc. bondholders. At issue were two federal statues, which disagreed on which court should hear the litigation after WorldCom, Inc. had announced major accounting problems in 2002.

The 2nd Circuit Court of Appeals ruled that the lawsuit should be in federal court because it relates to a bankruptcy case. As a result, the suit brought by CalPERS was consolidated with separate class action filings in New York against WorldCom, Inc., its officers, bond underwriters, directors, accountants, and research analysts by investors who lost billions when WorldCom became insolvent in a multi-billion dollar accounting scandal. CalPERS sought to keep its suit separate as it argued it was not related to the bankruptcy. CalPERS prefers to seek relief in state court for bondholder-loss claims because of a lower standard of proof for securities fraud claims.

U.S. Supreme Court Oral Arguments:

CONSTITUTIONAL LAW

• Can States Ban Certain Wine Parcels


Summary: The Supreme Court heard oral arguments on Dec. 7, 2004, regarding the scope of state power to regulate alcohol. The Court heard three consolidated cases examining whether Michigan and New York have the authority to enforce state regulations that favor in-state wine producers.

As a background, when Prohibition was repealed in 1933, state governments were granted the authority to ban alcohol within their boundaries. The passage of the
DOCKET

21st Amendment gave states, acting alone, the power to regulate alcohol within their borders. Thus, if the dispute involved any other legal product, the answer to ban such products from entering their borders would be no. The Constitution’s commerce clause establishes and protects a national common market, which mandates free interstate trade. Alcohol has a special status within the Constitution and the 50 states have 50 different ways of regulating alcohol. The issue is how far the power of the 21st Amendment extends.

On one side are 33 states, including Michigan and New York, which argue that the 21st Amendment gives them almost total control over alcohol, including the authority to enforce regulations that create hardships on out-of-state alcohol producers.

On the other side are producers, potential customers and free trade advocates. They argue that although there is state power to regulate alcohol, the power must be evenhandedly distributed so that whatever restrictions or benefits the state applies to in-state producers also equally restrict or benefit out-of-state producers. Millions of dollars are at stake for the liquor industry if the justices strike down state restrictions that discriminate against out-of-state producers, which could also mean lower prices and a greater range of products for consumers.

States oppose also on the notion that minors may gain easier access to alcoholic beverages. Some states also argue that it would make it harder to police the alcohol industry and collect taxes on alcohol sales.

The New York and Michigan cases involve challenges by out-of-state wine producers who want to be able to sell and ship their products directly to consumers in these states. These states currently prohibit direct shipments from out-of-state wineries, requiring that shipments must first pass through in-state licensed alcohol dealers. Currently, 24 states have laws similar to New York and Michigan that prohibit direct shipments from out-of-state wineries.

INDIANA SUPREME COURT:

PROPERTY LAW

* Rezoning Request Denied

Borsuk v. Town of St. John, 2005 Ind. LEXIS 1 (Ind. 2005).

Opinion delivered by Chief Justice Shepard

Summary: Chester Borsuk, Plaintiff, requested that the Town of St. John, Defendant, rezone the half of his lot presently designated as residential so that the whole parcel would be commercial. Borsuk sought to turn his entire land parcel into a gas station. Fifty-two people filed a petition with the Plan Commission in opposition of Borsuk’s request.

At the public meeting, the public complained of various issues with the rezoning, such as traffic congestion and safety of nearby school children. Borsuk replied that every lot on his block is commercial with the exception of the residential half of his lot.

The Plan Commission’s findings indicated that the rezoning would not promote the public health, safety, comfort, morals, convenience, and general welfare of the Town. Additionally, the Plan Commission determined that the proposal would not conserve property values. The Town Council adopted the Commission’s recommendations and rezoning was denied.

Borsuk filed a petition alleging the Town’s refusal of rezoning was unconstitutional, taking, arbitrary and capricious. Borsuk moved for summary judgment and the court entered judgment for the Town. The Court of Appeals reversed and ordered rezoning for Borsuk.

