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When Judge Guido Calabresi was the dean of Yale Law School, he had a reputation for gently but pointedly asking faculty candidates and colleagues, “What is your idea?” Underlying this question was the notion that every noteworthy teacher-scholar should be animated by the power of an idea, or a set of ideas, that can energize the classroom and stimulate the creation of new knowledge. The ideas might be theoretical or practical, liberal or conservative, popular or provocative; but, in their totality, they would demonstrate why great law schools are robust places where thought and action intersect.

Here at the University of Idaho, ideas thrive among our law faculty. Although I cannot express my colleagues’ ideas as fully (or as well) as they themselves could, please allow me to offer a brief introduction.

Mark Anderson has been exploring the impact of antitrust laws upon the pursuit of ecosystem management goals; he also has analyzed the conceptual basis (direct or derivative) of the liability of nations for environmental harms in neighboring states. Ben Beard, our associate dean, is working with a United Nations commission to determine whether electronic commerce can best be expanded internationally through a laissez-faire approach or through the uniformity of a regulatory system. Elizabeth Brandt is addressing flashpoint issues generated by the tension between national security and civil liberties; she also is examining the interests of children caught up in multicultural or high conflict domestic disputes.

Dennis Colson is working on the current status of state constitutional law in the American federal system as well as on the historical record, and present significance, of encounters by the Lewis and Clark “Corps of Discovery” with the Nimiipuu (Nez Perce people). Barbara Cosens is using complex, multi-stakeholder mediation as a tool for shaping public policy on water rights in the western United States. In a clinical setting, Pat Costello is finding ways to make the legal system more responsive to the problem of domestic violence and to the interests of victims in criminal cases. Lee Dillion is investigating whether aspirational standards of professional conduct significantly affect lawyer behavior, either in handling particular matters or in making career choices.

Dale Goble is exploring issues at the interface of law, policy, and science, including local-level arrangements by which fragile ecologies and endangered species can be protected, as well as ways in which public policy debates on biodiversity issues can be better informed with empirical data. John Hasko, our law library director, is using the history of conflict between cattle and sheep growing interests as a window through which to examine the process of shaping public lands policy in Idaho. Craig Lewis, now working a half-time schedule, continues to explore issues in the rules of evidence, including the role and rationale of “residual” hearsay exceptions.

Maureen Laflin, director of our clinic, and founder of the Northwest Institute for Dispute Resolution, is addressing the use of mediation in unfamiliar contexts such as criminal law; she also is developing the concept of... theoretical or practical, liberal or conservative, popular or provocative... they would demonstrate why great law schools are places where thought and action intersect.

... Debora McIntosh, Laurie O’Neal and visiting instructor Fred Leatherman, all of whom teach legal writing and research, are perforce engaged in a continuous inquiry into best practices for enabling first-year students to begin “thinking [and communicating] like a lawyer.”

Jack Miller is developing a new approach to tax teaching through an upcoming textbook, in which he and a co-author will combine substantive tax law with critical analysis of tax policy, and will integrate tax law with accounting and business planning.

Russell Miller has been studying the application of international human rights law to Native American issues; he also is exploring the role of “centrism” in federal judicial appointments, with a focus on the selection, and writings, of Justice Ruth Bader Ginsburg.

Doug Nash has been on leave in 2005-06 to direct a national Indian estate planning project, dedicated to the idea of preserving native interests and control of homelands held in trust by the United States for tribal members, as those lands pass from one generation to another. (The early success of the project may cause Doug to con-
Mr. Hoopes echoed Chief Justice Schroeder’s assessment that the landscape of judicial selection has undergone significant change. He also explained that the principle of judicial independence, which he described as the most important issue now confronting the legal profession, is “nothing new to the common law.” It dates back, he said, to 1689 and the passage of the so-called “English Bill of Rights,” which forbade the King from establishing his own courts or acting as a judge himself. Not having the protection of an impartial judiciary, said Mr. Hoopes, is one of the reasons the American colonies broke off from England.

Explaining that special interests have decided that the most effective way to put forth their agendas is not through legislative action but through judicial selection, Mr. Hoopes described two measures that will help to ensure judicial independence. One is to make the results of Bar surveys available to the public to assist them in determining the worthiness of judicial candidates. Another is to establish campaign conduct committees to educate candidates on what is inappropriate behavior, to determine when bad conduct occurs, and to encourage good conduct agreements. It is also important, he said, to educate the public about the nature of the judicial branch. He concluded by saying that it is “imperative that judges owe allegiance only to the rule of law and to the ascertainment of truth, through which justice will result.”

Two state supreme court justices and an Idaho trial lawyer joined Dean Don Burnett in a panel discussion on the timely topic of judicial independence on Thursday, October 20, as part of the College’s 2005 Sherman J. Bellwood Lecture. Those participating in the discussion held in the Law Courtroom were Bellwood Lecturer Justice Alan C. Page, Minnesota Supreme Court; Idaho Chief Justice Gerald Schroeder; and attorney Fred Hoopes of Idaho Falls, a member of the Idaho State Bar Judicial Independence and Integrity Committee.

The program began with Dean Burnett welcoming the speakers as well as several special guests in attendance, including University of Idaho President Timothy White, Idaho Supreme Court Justice Linda Copple Trout, and Jay Sturgell, President-Elect of the Idaho State Bar. Dean Burnett also introduced Justice Page, describing him as a “disciplined, thoughtful, and reflective jurist” committed to preserving the independence and integrity of the nation’s state judiciaries.

While the role of a judge, said Justice Page, is to provide equal justice under law, it is “nigh impossible” to be impartial when jurists adopt specific social or political agendas; it is even more difficult in the absence of codes of judicial conduct that preclude judges from speaking out on controversial issues. “If a judge sends a certain message,” asked Justice Page, “how can he be impartial? If a judge cannot set aside his own personal views – cannot rule against his personal preferences – then he shouldn’t be sitting on the bench.”

The “genius” of our political system, said Justice Page, is the way the three branches serve to balance the power of any one branch at a given time. Yet, he said, the judicial branch is different from the legislative and executive branches. Its constituency, he said, is simply the rule of law; lacking any enforcement authority, the “only power the judiciary has is the trust and confidence of citizens.” “Without that,” said Justice Page, “we have nothing. There is no reason for citizens to bring disputes to the courts; they may as well settle them in the streets.”

Like Justice Page, Chief Justice Schroeder also commented on the difficulty of maintaining judicial impartiality in an era of partisan politics. Observing that the “landscape has changed dramatically” since he began his career nearly 40 years ago, Justice Schroeder said that there is now intense pressure for judges to commit to an agenda in order to be selected for their positions. Where personal attributes once determined judicial elections, now it is “hot button” issues, such as term limits and abortion, that drive voters to the polls, he said.
2005 BELLWOOD LECTURE

The Challenge Is to Act

The Honorable Alan C. Page, justice of the Minnesota Supreme Court, presented the 2005 Sherman J. Bellwood Lecture on Thursday, October 20, 2005. College of Law Dean Don Burnett welcomed the large audience gathered in the ballroom of the University of Idaho Student Union Building and at a television viewing site in the building’s Borah Theater.

Dean Burnett also introduced the members of the Platform Party. Representing the University of Idaho was President Timothy White who thanked Justice Page for spending time with the UI community. David Hensley ’02, Legal Counsel to Governor Dirk Kempthorne, welcomed Justice Page on behalf of the Governor and the State of Idaho. The other members of the Platform Party were Douglas Baker, University of Idaho Provost; Paul Agidius, a Moscow attorney and member of the State Board of Education; Jay Sturgell, President-Elect, Idaho State Bar; James Whistler, Chair, Law Advisory Council; Taylor Mossman, President, Student Bar Association; Jane Chi, President, Multicultural Law Caucus; and Gerald Schroeder, Chief Justice of the Idaho Supreme Court who introduced Justice Page.

Born in Canton, Ohio, in 1945, Justice Page earned his baccalaureate degree in political science from the University of Notre Dame. He went on to what he modestly calls “full-time employment as a professional football player.” In fact, he became a legendary Minnesota Viking, winning the National Football League’s “most valuable player” award as a defensive lineman and earning a place in the NFL Pro Football Hall of Fame. While playing full-time in the NFL, he undertook the full-time study of law, receiving his J.D. degree from the University of Minnesota in 1978.

Justice Page continued in the NFL until 1981, simultaneously practicing law with the Minneapolis firm of Lindquist andVennum. He subsequently became an Assistant Attorney General for Minnesota and, in 1992, he was elected to the Minnesota Supreme Court—the state’s first African American to hold this high office. He has been re-elected twice, basing his candidacy each time on legal merit, judicial temperament, and work ethic.

Justice Page has served on the boards of numerous service organizations and has been the recipient of numerous humanitarian and civic awards, including the Aetna “Voice of Conscience” Arthur Ashe, Jr., achievement award. He helped establish the Kodak/Alan Page Challenge, a nationwide essay contest encouraging urban youth to recognize the value of education. He founded the Page Education Foundation, which has helped more than 2000 youths attain a post-secondary education—requiring them, in return, to spend a minimum of four hours per month teaching, tutoring, or mentoring younger students.

Thanking Justice Schroeder for his kind introduction, Justice Page spoke to the issues of “education, character, ethics, and race.” He began by sharing an anecdote from his own legal education. When called upon one day in his first year contracts class, Justice Page said his mind went blank, “and it stayed blank” to the point of his having “momentary empathy” for those quarterbacks he’d been chasing for a living.