The court held that Indiana municipalities may establish an advisory plan commission to make recommendations to the legislative bodies. The plans created by these commissions promote efficiency and economy in the land use development process. Comprehensive plans have numerous benefits and play a central role in zoning and help to allocate land use with consideration given to a community as a whole.

The Indiana Code requires that the plan commission and legislative body “pay reasonable regard to” the comprehensive plan in preparing and considering proposals to adopt initial zoning ordinances and amendments. Ind. Code Ann §§ 36-7-4-602, 603 (West 1997). These bodies must also consider other relevant factors, such as use for land, property values and reasonable growth and development. The Indiana Code enumerates factors to be considered.

The court found that the Appeals court interpreted the statute to mean that the municipality must comply with the comprehensive plan’s vision unless there is a compelling reason otherwise. Instead, the court found that the statute should be interpreted such that a municipality must consider all enumerated factors and balance each to make a determination.

The court found that the evidence indicated that the Town weighed all of the statutory factors and determined against the rezoning. The court contended that the Town’s balancing of factors suggested a permissible deviation from the comprehensive plan and the public concerns provided a rational basis for denial, which do not make the decision arbitrary and capricious.

Borsuk contended that the Town’s comprehensive plan contemplates commercial zoning for the entire lot and argued that the denial of his request by the Town was arbitrary and capricious. However, the court held that although the comprehensive plan is an important ground, it is not the sole ground the Indiana Code indicates such decisions should be made.

The decision of the trial court was affirmed.

The Docket is a regular feature of The Forum. If you know of any recent and interesting cases and would like to have them appear in this space, e-mail your ideas to forum@valpo.edu
FROM PAGE ONE

LAW WEEK
continued from page 1

in style this year. Joe is being delivered to Radisson in Merrillville in a 72 passenger Limo-bus. The bus is called the Chicago Pleasure-Measure.

The number one reason people tell me why they aren’t going to Barrister’s Ball is they don’t have a date. I have three answers to that statement. (in reverse order) 1) HELLO! This is NOT law school prom people, you don’t need a date. 2) You’re likely to have more fun without a date. 3) Lastly, you’re likely to have more fun without a date.

Barrister’s Ball runs from 7:00 p.m. to midnight and tickets are $35. The night room at the Radisson includes a sweet dinner and a generous bar. The reignining champs, Coaches of the c/o 2005, will defend their twice-won title at the Bar-a-Thon. Tickets for this event at Inman’s are $40 for teams of eight.

While none of us are freshman, I’m certain all will enjoy Brian Vander Ark and members of The Verve Pipe at Cronies Charhouse in Kouts on Fri., Feb. 4th.

SBA has arranged for law students to have a private room with appetizers. But that’s not all. Law students can close their wallets because we’ll have an open bar from 8:30 to 12:30.

Our package affords us draft beers, including Guinness, and drinks, including Bacardi. Tickets are very limited and cost a mere $4. All proceeds will be sent to the Red Cross for Tsunami relief efforts. Now relax about the 8 mile drive to Kouts. SBA is arranging to have 14 passenger vans running a continuous loop from Wesemann Hall parking lot to Cronies.

Law Week is a departure from ‘business as usual.’ Watch for SBA posters this week with more specific info.

SEEGERS
continued from page 1

Practices and the Irony of Missouri v. Seibert.”

Dean Bruce Berner, Seegers professor of law, will serve as moderator for the discussion.

The lecture is named in honor of the late Edward A. Seegers, a Chicago attorney who was generous in his extended support of VU, including contributions for scholarships and buildings. He also endowed a law school professorship in honor of his parents.

BAR ASSOCs.
continued from page 2

providing them with all the benefits given to regular professional members.

Signing up is easy and can be done at the various State Bar Association websites, most of which are located at http://www.palid.com/statebar.htm.

In order to join the Indiana State Bar Association, visit www.inbar.org. To join the Illinois State Bar Association, visit www.illinoisbar.org.

If you have any questions about the Indiana State Bar Association, please send an e-mail jonathan.pasky@valpo.edu.

For questions about the Illinois State Bar Association, please send an e-mail to christopher.stemler@valpo.edu or marina.ricci@valpo.edu.

“Not Typical Bar Food!”

Steaks, Seafood & Famous Burgers!

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Cronies
Charhouse
& Grill

Live Bands Every Week!

Fridays:
No cover with VU ID

Fri., Jan. 21
LONESOME JUBILEE
(Rock & Country Covers)

Fri., Jan. 28
SUPERWONDER BAND

Fri., Feb. 4
VERVE PIPE’S
Brian Vander Ark w/special guest COSMIC SLOP

Fri., Feb. 11
SOUND DEZIGN
(Karaoke & DJ)

Friday, February 4:
VUSL LAW WEEK FINALE
Close out this year’s Law Week with a party!!!

THE VERVE PIPE’S
Brian Vander Ark with accustical sets & covers from Special Guest COSMIC SLOP

Free food and drink for law students 8:30 p.m. - 12:30 a.m.

Music starts @ 10:00 p.m.

Sat., Jan. 22
WESTERN HAZE
(Country)

Sat., Jan. 29
SHOWDOWN

Sat., Feb. 5
NAWTY
(Formerly SADIES CAGE)

Sat., Feb. 12
MACK’S CREEK BAND

310 S. Main St., Kouts, IN (219) 766-3172
Where the hell is Kouts? (Just 10 minutes south of Valpo on Hwy. 49)

ARIZONA

Special orders.
Leather and shoe repair.
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We can bring your old Birkenstocks back to life.

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Property for Rent:
Large 2 Bdrm $600/mth
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Heat & Water Furnished
Spacious Downtown Living with Old Style Charm
contact Buck’s for more information.

From Page One
Clockwise from bottom, left: (1) Keynote speaker Chris McNair, a community leader in Birmingham, Ala., speaks at the opening convocation in the Chapel. (2) Dean Jay Conison and law librarian Naomi Goodman applaud McNair after the question and answer session at the MLK luncheon. (3) An MLK Day Program before the start of the convocation. (4) Dance production in the VUCA, put on by VU students and outside dance companies. (5) Scene from the “I Have a Dream” dance. (6) Shirt design from this year’s “Remember the Dream: MLK 2005” events. (7) Chris McNair with 1L Zach Butler.

Photos by Danielle Guerra
Any Legal Writing tutors available?

In August of 1949, the language of the Third Geneva Convention "Relative to the Treatment of Prisoners of War," was solidified and signed by representatives of nations present for its creation. Since that day, 192 states have become party to the agreement set forth by the Geneva Conventions.

The Articles of the Conventions speak to a desire to keep the horrors of war at bay, to retain humanity in the midst of death and destruction, to maintain the rule of law that, in the most desperate of times, can be all that shields humans from their animal nature.

These are the ideas that Alberto Gonzales, George W. Bush's nominee for Attorney General, called "quaint" and "obsolete."

Should it really be that much of a surprise that Gonzales is now being called the "Architect of Torture" for framing a government policy that all but deems torture as a means of extracting information from prisoners of war? A quick look at his record shows that his total disregard for human rights and the legal protection of civil liberties goes back quite a while.

Alberto Gonzales first became a Bush crony in 1994, when he was named general counsel to the then-Texas Governor. He became Texas Secretary of State in 1997 and was named to the Texas Supreme Court in 1999—both appointments made by Governor Bush.

Now, a governor is expected to rely heavily on the counsel of his or her cabinet and staff, and documents recently extracted from the Texas State Archives show that Gonzales was trusted with life-or-death decisions—literally. On 153 occasions, Governor Bush was called upon to serve as the final judge in a death row inmate's appeal. He chose death for 152. In 57 of those cases, Bush relied almost solely on briefings written by Alberto Gonzales.

What's wrong with that, you might ask?

You see, Gonzales' memos have been described by those who have since had access to them as "shabby," "heavily biased against clemency," "appallingly incomplete," and "designed, above all, to facilitate the governor's predisposition for execution."

The briefs ranged from 3 to 7 pages in length and repeatedly omitted details of mitigating evidence, ineffective or incompetent counsel and seriously questionable legal tactics on the part of various prosecutors.