“All of us,” said Justice Page, “have the ability to determine not only our personal but also our national character. If we are to change our character as a nation—each of us individually—must change.”
He eventually did recover, and this experience, he said, taught him three valuable lessons: that preparation is critical to success, that sometimes we create our own greatest obstacles, and that even when our fears cause us to stumble, good preparation will pick us up.

Yet, said Justice Page, specifically addressing the law students present, what you learn in law school – the basic skills of lawyering and the knowledge to practice law – may not prepare you “morally or ethically for the world in which you will practice your new profession, a world where your judgment, your beliefs, and your moral fiber will be tested again and again.” In illustration Justice Page drew from his own experience as a practitioner when he began to realize that, while the law is often about righting wrongs, it is also a business in which “money can become an all-consuming concern.”

Justice Page also advised the students that they would be “faced with questions of professionalism and civility” and that the “lack of professionalism and civility, even when not a violation of any rule, puts lawyers and the legal profession in a bad light.” Citing abusive litigation tactics, a sense of mean-spiritedness, and a lack of courtesy among lawyers as examples of a decline in our national character, Justice Page urged those present to take responsibility for who they are and for what they do. “People of character,” he said, “don’t blame others.”

Admitting that it takes strength to resist the “pressures and temptations that seduce us to make the easy choices rather than the right choices,” Justice Page explained that strength has less to do with physical stature than with the belief that “each one of us has an obligation to act in ways that build, rather than diminish, our character and the character of those around us.” To do this, we must keep our promises, be honest and trustworthy, play fairly, tell the truth, treat others and ourselves with respect, and make decisions with other people in mind. “All of us,” said Justice Page, “have the ability to determine not only our personal but also our national character. If we are to change our character as a nation—each of us individually—must change.”

Justice Page then moved to the issue of race in the United States, putting it in the context of what “seems to be an increasingly violent world.” He said, “There is the violence of guns and gangs but also the violence of hunger, homelessness, drug and alcohol abuse, intolerance, and hatred.” Sadly, he added, there is hatred based “not only on race but also on gender, age, ability, and disability” and that “this violence continues to have a disproportionate impact on people of color.”

“Clearly,” said Justice Page, “some things have changed for the better. Having taken down the ‘Whites Only’ and ‘Colored Only’ signs of my youth, I no longer have to sit in the back of the bus or drink from a separate fountain.” Yet despite legislative remedies, such as the Voting Rights Act of 1965, today, said Justice Page, “far too many African-Americans feel they have no reason to vote. Our society is a far cry from Rev. Martin Luther King, Jr.’s ‘promised land’ of racial equality.”

The existence of inequities, said Justice Page, can be found in the criminal justice system, “which seems more
College of Law
Turns Small Change to a Big Purpose

Like individuals across the nation, the staff, students, and faculty of the College of Law responded to the aftermath of Hurricane Katrina in whatever way they could. Staff members Sande Schlueter and Susan Troyano organized a “small change” relief fund that netted over $2,000 in donations from faculty, staff, and students. The total donation of $2,180.50 made to the University of Idaho Hurricane Katrina Relief Effort included $1,400 contributed by the members of Professor Richard Seamon’s Administrative Law and Procedures classes and proceeds from the sale of organic produce from the garden of student Anna Lim-Mikkelsen.

These amounts did not include all the direct contributions made by the law school community to the International Red Cross, the Salvation Army, the Humane Society of the United States, the Bush-Clinton Katrina Fund, and other relief efforts. In addition, first-year student Kristina Wilson and members of the International Law Students Association organized a supplies drive for the victims for Katrina that yielded much needed essentials such as sponges, brushes, laundry and dish detergent, garbage bags, batteries, shampoo, toothbrushes, and toothpaste.

Dean’s Message, continued from page 3

of Chief Justice John Roberts while at the Department of Justice, has been examining the availability of tort remedies for torture and the desirability of renewing the USA Patriot Act – particularly those provisions relating to information-sharing between foreign intelligence and criminal law enforcement.

My ideas? Well, as a teacher of professional responsibility and ethics, I am interested in strengthening the nexus between judicial impartiality and judicial independence in the nation’s state courts. And, as a dean, with help from my colleagues, I am considering how we should integrate every lawyer’s call-

Justice Page then cited a report issued by a task force of the Minnesota Supreme Court, which found that “people of color are arrested more often, charged more often, given higher bails, tougher pleas bargains, less fair trials, and far longer sentences.”

To address the issues of race that confront the nation, Justice Page said “we must begin by looking inward and eliminating our own biases and setting aside stereotypical views of people who are different from us. We need to make sure that our feelings about other people are based on the individual rather than some preconceived characteristic of a racial group.”

Stressing the importance of looking inward to make change, Justice Page connected the tragic events of September 11 with “an inability, on some very basic level, to connect with other people. If we as a nation, and as a world of nations, are going to survive, we need to learn to live with one another.”

In conclusion, Justice Page offered specific actions “to improve the lot of others,” sharing his belief that those who enjoy a privileged place in society are obligated to help those who are less fortunate. Foremost, he said, we must focus on children to help them understand “the importance of education, motivate them in their educational pursuits, and work to provide educational opportunity. Everyone has the ability, the opportunity, and the obligation to make this world a better place. The challenge for each of us is to act.”

 embedded image: Anna Lim-Mikkelsen ’07 sold organic produce from her garden to raise money for the victims of Hurricane Katrina.
Should Torture Be a Tort?
by Richard H. Seamon, Associate Professor of Law

The vast majority of American service men and women, when called to duty in harm’s way, conduct themselves with honor. Unfortunately, as we know, a few do not. Their actions, and the policies implicated by their actions, frame an intriguing issue: Should our legal system treat torture as a tort?

The topic is an uncomfortable one. Yet, it is now clear that the United States has submitted some people detained in the war on terrorism to torture, at least as that term is defined in many circles.¹ The victims of this torture have already begun to sue in U.S. courts.² This essay briefly explores whether the U.S. or its officials can be held civilly liable for U.S.-sanctioned torture in U.S. courts under current law. Based on that exploration, the essay also addresses whether current law is adequate in this setting.

To put a human face on this, consider the following scenario, which is based on actual reports: The U.S. military has detained Amar, an alien, on the battlefield of Afghanistan while he was wielding arms against U.S. troops. They are keeping him at the U.S. Naval Base at Guantánamo Bay, Cuba. The officials (“GTMO” interrogators) assigned to interrogate Amar use methods that they reasonably believe are specifically authorized by the Secretary of Defense. For example, they put him in a cell where the lights are always on and there is a constant, loud, hissing sound; question him for 20 hours at a time; keep him naked for days at a time; and “waterboard” him by strapping him to a board and then dunking him under water to make him believe he is drowning.

Can Amar hold the U.S. or his interrogators liable in civil damages for this treatment in a U.S. court? Should Amar be able to do so?

Under current law, the answer to the first question is almost certainly “no.” The United States will escape liability because of its “sovereign” immunity. The interrogators will escape immunity, if for no other reason, because of their “official” immunity. Indeed, this result reflects a broader truth, which is that the liability of the U.S. and its officials for even the most clearcut cases of torture is minimal. The question naturally arises whether this is how the law should be.

In my view, this is not how the law should be. In a recent article that I have prepared for publication in a law review, I argue that the current law is inadequate in two separate but related ways. It is inadequate because it seldom yields a remedy for U.S.-sanctioned torture, and it is inadequate because it misconceives such torture as a mere tort. The law should treat such torture for what it is: a civil rights and a human rights violation.

I will discuss in greater detail how current law should be changed so that it reflects the true nature of U.S.-sanctioned torture. Before doing so, however, we must examine how such torture is treated under current law. The examination begins with a brief background on the doctrines of sovereign and official immunity. Then we separately examine torture claims against the U.S. and torture claims against its officials. I believe this examination exposes the inadequacies of current law and provides a basis for suggesting improvements.

Background on Sovereign and Official Immunity

As a rule, you cannot sue the United States without its consent. Unconsented private lawsuits against the United States are barred by sovereign immunity. The doctrine of sovereign immunity is said to have its roots in the ancient English maxim that “the King can do no wrong.”³ Despite the apparently anachronistic nature of that maxim, the doctrine survives today. Indeed, just last Term the U.S. Supreme Court held that a breach of contract action brought against the United States by a group of farmers was barred by sovereign immunity.⁴ The United States has used the cloak of sovereign immunity to escape liability for many sins, including for the internment of Japanese-Americans and for using unknowing military service members to experiment with LSD.⁵

The sovereign immunity doctrine has two exceptions—or limitations—that mitigate its harshness. First, the United States can consent to be sued, and indeed it has done so in many statutes that waive sovereign immunity from various types of claims. Second, sovereign immunity does not bar civil lawsuits seeking to hold U.S. officials personally liable—i.e., seeking money damages out of those officials’ own pockets—for official misconduct. Like statutes waiving the U.S.’s sovereign immunity, the law of officer suits provides some potential avenues for tort
claims. It is a much harder question whether any of those avenues will lead to successful recovery for U.S.-sanctioned torture. The law does make this much clear: claims for money damages against the United States must be analyzed separately from claims for money damages against U.S. officials. To those separate analyses we now turn. In each instance, let us focus our attention on the not-so-hypothetical situation of Amar that was described at the outset of this essay.