Gonzales' briefing on one case, for example, never mentioned that the defendant's attorney literally slept through most of the trial. In another brief, the fact that the defendant was mentally retarded was not included. Whether or not the revelation of these facts would ultimately have made a significant difference—and given Bush's penchant for pulling the switch, it probably wouldn't—one thing is clear: Alberto Gonzales never took Legal Writing with Professor Stuart.

Whether Alberto Gonzales has "respect for life" is a vague question with only a dubious place in confirmation hearings, but President Bush has nominated Gonzales to the position of United States Attorney General, one of the highest posts a U.S. lawyer can aspire to hold, and many people predict that Gonzales will be nominated to fill any upcoming vacancy on the Supreme Court.

Whether Gonzales has a respect for law, therefore, and a respect for law's place in the protection of human dignity and due process, is a matter of grave concern and importance.

Katherine Lord is a 3L at VUSL. She can be reached at katherine.lord@valpo.edu
Dealing with a rationalization of suicide

I've been on a Chicago School bender as of late.

For those of you not familiar with this brand of legal philosophy, it uses economics to construct a full theory of the law. (To this point I suggest that you all take Law & Economics with Professor Brietzke if ever possible.)

Anyway, my morbid train of thought brought me to an area of the American legal system that most of you probably never think about—civil commitment. It is the policy of every state to commit individuals determined to be a threat to themselves to institutionalization. The obvious purpose is to prevent them from killing themselves. My question is simple: why?

Before I expound, let's reflect on the concept of economics. It is the study of how rational humans satisfy their inextricable wants with scarce resources. It is assumed that a "rational person" seeks to satisfy his or her desires in all that they do.

Rousseau put simply that we seek pleasure and avoid pain. What constitutes pleasure or pain is subjective, and no set standard for society could ever be established. Therefore, if a man seeks to end his own life, he is doing so because he sees it as the best recourse to, if not find pleasure, at least to avoid pain.

Many of you will say that wanting to end one's own life is inherently irrational. I ask you all to give me one reason why that is the case.

The dogmas of the Enlightenment were built with the postulate that all human beings inherently seek to protect their own lives. However, their supporting evidence is scarce. It's true that we rarely observe epidemics of suicide because people find it to be a good idea, but there are other explanations that would take way too long to lay out for this article. Wholly proving or disproving that would require more paper than clear cutting Minnesota could provide, but that doesn't really matter for this discourse.

Besides, rationality is a subjective term in this context. So long as it can be presumed that people act to serve their perceived self-interests, they can be said to be acting rationally.

I ask again, why is it the policy of the states in the Union to prevent a man from seeking to satiate his desires? It may seem extremely macabre, but the laws of the land permit the American people do just about anything else to themselves.

Watch an episode of either Jackass or Wildboyz for further study. Besides, how much money is wasted on keeping people alive that aren't thrilled with the experience?

Doesn't it make more sense for society to use its scarce resources to produce happiness for those who find it in life than to waste those scarce resources on imposing perceived misery on those who want to die? It seems to make about as much sense as advocating a public cattle fund to force-feed steak to vegans.

As a Lutheran I would have serious objections to sitting idly by as people find creative ways to kill themselves. But, at the same time, I also believe that every man, woman and child should reap what they sow.

I don't anticipate any grand policy shifts anytime in the foreseeable future (that is unless Hillary is elected in 2008), but I think that it might be a worthwhile intellectual exercise to ponder.

In the meantime, in the immortal words of Number One, let's get drunk and play ping pong!

Ryan Adler is a 3L at VUSL. He can be reached at ryan.adler@valpo.edu
Student Profiles

By Danielle Guerra, Photo Editor

3L

Michael Rusch

Hometown: Chicago, IL
Undergraduate School: Indiana State University
Undergraduate Major/Minor: Criminology / Psychology

Family: Dad: James, Mom: Angeline, Brother: Jim

Why law school? When I was working as a probation officer, I don’t know how many times I said, “if this guy can make it thru law school and pass the bar, I know I can.”