Torture Claims Against the United States

Only one statute appears to waive the United States’ sovereign immunity from at least some claims for U.S. sanctioned torture: the Federal Tort Claims Act. On closer examination, however, the appearance of a remedy all but vanishes.

The Federal Tort Claims Act (FTCA) creates the following general rule of liability: The United States is liable for a negligent or wrongful act by its employee, if the act was committed within the scope of employment and if a private employer would be liable for the act under the tort law of the place where the act occurred. Thus, the FTCA generally ties the United States’ liability to the tort law—including the law of respondeat superior—of the state where the tortious conduct occurred.

Under this general rule of liability, Amar seems to have a fighting chance. After all, torture constitutes the torts of assault and battery in most, if not all, jurisdictions. Furthermore, in our scenario, Amar’s interrogators seemed to be acting within the scope of their employment, for they followed what they reasonably believed were interrogation policies established by the Secretary of Defense. Unless the interrogators’ conduct was privileged by some tort defense that would be available to the employees of a private employer (which seems unlikely), the U.S. would be liable in money damages under the FTCA’s general rule of liability.

The problem is that this general rule is subject to exceptions, which preserve the United States’ sovereign immunity from certain tort claims. The FTCA exceptions that are potentially applicable to claims for U.S.-sanctioned torture shield the United States from liability for most intentional torts; for tort claims arising in a foreign country; for tort claims “arising out of combatant activities of the military or naval forces ... during time of war”; and for tort claims based on the exercise of a “discretionary function.” Amar has some arguments against the application of each of these exceptions. For example, it is unclear whether torture at Guantánamo Bay is occurring in a “foreign country.” Nonetheless, at least one of these exceptions is certain to bar his FTCA claim against the United States for the torture he suffered at Guantánamo.

The FTCA—in both its general rule of liability and its exceptions—reflects Congress’ intention to make the United States liable for the “garden variety” torts of its employees, such as the negligent operation of government vehicles. Although liability for the routine torts of employees was seen as desirable, Congress created numerous exceptions where, in its estimation, the important governmental interests in avoiding liability outweighed the interest in providing a remedy to the victims of these routine torts. The point is that this weighing was designed with garden variety torts in mind, not U.S.-sanctioned torture. It is one thing to say that a governmental interest is strong enough to justify denying relief for an employee’s ordinary, on-the-job negligence. That same governmental interest is not necessarily strong enough to justify denying relief for an employee who tortures another person in the reasonable belief that the torture is authorized—indeed mandated—by higher-level U.S. officials. In short, applying the FTCA to U.S. claims for U.S.-sanctioned torture rests on misconceiving such torture as merely another garden variety tort. The fact that remedies for such torture are seldom available under the FTCA reflects only that Congress did not design the FTCA with such torture in mind; it does not reflect Congress’ judgment that remedies would be inappropriate.

In the law review article on which this essay is based, I argue that U.S.-sanctioned torture is more like police brutality than like private torts. Accordingly, I propose that the U.S. should be liable for torture inflicted by its officials under the same circumstances as a city or county can be held liable for police brutality under the well-known civil rights statute, 42 U.S.C. § 1983. Under Section 1983, a city or county can be held liable for an employee’s violation of federal rights when it has a “custom” or “policy” that causes the violation. The victim of the violation can establish the required causal link between the custom or policy and the violation by showing that those responsible for the custom or policy were “deliberately indifferent” to the risk that the custom or policy would lead to the violation. It is quite possible that, under this standard, Amar could hold the U.S. liable for its interrogators’ torture of him. For him to do so, Congress would have enact a statute that was modeled on Section 1983 except that it would apply to federal officials instead of state and local officials.

Continued on next page
Torture Claims Against U.S. Officials

We have seen that Amar cannot sue the United States for his torture. Amar should therefore consider suing his interrogators to hold them personally liable. The three potential avenues for suing his interrogators are the Alien Tort Claims Act (ATCA), non-federal tort law, and the Bivens constitutional tort doctrine. Unfortunately, none of these three avenues will likely yield recovery. And, in my view all three avenues, like the FTCA, are not only inadequate because they deny recovery but also because they misconceive U.S.-sanctioned torture as a tort.

The ATCA gives federal district courts original jurisdiction “of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Amar is an alien and, as the U.S. Supreme Court indicated in a recent decision, torture violates universally accepted principles of international law. Indeed, a highly regarded study jointly authored by N.Y.U. Law School and the Bar Association of New York City concluded that the ATCA provides civil remedies for U.S.-sanctioned torture.

This conclusion overlooks a provision in the Federal Tort Claims Act that, though obscure, clearly bars relief against individual U.S. officials under the ATCA. This obscure FTCA provision makes FTCA actions against the United States the exclusive remedy for negligent or wrongful acts by U.S. employees acting within the scope of their employment. In other words, the general rule is that, if it is possible for you to sue the United States under the FTCA for a federal employee’s misconduct, you cannot sue the employee for that same misconduct; claims against the employee are generally excluded. There are exceptions to the FTCA’s exclusivity provision, but they do not salvage torture claims asserted under the ATCA. The cruel feature of this exclusivity provision is that it bars a claim against a federal employee even when an FTCA action against the United States for the same conduct is barred by one of the FTCA’s exceptions (such as the intentional torts exception or the foreign country exceptions).

In other words, the FTCA generally provides the exclusive remedy for official misconduct even when it provides no remedy at all!
to treat official torture—as *Bivens* analysis would have it—as one official’s tort.

In the law review article on which this essay is based, I argue that the law would be improved (and, I believe, it would be politically feasible) to hold U.S. officials liable for torture under the same circumstances as officials of local government would be liable under the civil rights statute, 42 U.S.C. § 1983. This parallels the earlier suggestion that the U.S. should be liable under the same circumstances as local governments would be for police brutality under Section 1983. The main advantage of tying U.S. officials’ liability to a regime modeled on Section 1983 is that Section 1983 liability potentially exists for official violations of all federal rights, not just constitutional rights. Thus, it is possible that U.S. officials could be held civilly liable for violations of the many statutes and regulations that prohibit abuse of detainees.

Alternatively, I propose that U.S. officials should be held civilly liable for torture under the same circumstances as foreign officials can be under the Torture Victims Protection Act of 1991 (TVPA). The TVPA creates a civil cause of action against any individual who, under color of foreign law, subjects an individual to torture. The Act applies only to torture committed under color of foreign law—and not to torture committed under color of U.S. law—apparently because Congress did not think that torture did or ever would occur under color of U.S. law. It is a shame that recent history has proven Congress wrong.

**Endnotes:**


5. Hohri v. United States, 782 F.2d 227, 245-46 (D.C. Cir. 1986) (holding that common law tort claims against United States for Japanese internment were barred by sovereign immunity because plaintiffs did not satisfy the administrative litiing requirement that was a condition on the waiver of sovereign immunity created by the Federal Tort Claims Act); aff’d in part and rev’d in part on other grounds, 782 F.2d 227 (D.C. Cir. 1986), vacated and remanded, 482 U.S. 64 (1987); Stanley v. Central Intelligence Agency, 639 F.2d 1146, 1149-53 (5th Cir. 1981) (holding that United States had sovereign immunity from claims based on U.S. officials’ administration of LSD to plaintiff, without his knowledge, while he was in the military).


8. Williams v. United States, 350 U.S. 857 (1955) (per curiam) (holding that “the California doctrine of respondeat superior” governed an FTCA case in which a drunken soldier on a recreational drive injured a civilian and there was a dispute about whether the soldier was acting “in the line of duty” at the time of the accident).

9. 28 U.S.C. § 2680(a), (h), (j), (k).


12. See, e.g., Board of County Comm’rs v. Brown, 520 U.S. 397, 403 (1997). As the Supreme Court has interpreted Section 1983, whereas cities and counties can be held liable in money damages for the officials’ violation of federal rights under Section 1983, states cannot. See Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989) (holding that a state is not a “person” within the meaning of Section 1983).

13. See, e.g., Brown, 520 U.S. at 407-08.


15. See Alvarez-Machain, 124 S. Ct. at 2763 (citing *Torture Victims Protection Act* as providing a “clear mandate” to federal courts from Congress to adjudicate claims of torture); id. at 2766 (citing with apparent approval holding in Filartiga v. Pena-Irala, 630 F.2d 876, 890 (2d Cir. 1980), that prohibition on torture was sufficiently universal and clearly defined norm of international law to be recognized as a cause of action under the ATS); id. at 2769 n.29 (citing with apparent approval Filartiga’s description of prohibition of torture as a “norm of international law”); id. at 2783 (including torture in a “subset” of behavior that is “universally condemned” by international law and that “universal jurisdiction exists to prosecute”).


18. See id. § 2679(b)(2).


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Faculty Reach Academic Milestones

Clinic Director Maureen E. Laflin recently was promoted to the rank of full professor. A member of the faculty since 1991, Professor Laflin’s teaching and research focus primarily on skills building. She directs the College’s Trial Advocacy program and teaches the Appellate Clinic. Professor Laflin, a certified professional mediator with the Idaho Mediation Association, also created and directs the College’s Northwest Institute for Dispute Resolution. Professor Laflin earned a B.S. in Spanish and Social Work from the University of Dayton and her J.D. from St. Louis University.

Associate Professor Monica A. Schurtman has been approved for tenure. Professor Schurtman, who supervises the Tribal and Immigration Clinic, has written on a variety of subjects, including landmines, laser weapons, humanitarian law, and human rights issues in the Americas. Professor Schurtman earned a B.A. from the State University of New York at Stony Brook and a J.D. from the New York University School of Law.

The 2005-2006 Alan G. Shepard Professorship was awarded to Russell A. Miller. This endowed professorship, traditionally awarded to a member of the faculty on a yearly basis, is named for the late Chief Justice of Idaho. It is funded in part by the estate of Muriel Kirk and was established by Donna Shepard to recognize a professor who distinguishes the mission and the reputation of the College of Law through outstanding service to his or her area of expertise.

Professor Miller, an Idaho native, earned a B.A. with honors from Washington State University, an M.A. in English Literature and his J.D. both from Duke University, and an LL.M. degree with highest honors from the Johann Wolfgang Goethe University at Frankfurt, Germany.

Professor Miller, who joined the faculty in 2002, teaches international law, constitutional law, criminal procedure, and conflicts of law. He created and has been the primary force in sustaining the annual University of Idaho International Law Symposium, which has attracted a global array of scholars and policy-makers over the past three years. Cambridge University Press, one of the world’s most distinguished academic publishers, has papers from the inaugural symposium, “Transboundary Harms in International Law: Lessons from the Trail Smelter Arbitration,” for publication. In addition, Professor Miller is a co-creator and co-editor of the “German Law Journal: A Review of Developments in German, European, and International Jurisprudence.”

Professor Dale Goble received the University of Idaho’s top award for Excellence in Research or Creative Activity. Professor Goble, the first law professor ever to receive this particular award, is a national authority on natural resources law and policy, with special expertise in wildlife law, the federal Endangered Species Act, and the interactions between natural ecologies and human communities. Professor Goble earned his A.B. degree from Columbia University and his J.D. from the University of Oregon School of Law.

In bestowing the excellence award, the University noted Professor Goble’s achievements in connecting interdisciplinary research with development of public policy. His 1999 book, Northwest
Adjunct Faculty: Enriching Curriculum

**Augmenting the College's small community of hard-working permanent faculty is a group of distinguished practicing attorneys. These devoted teacher-practitioners not only enable the College to offer a deep and broad curriculum but also bring to the classroom first-hand experience in a variety of subject areas, ranging from bankruptcy to worker's compensation.**

- **Kenneth Anderson** ’78 teaches the Clinical lab section for the College's bankruptcy course. Bankruptcy has always been a major part of Mr. Anderson’s practice, and since January of 1990, he has restricted his practice to bankruptcy. After an earlier career as an Assistant Professor of History (ancient, medieval, and Byzantine) at Washington State University in Pullman, Washington, Mr. Anderson decided to attend law school. Since graduating, he has been in private practice with offices in Lewiston and Grangeville, Idaho.

  Mr. Anderson serves as president of the North Idaho Debtors’ Counsel, the Moscow Area Bankruptcy Bar, and was past Chair of the Board of Governors of the Commercial Law and Bankruptcy Section of the Idaho State Bar. In addition, he is a member of the Local Rules Committee for the U.S. Bankruptcy Court for the District of Idaho and Chapter 13 subcommittee.

- **Jon Bauman** ’82 has taught worker’s compensation law since 1995. His practice with the Boise law firm of Elam & Burke P.A. is primarily focused on the areas of worker’s compensation and insurance defense. Mr. Bauman attended the University of Utah where he earned degrees in English, a B.A. in 1976 and a Master’s in 1980.

  In 1985, Mr. Bauman entered civil practice and was also admitted to the Utah State Bar. He served as a worker’s compensation referee for the Idaho Industrial Commission from 1991-1993 and was involved during that time in drafting the Industrial Commission’s Judicial Rules of Practice and Procedure. In 2003, he was also admitted to practice before the U.S. Court of Appeals for the Ninth Circuit. He has served as member and chairman of the editorial board of *The Advocate*, published by the Idaho State Bar. He has actively participated as a member of the legal panel of the Idaho chapter of the American Civil Liberties Union for more than 10 years.

- **Frank J. Dykas**, a Registered Patent Lawyer for 26 years, teaches patent and copyright law. Mr. Dykas is the senior partner in the intellectual property law firm of Dykas, Shaver & Nipper, LLP located in Boise. He has lectured extensively for many years, has published articles, and has been teaching patent and copyright law at the College of Law since 2000.

  Mr. Dykas received a B.S. degree in Industrial Engineering from New Haven College in 1968 and his legal education at the University of Wyoming in 1975. Between college and law school, he served as a nuclear engineer aboard a nuclear attack submarine. He has also served as an elected county prosecutor.

- **Ford Elsaesser** ’77 senior partner in the Sandpoint law firm of Elsaesser Jarzabek Anderson Marks Elliott & McHugh, teaches bankruptcy. His practice includes commercial law and banking, bankruptcy, trusteeships and receiverships, and corporate law. He was admitted to the Idaho State Bar and U.S. District Court for the District of Idaho in 1978, the Ninth Circuit Court of

**Continued on next page**
Will Herrington teaches local government law. He is an alumnus of Washington State University and attended law school at both the University of Washington and the University of Oregon, receiving his J.D. from that institution in 1974. His law practice includes an emphasis on local government, land use, real estate, development, and property law. Representative clients include numerous cities, counties, and districts, including health districts, school districts, water and sewer districts, community homeowners’ associations, and land owners and developers.

Mr. Herrington is a member of the American Planning Association, the Idaho State Bar Association, and numerous attorneys associations. He has acted as the President, and is currently the Secretary and Treasurer, for Idaho Municipal Attorneys, Inc., an association he helped found. He also serves on the legislative committee for the Association of Idaho Cities.

Patrick Miller ’84 teaches health law. His practice emphasizes health and hospital law, with extensive work on compliance related issues, particularly fraud and abuse and tax exemption issues. Mr. Miller has led many complex health care transactions including acquisition of hospitals, physician recruitment, acquisition and formation of hospital and non-hospital affiliated medical practice groups, formation of ancillary service joint ventures, independent practice associations, and provider networks. He also has substantial experience in hospital-physician relations including all aspects of medical staff credentialing. He is a founding member of the Health Law Section of the Idaho State Bar Association.

Mr. Miller earned a B.A. in Economics (cum laude) from the University of Idaho in 1981. He was admitted to the Idaho Bar and the U.S. District Court (Idaho) in 1984 and the Ninth Circuit Court of Appeals in 1994. From 1984-85, he was Law Clerk for the Honorable Ray McNichols, Unites States District Judge.

Irving “Buddy” Paul is an adjunct professor of insurance law. He is a graduate of Northwestern University and the University of Michigan Law School. Mr. Paul served as law clerk to a Federal District Court Judge in Michigan prior to moving to the Northwest in 1976. He is admitted to practice in Michigan, Washington, and Idaho. Since 1976 his practice has focused on litigation, with an emphasis on cases involving insurance issues, product and construction failures, and fires.

Mr. Paul is a principal with the law firm of Huppin Ewing Anderson & Paul, P.S., a regional law firm practicing in both Washington and Idaho. He has been with that firm throughout most of his practice, and served approximately five years as the firm’s president.

Milt Rowland has taught a variety of courses for the College of Law. In 1997-1999, he taught state and local government law and land use planning; in 2003, administrative law, and in the summer of 2005, remedies.

Mr. Rowland is a 1975 cum laude graduate of the University of Detroit-Mercy and a 1985 summa cum laude graduate of Gonzaga University School of Law. Since graduating, Mr. Rowland has followed two parallel career paths. In one, he is a civil litigation attorney. Licensed in Washington and Idaho, he has tried a wide range of civil and administrative cases, ranging from constitutional tort cases to highway design, and employment discrimination cases. Mr. Rowland is presently the Senior Assistant City Attorney for the City of Spokane, Washington, where he has
been litigation counsel since 1993. In his second career path, Milt Rowland teaches, writes, and lectures widely in the law. He has written chapters for two books on tort and trial practice and has lectured extensively on property, constitutional, trial practice, and municipal liability issues.

Frances H. Thompson '81 is the adjunct professor for the Legal Aid Pro Se Clinic. She is also the Lead Court Assistance Officer of the Court Assistance Offices Project of the Idaho Supreme Court and serves as Court Assistance Officer in Latah County where she supervises the Pro Se Clinic. Ms. Thompson is responsible for statewide training for Court Assistance Officers, development of court forms and instructions for use in the project, and administration and staffing in Latah County. She also coordinates the Small Claim Mediation program in Latah County and has trained mediators in Idaho and Washington.

Before attending law school, Ms. Thompson received a B.A. in Literature and Communication from Marquette University. Prior to joining the Court Assistance Offices Project, Ms. Thompson had a private general practice in law and mediation. She is a Certified Professional Mediator and a qualified lead trainer of the Idaho Mediation Association. In 2003, Ms. Thompson was awarded the Idaho State Bar’s Outstanding Service award.

Glen Utzman ’64 has been a permanent faculty member in the Accounting Department of the University of Idaho College of Business and Economics since 1974. At the College of Law, Professor Utzman, licensed as a CPA in both Washington and Idaho and a member of the Idaho State Bar, teaches legal accounting. He is admitted to and has practiced before the United States Tax Court.