Why Valpo law? Harvard said they didn’t have a need for a 6’4, 250 lb idiot.

What kind of law would you like to practice? Bankruptcy or real estate. Really. I live by the motto “A man has to eat,” so I will take a job doing anything at this point.

Favorite present you gave/received for Christmas? Gave: I don’t believe in giving; only receiving. Received: Chicago Bears jacket- I’m a diehard fan!

In your opinion, what is the best way to aid the tsunami victims? Should we be more concerned with the California mudslides? While drinking should never be done to excess, victims will be limited if a proper tsunami is made. My favorite recipe is as follows:

1 oz Captain Morgan Original Spiced Rum
1/2 oz Malibu Coconut Rum
1/2 Myer’s Dark Rum
Fill with Pineapple juice
Grenadine

And like the man James Bond “shaken not stirred” I have never had a California Mudstone but I do enjoy the type made with Bailey’s, Kahula, and Vodka. Seriously, if you feel that you need to help as many as you can but you have to take care of your own first.

How did you celebrate the New Year? My attorney has advised me not to answer this question.

What are your thoughts on the break up of Jennifer and Brad Pitt? She called me after hearing I was voted Valpo Law’s Sexiest Man 2005 and told me she had separated as soon as school is over I’m heading out to California to see if we can make it work.

Any advice for 1L students? A wise man by the name of Henry Rollins once said, “You either read or you don’t, you can’t catch up!”

“You know gang, when you’re a superhero, you never know where the day will take you. You may find yourself halfway around the world in the shark-infested waters of true-to-life living. Or you may find yourself going down to the store for a lozenge. You can’t know, can you? No! You gotta ride that wave, you gotta suck that lozenge! ‘Cause if you don’t, who will?” - The Tick

What’s your New Year’s resolution? I want abs - Not sure if I can do it, but we will see! Food is a tasty mistress.

2L

Doug Shaw

Hometown: Bradford, PA
Undergraduate School: University of Pittsburgh
Undergraduate Major/Minor: History-Political Science(B.A) / Elementary Edu.

Family: Daughter-Caroline, Mother-Sally, Father-Parker, Brothers-Chris and Gordon, Sister-Patricia

Why law school? It was the best fit taking into consideration what I wanted out of life for my daughter and myself and what I wanted to give back to society.

Why Valpo law? It’s always been a dream of mine, and I realized my psychology degree on its own was not going very far.

What kind of law would you like to practice? Dabble in criminal law.

Favorite present you gave/received for Christmas? I recently worked on a criminal matter in Federal Court and found that area of law to be both interesting and challenging. I also have a significant interest in Family Law.

What kind of law would you like to practice? As a last-minute stocking-stuffer, Santa picked up some Silly Putty for my daughter. After opening her presents, it was the Silly Putty she played with for the rest of the day reminding me that sometimes those little things that I think are insignificant mean the most to someone else.

In your opinion, what is the best way to aid the tsunami victims? Should we be more concerned with the California mudslides? The initial need appears to be cash. Beyond that, sharing the technology that the United States has for this type of disaster might help reduce the degree of loss. The California mudslides have also been tragic, but this continues to be a problem every year and residents still insist on building homes on hillsides and then ignore warnings to evacuate.

How did you celebrate the New Year? We spent the evening drinking hot chocolate and toasting marshmallows over a campfire in Arizona.

What are your thoughts on the break up of Jennifer and Brad Pitt? While I do have an interest in Family Law, I haven’t paid attention to their situation.

Any advice for 1L students? If you did well your first semester, keep up your level of work and dedication. If you did not do as well as you hoped, now is a good time to start taking some of that advice you thought you didn’t need.

What’s your New Year’s resolution? I try not to wait until January 1st to change the things I know I’m doing wrong the rest of the year.

1L

Tesa Zimmerman

Hometown: Cadot, WI
Undergraduate School: Univ. of Wisconsin-Eau Claire
Undergraduate Major/Minor: Psychology / Society and Law

Family: My parents are Renee and Jim, and I have two older sisters, Anita and Jennifer. Jennifer is married to Jon and I have one niece, Katie, and one on the way! My parents have a small dog, a dachshund named Barney.