In addition to his J.D. from the University of Idaho, Professor Utzman holds a B.A. in Business Administration from Washington State University and an LL.M. (taxation) from New York University. Professor Utzman has received numerous teaching awards, including the Alumni Award for Faculty Excellence, Outstanding Accounting Faculty Award, and the Excellence in Teaching award presented by the First Interstate Bank Student Excellence Award in the College of Business and Economics.

Clinical Program Adds Two New Offerings

With the recent establishment of the Victims’ Rights Clinic and the Domestic Violence Clinic, the College’s Legal Aid Clinic now offers students hands-on experience in seven in-house Clinics, two mini-Clinics, and numerous externship opportunities.

Beginning with the 2005 fall semester, Professor Pat Costello will supervise the Victims’ Rights Clinic, which was formed through a grant from the National Crime Victims’ Law Institute (NCVLI) and the U.S. Department of Justice. Professor Costello explains that while Idaho has a strong legal framework of victims’ rights and procedural safeguards, and an equally strong network of crime victim advocates and services programs, there is no systematic way for Idaho crime victims to learn what their legal rights are, nor to secure representation to assert those rights. The Victims’ Rights Clinic will not only address this problem but will also educate law students and others to the existence of victims’ rights and the effective means to assert and enforce them.

The inspiration for the Clinic comes from Idaho attorneys Monte MacConnell of Boise and Jamie Shropshire of Lewiston. Mr. MacConnell and Ms. Shropshire had submitted a similar grant to the NCVLI in 2004, but their application was rejected in large part because the NCVLI sought greater participation by the College of Law. Professor Costello then successfully re-wrote the application to form the Victims’ Clinic as part of the College’s clinical program.

During the 2005-2006 academic year, third-year students will represent crime victims in the Second Judicial District of Idaho, under Professor Costello’s supervision. Eventually, the Clinic will serve victims throughout Idaho, utilizing volunteer attorneys supported by Clinic students and faculty. Priority will be given to serving populations who are especially at risk to victimization and who have the most difficulty accessing legal services. The final goal of the Clinic is to identify promising practices that can be duplicated.

Starting with the 2006 spring semester, the Clinic will offer a domestic violence/sexual assault project, funded by a subgrant from Idaho Legal Aid Services, which in turn, received a Legal Assistance to Victims grant from the U.S. Department of Justice. The project will support representation of victim clients in civil cases, including domestic violence protection order petitions, divorce, child custody, and other family law matters.

In addition to supervising students participating in the Domestic Violence Clinic and the Victims’ Rights Clinic, Professor Costello will continue to supervise students working in the General Clinic. Legal Research and Writing Instructor Deborah McIntosh ’91 will assume supervisor’s responsibilities in the Tax Clinic while continuing to teach legal research and writing on a half-time basis.
Through the efforts of Professor Russell Miller, aided by former UI law faculty colleague Rebecca Bratspies, the College of Law presented “Progress in International Organization,” as the Third Annual International Law Symposium in March 2005 in Coeur d’Alene. As with the College’s previous international law symposia, the 2005 symposium had an Idaho connection, taking its inspiration from Harvard Law Professor Manley O. Hudson’s visit to the University of Idaho in 1931 to inaugurate the William Edgar Borah Foundation for the Outlawry of War. Hudson delivered a series of short, accessible lectures that served as a comprehensive survey of the international order of his day; in 1932, the lectures were published under the title, Progress in International Organization.

“He could have never been a man himself,” said Professor Miller, “Hudson’s lectures suggest and inform an effective diagnostic checklist for measuring our generation’s progress in international cooperation.” He adds, “As a matter of history, one is struck by how tragically Hudson misapprehended the looming crisis in Europe, although the fascist horrors that would unleash World War II were already taking shape. As a matter of geopolitics, however, one is equally impressed by his prescient insights into the globalizing tendencies that define the landscape in which we find ourselves today.”

In his University of Idaho lectures, Hudson said, “If any lesson stands out from our experience of the past quarter-century, it is that all of the people of the United States, in every section of the country and in every walk of life, are dependent in their daily lives on the ordering of the relations which we are forced to maintain with other peoples of the world.”

Hudson shared the podium at the University of Idaho in 1931 with Idaho’s powerful legislator, Senator William E. Borah, the “Lion of Idaho.” Yet, the two men could not have differed more dramatically on the question of America’s role in the international order. Hudson was the nation’s preeminent internationalist. He had been a member of the U.S. delegation to the Paris Peace Conference and later served in the Secretariat of the League of Nations and as a judge of the Permanent Court of International Justice in the Hague.

As leader of the nation’s inter-war isolationist movement, no one worked harder than Senator Borah to thwart Hudson’s internationalist vision. The intensity of Borah’s commitment to the isolationist movement is clear from his remarks at the inaugural program in 1931:

“I have never been able to bring myself to believe that it would be in the interest of peace to involve this country in the affairs of Europe. And if I should ever reach that conclusion, still I would not purchase peace at that price. There are some things in this world more to be desired than peace, and one of them is the unembarrassed and unhampered and untrammeled political independence of this Republic – the right and power to determine in every crisis, when that crisis comes, untrammeled by any previous commitments, the course which it is best for...
the people of this nation to pursue. If peace cannot be had without our retaining that freedom of action, then I am not for peace.”

“Despite their diametrically opposed visions of America’s place in the world,” explains Professor Miller, “Borah and Hudson demonstrated a commitment to dialogue and respect for one another.” As do the two scholars who led the commentary at the 2005 Symposium: Abraham D. Sofaer, Senior Fellow at the Hoover Institution, Stanford University, and Jordan Paust, Foundation Professor of Law and Director of the International Law Institute at the University of Houston. Professor Miller explains that Professors Paust and Sofaer “genuinely disagree on a number of international issues confronting America today, and they brought to the discourse the dignity and grace modeled by Borah and Hudson.” He adds, “While the debate in 1931 was whether or not the U.S. should engage or isolate, the debate today is more about the degree and nature of America’s engagement with the world – according to which principles should the United States engage itself abroad? The United States’ unrivaled stature today means that the answer to that question has fundamental consequences for the fate of the whole international order.”

Barry Carter, Professor of Law at the Georgetown University Law Center, delivered a keynote address on “International Law and Institutions in a New Era.” Faculty from nine other American universities made presentations, along with scholars from the University of Toronto, University of Saskatchewan, the Max Planck Institute in Germany, and the Fudan University in China, as well as the Foreign Ministry of the Czech Republic. Presenters from the College of Law, in addition to Professor Miller, included Professor Monica Schurtman and former Visiting Professor Raul Sanchez. UI law students Luke Davis, Daniel Luker, and Kelly Parker also made scholarly presentations at the conference.

The Symposium was supported by the College of Law, the Carr Foundation, Kootenai County Task Force on Human Relations, and the Washington State University Center for Human Rights.

Lands, Liberties, and Legacies

The Fourth Annual International Law Symposium, “Indigenous Peoples and International Human Rights Law: Lands, Liberties and Legacies,” will be held in Coeur d’Alene, March 16-18, 2006. This fourth symposium continues the tradition of bringing together a select group of international law scholars for an intimate and collegial exchange around a topic of international law of unique relevance to Idaho. The focus in 2006 will be to recognize the importance of Native American heritage to Idaho’s history, culture, and politics, while at the same time, acknowledging that Idaho’s Native Americans have experiences and interests in common with indigenous peoples around the world.

In September 2005, at the request of College of Law faculty, the Native American Rights Fund and Western States Water Council brought the ninth Symposium on the Settlement of Indian Reserved Water Rights Claims, a national conference on tribal water rights, to Moscow. The Native American Rights Fund is the oldest and largest nonprofit organization dedicated to asserting and defending Native American interests nationwide, and the Western States Water Council is composed of representatives appointed by the governors of 18 western states including Idaho. Over 120 students from the law school attended some portion of the conference.

The conference brought together panel members representing tribal, state, federal, Congressional, local, and environmental interests to discuss, argue, and at times, resolve current issues facing the many efforts to settle Indian water rights in the western United States. One of the most lively and heated topics of discussion at the conference was the role of the federal government in settlement efforts.

Another popular topic was the recently approved Nez Perce water settlement, which was highlighted on the second day of the conference with speakers representing the Nez Perce Tribe, the Idaho Attorney General’s office, and the Department of the Interior.

Professor Barbara Cosens, who has spent the past 15 years working on water settlements and is currently mediating efforts to settle water allocation on the Walker River in California and Nevada, delivered the conference’s keynote address. Professor Cosens began her address “with a tone of optimism” when she acknowledged that “21 settlements have been through Congressional or court approval or both,” adding that while many settlements are in various stages of implementation, they “have given rise to a greater tribal voice in western water and have begun to reverse the disparity between federal dollars spent on non-Indian water projects and Indian water projects. For non-Indian water users, settlement has removed a cloud of uncertainty over their water rights. Non-Indians have also seen benefits, not only from settlement water projects, but also through improvements in efficiency, coordination of management in basins with multiple jurisdictions, and in relations with their neighbors.”

She explained that tribal users often choose settlement over litigation for two primary reasons: the greater likelihood that their tribe will see actual water rather than water rights.
than paper rights (known as “wet water”) and the ability to tailor the solution to the needs of their particular tribe and of the basin in which it resides. “You need only look to the diversity of the 21 settlements to see that negotiators have taken full advantage of these features of settlement,” she said.

“Over time,” said Professor Cosens, “Indian water settlements have become more complex, taking on issues of basin-wide concern, and thus requiring substantial funding to implement.” This, she explained is a “necessary result of the desire and the need to provide wet water. Litigation resulting in a paper water right need not address the many obstacles to delivery of that water or the economic and community impacts of its loss. Wet water requires comprehensive solutions because it has the potential to provide long-lasting benefits West-wide in water infrastructure, restored habitat, and improved coordination, management and dispute resolution across tribal and state jurisdictional boundaries.”

While the 21 settlements completed to date give reason for celebration, Professor Cosens noted that approximately an equal number remain at a time when 20% of American Indian households on reservations lack modern plumbing, when there is little “political will to fund, and when the remaining settlements are difficult, involving contentious issues, such as endangered species, water marketing, water quality, tribal/state jurisdiction, interstate allocation of water, and conjunctive management of ground and surface water.”

On the other hand, she said, “the 21 settlements taught us about the process, the science, the law, the politics, and most of all, about each other.” “If you believe as I do,” she added, “that the measure of a life is what we leave to make the burden on future generations lighter, whether in the values and opportunities you give your children or in what you give to your community, then collectively the people in this room have quite a legacy: 21 plus settlements encompassing much of the West. You are to be commended.”

In conclusion, Professor Cosens, drawing from her own experience as water rights mediator, identified six key points on which to focus as efforts toward settlement move forward:

1. Uncertainty is necessary. It is the room in which we negotiate. It must be addressed as an issue.
2. Trust at the table is necessary, but it should not be confused with trust of future governments.
3. Settlement agreement is voluntary: do not waste time on solutions that are clearly politically impossible.
4. Sovereignty over natural resources is control of those resources, and yet in a shared watershed, to give up a degree of control is to exercise sovereignty.
5. “Feds,” it is your fault – meaning, it is our collective fault.
6. Finality is impossible, and in fact, undesirable. This is water, and we are human.

Almost immediately upon joining the College of Law faculty in 2003, Professor Douglas Nash established the College’s first Indian law conference. The event has since become a key ingredient of the College’s outreach program, serving as a forum for the examination and discussion of legal issues within Indian Country.

The first Indian Law Symposium, held in Moscow in February 2004, addressed fee-to-trust issues, specifically the movement to return reservation lands to Indian control. The second day of the two-day conference was devoted to a discussion of whether Indian law should be included in state bar examinations; the discussion culminated in a resolution to urge state bar associations to include Indian law questions on their bar examinations.

The second Indian Law Symposium also addressed the topic of including coverage of federal Indian law on state bar examinations. However, the focus of the January 2005 conference was on Indian probate and estate planning. Central to the program were presentations on the history, development, content, and implementation of the Indian Probate Act of 2004. The conference, co-hosted by the College of Law and the Indian Law Section of the Idaho State Bar, attracted participants from all the Northwest states, plus Minnesota, Oklahoma, New Mexico, and Arizona.

Professor Nash, the guiding force behind the symposia, will be on leave during the 2005-2006 academic year to serve as Director of the Institute for Indian Estate Planning and Probate. The Institute operates under the auspices of the Indian Land Tenure Foundation, which funded the College’s Indian Estate Planning Project inaugurated last year.

Indian Law Symposia Attract Tribal Lawyers and Leaders

Theresa Carmody, Sharon Redthunder, and Doug Nash at the 2004 Indian Law Symposium in Moscow.
Bringing with him over two decades of experience in felony criminal defense, Frederick Leatherman joined the faculty as a Visiting Instructor of Legal Research and Writing for the 2005-2006 academic term. Professor Leatherman received his B.A. in Ibero-American Studies and his J.D. from the University of Wisconsin in Madison, Wisconsin. After graduating from law school in 1972, he clerked two years in Chicago for the Honorable Albert E. Hallett, a judge on the Illinois State Court of Appeals, District I. He moved to Seattle in 1975 and clerked two years for the Honorable Frank D. James, a judge on the Washington State Court of Appeals, Division I. He moved to Chicago in 1979 and clerked two years for the Honorable Albert E. Hallett, a judge on the Illinois State Court of Appeals, District I. He moved to Seattle in 1975 and clerked two years for the Honorable Frank D. James, a judge on the Washington State Court of Appeals, Division I. 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Professor Leatherman co-founded Innocence Project Northwest at the University of Washington Law School (IPNW) with Professor Jackie McMurtrey in 1997. In recognition of their efforts, the National Law Journal awarded IPNW its prestigious Pro Bono Award in 1999.

Using IPNW as a model, Professor Leatherman and Barry Scheck produced a primer, How To Start An Innocence Project. Published by the National Association of Criminal Defense Lawyers, the primer has been used by more than 20 law schools around the nation to establish such projects. *

**A Community of Scholars**

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**Mark Anderson**  
**Subject Area Emphasis:** Business Associations, Trademarks and Unfair Competition, Antitrust  

**Presentations:**  
Criminal Law as a Potential Weapon Against Cyber Threats, Department of Computer Science, University of Idaho (December 2005).

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**D. Benjamin Beard**  
**Subject Area Emphasis:** Electronic Commerce, Commercial Law  
**Presentations:**  
Buyer’s Legal Rights and Remedies under the UCC, 61st Annual Pacific Northwest Purchasing Conference, Anchorage AK (October 6-9, 2004).

**Current Developments in Contracting:** Electronic Contracting, International Perspectives and Revised UCC Article 2, 2005 Supply Chain Management Conference, Portland, OR (April 12-13, 2005).

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**Elizabeth Barker Brandt**  
**Subject Area Emphasis:** Family Law, Community Property Law, Children and the Law, Wills and Trusts, Civil Liberties  
**Scholarship:** Grandparents Parenting Grandchildren: Getting Legal Authority: A Guide to Idaho Law, AARP IDAHO, IDAHO KINCARE COALITION (June 2005).  


**De Facto Custodians: A Response to the Needs of Informal Kin Caregivers, 38 FAM. L. Q. 291 (2004).**

**Presentations:**  
Cautionary Tales of Adoption: Addressing the Litigation Crisis at the Moment of Adoption, Brigham Young University Conference on Parentlessness in a Changing World, Provo, UT (October 2004).  
The Crumbling Academic Freedom Consensus and U.S. Anti-Terrorism Policy, Oxford Round Table, Oxford University, England (July 15, 2005).

**Service Projects:**  
Family Law Education Reform Project of the Association of Family and Conciliation Contractors (2005).

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**Got something to say about this?**

Tell us what you think in the comments below or submit a guest post.

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*Continued next page*
Faculty Notes, continued from previous page

Courts, Advisory Committee.
Issue Editor, Intersection of Family Law and Elder Law, ABA Family Law Quarterly.
Family Law Council, Idaho State Bar.
Children and Families in the Courts Committee, Idaho Supreme Court.
Child Protection Committee, Idaho Supreme Court.
Editorial Board Member, Family Law Quarterly, American Bar Association.
Manager, official listserv for Section on Family and Juvenile Law, American Association of Law Schools (AALS).
Executive Committee, Section on Family and Juvenile Law, AALS.
Board of Directors, American Civil Liberties Union of Idaho.

**Don Burnett**

**Subject Area Emphasis:** Professional Responsibility, Judicial Process


**Presentations:**
- Multiple Representation: A Question of Conflict, Washington State Bar, Real Property, Probate and Trust Section CLE Presentation, Spokane, WA [June 10, 2005].

**Service Projects:**
- Board of Directors and Task Force on Judicial Independence and Accountability, American Judicature Society.
- Chair, Professionalism Committee, Section of Legal Education and Admissions to the Bar; Joint Committee on Lawyer Regulation, American Bar Association.
- President’s Cabinet, University of Idaho.
- Academic Deans’ Council, University of Idaho.
- Governance Task Force, University of Idaho Foundation.
- Chair, Diversity Initiatives Coordinating Group, University of Idaho.
- Chair, Provost/Executive Vice President Search Committee, University of Idaho.
- Chair, Screening Committee for Provost/Interim Appointment, University of Idaho.

**Recognitions:** Fellow (elected), American Bar Foundation.

**Dennis Colson**

**Subject Area Emphasis:** Idaho Constitutional Law, Indian Law, Contracts

**Presentations:**
- Campaigning for the Court: The Influence of Money, Politics, and Ideology on Idaho’s Judicial Elections, panel presentation, National Public Radio, Boise State University, Boise, ID.

**Service Projects:**
- Co-Director, Indian Estate Planning Project [Year 2], University of Idaho College of Law [with Doug Nash].

**Recognitions:** Inducted into University of Northern Colorado Athletic Hall of Fame.

**Barbara Cosens**

**Subject Area Emphasis:** Water Law, Alternative Dispute Resolution

**Scholarship:**
- Farmers, Fish, Tribal Power and Poker: Reallocating Water in the Truckee River Basin, Nevada and California, 10 West-Northwest J. ENVTL. L. & POL’Y 89, 2003 [Published Fall 2004].