Why law school? It’s always been a dream of mine, and I realized my psychology degree on its own was not going very far.

What kind of law would you like to practice? I received an application with a fee waiver. When I visited, the school was very personal and everyone was friendly. I could see myself here, and it seemed much less cut-throat than some of the other schools I was considering.

Favorite present you gave/received for Christmas? The best present I gave was this great doll, Mr. Wonderful, to my sister. He is a very well groomed man carrying a rose, who says seven expressions such as, “Let’s just lie together and cuddle all night.” Unfortunately, my sister was offended by the present, but luckily my niece (who is three) adopted it and carried it around all day.

In your opinion, what is the best way to aid the tsunami victims? Should we be more concerned with the California mudslides? I think the best way to aid the tsunami victims is to fully respond to their needs as they wish, and give generously the resources this country is fortunate enough to have. I think we should be concerned with the needs of people suffering no matter where in the world they are located.

How did you celebrate the New Year? I went up to freezing cold Wisconsin where my friend and I made tiramisu (which turned out to be a bit of a disappointment); I spent midnight dancing with an ex-boyfriend, and finished up the night eating eggs and toast in the bar at 3:30 a.m. What fun!

What are your thoughts on the break up of Jennifer and Brad Pitt? They broke up! Just kidding. I don’t really have an opinion, but last I heard they were trying to have kids; what happened to that?

Any advice for 1L students? As I am a 1L student, I am in no position to be giving advice…in fact, I may need some myself!

What’s your New Year’s resolution? To fall madly in love (preferably by Valentine’s Day!!)
Boston baseman keeps “his” ball

A
llegedly, possession is nine-tenths of the law. If this ancient prop-
erty maxim is held true, Boston Red Sox backup first baseman Doug Mientkiewicz will be a lucky man.

Mientkiewicz, who was traded to the Red Sox just prior to the July trading dead-
line, has kept the baseball that made the last out in the final game of the 2004 World Series against the St. Louis Cardinals. He obtained control when the pitcher tossed it to him making the third out of the ninth inning.

After the game, Mientkiewicz had the ball authenticated and placed in a safe box. He has also been quoted as saying the ball was his retirement fund. Presumably he is aware of the ball's value.

To no surprise, the Red Sox would like Mientkiewicz to return the ball to the organization, where it arguably belongs.

Fighting over balls is not uncommon in baseball. A similar situation occurred a few years ago when two fans claimed the right to a baseball hit by Barry Bonds from his 73rd record-breaking homerun.

Fan Alex Popov brought suit against Patrick Hayashi for conversion and tresp-
ass to chattel.

The baseball hit by Bonds initially landed in Popov's glove. Popov, who was subsequently forced to the ground by a mob of fans, dropped the ball out of his glove. Immediately thereafter, Hayashi saw the loose ball, picked it up and put it in his pocket.

Once Popov saw Hayashi with the ball, Popov articulated his relief and attempted to take it back, but to no avail.

Hayashi would not relinquish the ball and was thereafter relocated by security to a separate area of the stadium.

The court acknowledged the custom and practice of the fans in the stands creates a reasonable expectation that a fan will achieve full control of a ball prior to a claim of possession. Also, the fan must retain control of the ball after any accidental contact with other fans. Unfortunately for Popov he failed to do so. Because Popov neither had title, possession, nor any right to possession of the baseball, his claim of conversion failed against Hayashi.

On December 18, 2002, Judge McCarthy of the Superior Court of California, city and county of San Francisco, ruled via the principle of equitable division, both Hayashi and Popov had an equal and undivided interest in the ball and as a result, the ball must be sold and the proceeds divided equally between the parties. Amid the several definitions of possession, the court finally took note that possession requires physical control and the intent to reduce the property to one's possession. Therefore, because both men intended to possess the ball while each was in physical contact with it, the issue was one of legal quality of the claim of the baseball.