**Presentations:**
- Panel Moderator, Native American Water Rights, Western Water Law Conference: Big Growth in the Big Western Basins – Changing Demographics and Changing Policies, Denver, CO [September 2004] [Including introductory talk].
- Idaho Water Law, focusing on the Palouse Basin and the Nez Perce Settlement, League of Women Voters: Moscow and Pullman chapters (December 1, 2004).
- Idaho Mediation Association, Local Chapter, Water Dispute Resolution (June 2005).

**Service Projects:**
- Vice Chair, Public Service for the Water Committee of the Natural Resource and Environment Section, American Bar Association.
- Mediator, Walker River Basin Settlement. Indian Water Rights Settlement Conference:
  - convinced Western States Water Council and Native American Rights Fund to bring the 2005 conference to Moscow, ID, and to provide a discount to students. Organized technical and registration support for the conference.

**Patrick D. Costello**

**Subject Area Emphasis:** Clinical Legal Education, Business Law, Externships

**Scholarship:**
- Children and Families in the Courts Committee, Idaho Supreme Court.
- Delivery of Legal Services Committee, Idaho State Bar.
- Legal Panel, American Civil Liberties Union of Idaho.
- Judicial Council, University of Idaho.
- Foundation Board, Idaho Public Television. President, Friends of KUID-TV.

**Lee Dillion**

**Subject Area Emphasis:** Clinical Legal Education, Business Law, Externships

**Scholarship:**
- Conflicts of Interest in Business Transactions - The Common Engagement, ADVOCATE [Idaho] [September 2005].

**Presentations:**
- Professionalism & Ethics Section-sponsored CLE [January 12, 2005] and Idaho Prosecuting Attorney’s Association [February 11, 2005].
- Conflicts of Interest in Business Transactions - The Common Engagement, Young Lawyers Section-sponsored CLE [May 6, 2005].

**Service Projects:**
- Chair, Professionalism & Ethics Section,
Idaho State Bar.
Law Related Education Committee, Idaho State Bar.
Chair, Continuing Legal Education Committee, Idaho Law Foundation.
VIEW (Vandal Innovation & Enterprise Works) subcommittee, University of Idaho.
Recognitions:
Service Award in recognition of service and commitment to the legal profession and the public, Idaho State Bar.

Ruth Funabiki
Subject Area Emphasis:
Technical Services Law Librarianship, Advertising Scholarship:
The Desirability Paradox in the Effects of Media Training. Peer-reviewed and accepted for presentation at International Communication Association annual conference, New York, NY (May 2005) [Revised and expanded version is under peer review at COMMUNICATION RESEARCH].
Presentations:
Service Projects:
OBS/TSS Joint Research Grant Committee, American Association of Law Libraries.
OBS-SIS Board, American Association of Libraries [managed OBS-SIS conference exhibit].
Co-coordinator, Endeavor law users Special Interest Group.
LiLI Board, Idaho Library Association.
Chair, Information Technology Committee, University of Idaho. [Participated in Northwest Commission on Colleges and Universities accreditation visit. Drafted Committee response to the UI Vision and Resources Task Force report].
Administrative Affairs focus group on leave policies, University of Idaho.
International Opportunities Committee, College of Law.

Dale Goble
Subject Area Emphasis:
Natural Resource Law and Policy (particularly public lands and wildlife law), American Legal and Environmental History Scholarship:
THE ENDANGERED SPECIES ACT AT THIRTY: RENEWING THE CONSERVATION PROMISE (Island Press 2005) [edited with J. Michael Scott and Frank W. Davis].
By the Numbers in THE ENDANGERED SPECIES ACT AT THIRTY: RENEWING THE CONSERVATION PROMISE (Island Press 2005).
Renewing the Conservation Commitment in THE ENDANGERED SPECIES ACT AT THIRTY: RENEWING THE CONSERVATION PROMISE (Island Press 2005).
Editorial: A Database for the ESA, 55 BIOSCIENCE 299 (2005) [with J. Michael Scott].
Environmental Humor in American History: A Gallery of Political Cartoons, 10(4) ENVTL. HIST. (October 2005) [with Paul Hirt and Susan Kilgore].
Three Cases / Four Tales: Commons, Capture, the Public Trust, and Property in Land, ENVTL. L. (2005).
Presentations:
Three Views of Recovery, The Nature Conservancy-Smith Fellows, Atlanta, GA (October 14, 2004) [invited lecture].
United States Constitutional History, Yunan University School of Law, Kunming, Yunan, People’s Republic of China (May 16-20, 2005) [invited lectures].
Recognitions:
Award for Excellence in Research / Creative Activity, University of Idaho.

John J. Hasko
Subject Area Emphasis:
Law Librarianship, Legal Research
Service Projects:
University Level Promotions Review Committee, University of Idaho.
Borah Foundation Committee, University of Idaho.
Co-chair, Student Computing Advisory Committee, College of Law.
Board of Trustees, Latah County Library District.

Maureen Laflin
Subject Area Emphasis:
Alternative Dispute Resolution, Appellate Advocacy, Trial Practice, Clinical Education Scholarship:
Remarks on Case-Management Criminal Mediation, FLORIDA CRIMINAL LAW JOURNAL 6 (Summer 2004).
Presentations:
Mediation in Criminal Cases, The Second Annual Gerald Bennett Summit on Criminal Justice Issues, Florida State Bar

Michael J. Greenlee
Subject Area Emphasis:
Legal Research, Law Librarianship Presentations:

Continued next page
Faculty Notes, continued from previous page

Criminal Law Section, Boca Rotan, FL (June 25, 2004).
Role of the Judiciary in Mediation, Spokane County, WA, Superior Court Retreat, University of Idaho, College of Law (October 2, 2004).
Mediation Credentialing, Community Justice in Rural Idaho Workshop, Sun Valley, ID (March 31-April 1, 2005).
Settlement Negotiations and Ethical Considerations: Mediation Ethics, Idaho State Bar (July 14, 2005).

Service Projects:
Mediation Privilege/UMA/IRE 507 Committee: responsible for drafting a new mediation privilege rule for Idaho.
Governing Council, ADR Section, Idaho State Bar.
ABA site evaluator, University of Louisville.
Co-planner, 2004 Northwest Clinical Conference, Leavenworth, WA.
Ray McNichols Inn of Court.
IVLP Policy Council.

Recognitions:
Promoted to full professor.
Allan G. Shepard Professor of Law.

D. Craig Lewis
Subject Area Emphasis: Evidence, Procedure
Presentations: Trial Evidence for Judges: The Exclusionary Rules, Magistrate Judges Institute, Boise, ID (November 2004) [with Merlyn Clark]
District Judges Seminar, Boise, ID [January 2005] [with Merlyn Clark].

Recognitions:
Recipient, Professionalism Award, Idaho State Bar (2005).

Monique C. Lillard
Subject Area Emphasis: Torts, Remedies, Workplace Law
The European Court of Human Rights Takes a Step Towards Balancing the Arms, GERMAN LAW JOURNAL (May 2005). Article comparing Britain’s regulatory grievance procedures to American grievance procedures [in progress] [with Keith Puttick].
Presentations: Employment Law seminar, Dignity at Work employment conference, Staffordshire University School of Law, Stoke-on-Trent, England [February 2005] [also workshop leader].

Service Projects:
Chair, Admissions Committee, College of Law.
Career Services Committee, College of Law.
Blue Ribbon Committee [Strategic Investment Proposals], University of Idaho.

John A. Miller
Subject Area Emphasis: Federal Taxation, Estate Planning, State and Local Taxation, Business Planning, Elder Law
Tax Planning for Sabbaticals [in progress] [with Robert Pikowsky].
Tax Treatment of Inherited Pensions: A Study of Inequity [in progress].

Presentations:

D. Craig Lewis
Subject Area Emphasis: Evidence, Procedure
Presentations: Trial Evidence for Judges: The Exclusionary Rules, Magistrate Judges Institute, Boise, ID (November 2004) [with Merlyn Clark]
District Judges Seminar, Boise, ID [January 2005] [with Merlyn Clark].

Recognitions:
Recipient, Professionalism Award, Idaho State Bar (2005).

Monique C. Lillard
Subject Area Emphasis: Torts, Remedies, Workplace Law
The European Court of Human Rights Takes a Step Towards Balancing the Arms, GERMAN LAW JOURNAL (May 2005). Article comparing Britain’s regulatory grievance procedures to American grievance procedures [in progress] [with Keith Puttick].
Presentations: Employment Law seminar, Dignity at Work employment conference, Staffordshire University School of Law, Stoke-on-Trent, England [February 2005] [also workshop leader].

Service Projects:
Chair, Admissions Committee, College of Law.
Career Services Committee, College of Law.
Blue Ribbon Committee [Strategic Investment Proposals], University of Idaho.

James Macdonald
Subject Area Emphasis: Constitutional Law, Federal Courts, Securities Regulation, Jurisprudence, Accounting and the Law, Sports Law

Deborah McIntosh
Subject Area Emphasis: Legal Research and Writing

Recognitions:
L. Weldon Schimke Distinguished Professor of Law.
University of Idaho Alumni Award for Faculty Excellence, 2004.