The baseball was expected to fetch up to two million dollars but was eventually sold for a mere $517,000. Even Hank Aaron’s 755th homerun ball was worth more when it sold for $650,000. After taxes and attorneys' fees, Popov and Hayashi will be lucky to gain anything from this experience.

Back to Boston. Who else has an interest in the baseball?

Obviously Major League Baseball has an interest in retaining the ball as a memento of the Red Sox finally winning the World Series. Additionally, because the game was played in St. Louis, the ball arguably belongs to the Cardinals. Presumably it is customary that the Cardinals, being the home team, furnished the baseballs for the game and may show title by this implied custom or in the alternative a purchase receipt of the baseball. However, the Cardinals organization may not want to observe the fact it was the team that lost to the “cursed” Red Sox in four consecutive games.

Likely though, it will come down between the Red Sox and Mientkiewicz. If the honorable, albeit fictional Judge Elihu Smails were to order the ball to be sold and the proceeds to be split, as is what Judge McCarthy declared vis-à-vis the Bonds ball, would Mientkiewicz just give up the ball in order to preserve its integrity for public viewing? After all, he was quoted as saying he wants it available for the fans to see. Why not send it to Cooperstown?

Or, if push comes to shove would the Red Sox dare claim Mientkiewicz is a thief?

Conceivably yes. Let’s put this situation in context. Mientkiewicz, a typical starter in Minnesota, was traded to the Red Sox to be used as a backup first baseman. He primarily played the last couple innings of a game. In addition, Mientkiewicz, who has frequently expressed his unhappiness in playing part-time, has one year left on his contract with the Red Sox.

Further, the Red Sox have an option to renew Mientkiewicz’s contract in 2006 but have hinted at the possibility of making a trade prior to exercising the option. Perhaps this discontent illustrates the lack of love that exists behind the scenes between Mientkiewicz and the Red Sox and a possible reason why Mientkiewicz would hold on to the ball. Perhaps too the Red Sox are circulating rumors regarding the trade to use as leverage against Mientkiewicz.

The Restatement of Torts defines conversion as “an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.”

The Red Sox will likely contend that where an employer puts his employee in charge of his property, the employer still has possession, albeit constructive pos-
session, whereas the employee has mere custody. By saying the employee has only custody, the law allows employees to be convicted of conversion of the employer’s property.

However, Mientkiewicz will likely assert a claim of right. One may take the property of another honestly but mistakenly believing that it is his own property or that it is no one’s property or alternatively that the Red Sox owned it but he has permission to take it as he did. These arguments would demonstrate he lacks the requisite intent to steal for conversion.

In addition, it is customary for a player to keep balls and bats from significant milestones in his career. Thus, as long as Mientkiewicz claims an honest belief and reveals the openness of the taking as well as the reasonableness of belief and custom of the taking, he will likely prevail.

Bob Marrs is a 2L at VUSL. He can...
In Memoriam

Rich,

So much of our success is due to your diligent and generous efforts.

You have quietly blessed many. Our greatest gratitude for all you have given.

Your legacy lives on.

Richard Blennerhassett (1948 - 2004)
Associate Admin. for Technology, VUSL

The FORUM Staff

Legal Trivia

1) What U.S. Supreme Court Justice signed the Declaration of Independence?

2) What U.S. Supreme Court Justice practiced as a doctor for nine years before giving up medicine for law?

3) This famous attorney's list of clients include Todd Bridges and James Brown.

4) Richard M. Nixon attended this institution before moving on to Duke University to obtain his law degree.

5) Bill Clinton attended this law school.

6) He topped off his prestigious career representing the defense in Tennessee v. John Scopes (The Monkey Trial).

7) What state has the permission of Congress to subdivide into five states with the consent of its own legislature?

8) What justice was half-brother to a slave?

9) Why did President Taft veto the admission of Arizona to the Union in 1910?

10) The number of seats on the Supreme Court is determined by Congress. Since 1869 it has been the present number, 9. What was the fewest number of authorized seats? The largest?

Fresh from the holiday break, law students compare their notes to the newly posted 2005 VUSL roster to find out who wasn't invited back.