Russell A. Miller
Subject Area Emphasis: Constitutional Law, Comparative Constitutional Law (Germany), Public International Law

Scholarship:
Supreme Court Needn’t Reflect Majority Rule, SPOKESMAN REVIEW, (September 18, 2005) [op-ed].
Founders Set Up Supreme Court to Make Its Own Mandate, IDAHO STATESMAN, (September 17, 2005) [op-ed].
Presentations:
The Sociology of Federalism, German Federal Constitutional Court, (December 16, 2004).
Paradox of Personality: Non-State Actors in International Law, Symposium - Progress In International Organization, University of Idaho College of Law, Coeur d’Alene, ID, (March 3-5, 2005).
The Trial of Saddam Hussein, Washington State University Sociology Department, Washington State University, Pullman, WA, (April 15, 2005) [invited lecture].
Supreme Court Appointments and Majority Rule, University of Idaho Bureau of Public Affairs Research, Panel: Supreme Court Appointment of Judge John Roberts, Moscow, ID (September 8, 2005).

Service Projects:
Co-Editor-in-Chief, German Law Journal (http://www.germanlawjournal.com).
Co-Organizer, Third Annual German Law Journal Workshop, Bonn, Germany.
Co-Organizer, Fourth Annual University of Idaho International Law Symposium, Coeur d’Alene, ID.
President’s Athletic Advisory Council, University of Idaho.

Laurie O’Neal
Subject Area Emphasis: Legal Research and Writing, Evidence

Douglas Nash
(On leave 2005-06)
Subject Area Emphasis: Indian Natural Resources Law, Civil Procedure, Criminal Law
Service Projects:
- President, National Native American Bar Association (2004-05).
- Director, National Indian Estate Planning Project, Indian Land Tenure Foundation (2005-06).
- Co-director, Indian Estate Planning Project (Year 2), University of Idaho College of Law [with Dennis Colson].
- Advisory Committee, The Trust for Public Land.
Recognition:
- Honored by Oregon State Bar as first Native American admitted to the practice of law in that state.

Malla Pollack
Visiting Faculty
Subject Area Emphasis: Constitutional Law, Intellectual Property Law, Federal Courts
Scholarship:
- Rebalancing Section 512 to Protect Fair Users from Herds of Mice-Trampling Elephants, or A Little Due Process Is Not Such A Dangerous Thing. [forthcoming in 22 SANTA CLARA COMPUTER & HIGH TECH. L.J. (2006)].
- Dampening the Illegitimacy of the United States Government: Reframing the Constitution from Contract to Promise, [Forthcoming in IDAHO LAW REV. (2005)].
- Miscellaneous entries in AMERICAN CIVIL LIBERTIES ENCYCLOPEDIA, (Routledge Press) [forthcoming].

Monica Schurtman
Subject Area Emphasis: Immigration, Tribal, International Human Rights, Humanitarian Law, Legal Education Scholarship:
Presentations:
- Presented and Introduced: Jody Williams, 1997 co-recipient of the Nobel Peace Prize, Borah Symposium, University of Idaho, Moscow, ID (Spring 2005).

Service Projects:
- Pro Bono immigration support to attorneys, agencies, social service, and shelter providers.
- Nex Perce Tribal Drug Court Planning Team: participated in planning meetings and national tribal drug court trainings in Idaho, Texas/New Mexico, and San Diego (2003).
Recognition:
- Awarded tenure.

Coalition for Justice in the Maquiladoras: special recognition for work promoting international labor and occupational health and safety rights, Rio Bravo, Tamaulipas, Mexico.
Public Interest Fellowship Inaugurated

Three members of the Class of 2007—Sara Bearce, Andrea Hansen, and Zach Wesley—were the first recipients of the College of Law Public Interest Fellowship, funded through a grant from the Idaho IOLTA program and other private donors. The Fellowship, open to all students, helps provide support for students performing unpaid summer public interest externships.

Sara Bearce’s public interest externship took her to Idaho Legal Aid Services in Boise where she managed a landlord/tenant hotline designed to provide basic legal information to tenants facing eviction. She also assisted on several divorce and custody cases by interviewing clients, preparing answers to interrogatories, and conducting research. Ms. Bearce, who related that she did not “come to law school with a clear vision of what I want to do with my law degree” found that her externship experience gave her a “concrete basis from which to make decisions” about her career path.

Andrea Hansen also externed with Idaho Legal Aid Services. Ms. Hansen said she is glad she took advantage of the externship opportunity, which took place in Caldwell. It provided her the opportunity to put to practice all her first-year skills and to apply the knowledge she had gained in the classroom. “What’s more,” she explained, she was able to “put that knowledge to use in a way that benefitted the greater good.” Ms. Hansen added that the “attorneys in the office were friendly, eager to find projects that would be both engaging for me and beneficial for clients, and eager to share their own stories about practicing law.” She recommends the “experience for any law student who has not yet had the opportunity to work in a law office.”

Zach Wesley stayed in Moscow for his public interest externship where he worked for the Latah County Court Assistance Office. Mr. Wesley navigated pro se litigants through the Idaho state court system. He explained that the Fellowship “allowed me to provide a needed service for the community and to strengthen my legal and professional skills with hands-on experience.” He added, “The experience furthered my understanding of civil procedure, mediation, and family law and gave me a greater insight of the need for legal public service in Idaho.”

Coming Home from Iraq

College of Law students Daniel Malouf, Kory Turnbow, and Eric Vehlow will resume their legal educations following their forthcoming de-activations from the military. All three men served in Iraq. Daniel Malouf, a sergeant with the Army Reserve, was activated in September 2004, just as he began his third year of law school. Kory Turnbow and Eric Vehlow, members of the 116th Cavalry Brigade of the Idaho National Guard, also were deployed last year; both men expect to be back in class beginning with the Spring 2006 semester and Sergeant Malouf with the Fall 2006 term.

Upon his activation, Sergeant Malouf was transferred from his regular combat engineer unit to a construction support unit, 659th Engineer Company, 30th Engineer Brigade. Sergeant Malouf’s unit provided a variety of support functions, including base security and high-way and bridge construction. In charge of his unit’s 18-wheelers and their drivers, Sergeant Malouf traversed much of Iraq transporting equipment needed to drill wells for water.

Captain Turnbow commanded a combat engineering unit, B Company of the 116th Engineering Battalion, and Sergeant Vehlow served as a law clerk with the Judge Advocate General Corps. Captain Turnbow’s company, originally embedded with the Iraqi Army, later worked with the Iraqi Police. In his August 25, 2005, email correspondence with Dean Burnett and Associate Dean Beard, Captain Turnbow took time to comment on his experiences serving in Iraq: “Our goal here is still to make some type of progress every day, and the results are all around us...Signs of economic recovery abound, and we even saw the Iraqi equivalent of a Home Depot on the side of the road in Kirkuk the other day...Problems still remain to be sure, but not as many as there were when we first arrived. All good things take time.”

Captain Kory Turnbow.
Student Organizations: Opportunities to Learn and to Serve

Co-curricular activities are an important part of a legal education, and at the College of Law, students have the opportunity to participate in over two dozen separate organizations. The purposes of these organizations are diverse, ranging from freeing the wrongly convicted to fostering personal and professional affiliations to maximizing hunting and fishing opportunities.

The College’s student organizations operate under the auspices of the Student Bar Association (SBA), which allocates funds earmarked for student organizations. As stated in the SBA’s mission statement, “student organizations augment law school learning by providing their members with rich and meaningful events such as guest speakers and/or specific skills training.”

Some student organizations at the College of Law address the specific needs and interests of law students while others focus on the needs of individuals outside the law school community. All add significantly to the intellectual and community life of the law school. For example, the Spanish Speaking Law Students Association sponsored a question-and-answer discussion with Judge Sergio Gutierrez when the Idaho Court of Appeals visited the law school in April 2005. A month earlier, the student chapter of the Idaho Trial Lawyers Association (ITLA) hosted a panel discussion on “Practical Concerns of Lawyering” and programs to the law school and the University community. In October 2004, the student chapters of the American Bar Association, the American Civil Liberties Union (ACLU), and the ITLA, as well as the Christian Legal Society, Federalist Society, inter alia, Multicultural Law Caucus, Non-traditional Students, and the SBA, co-sponsored a series of programs addressing domestic violence issues during Domestic Violence Awareness Week. In the 2005 spring semester, the American Constitution Society, Phi Alpha Delta, and the Sexual Orientation Diversity Alliance jointly held a canned food drive, proceeds going to needy individuals in the Palouse area.

The purpose of many student organizations is to provide opportunities to develop professional skills and gain first hand experience in legal settings. The Board of Student Advocates (BSA), for example, organizes trial teams to compete in the Raymond C. McNichols Moot Court Competition, just as Law Students for Alternative Dispute Resolution (LSADR) organizes teams to compete in the American Bar Association’s national negotiation competition. Each spring, the Idaho Law Review sponsors a symposium in Boise, in addition to publishing three editions each year. Annually, the Women’s Law Caucus sponsors Meet & Greet, an opportunity for all students to mingle with faculty and local attorneys in a social setting.

In addition to providing opportunities for professional development, many student organizations also address the extra-curricular interests of students. Examples include the SBA’s Barrister’s Ball and the BSA’s Talent Show, an opportunity for students, faculty, and staff to reveal a side of their personalities seldom seen within the walls of the law school. Students wishing to share their opinions on matters small and large have an outlet in inter alia, the College’s “official humor and opinion pamphlet,” published on alternating Wednesdays during the school year.

The Law School Support Association (LSSA) is also active at the College of Law. Its members include law students and those individuals close to them, such as spouses and significant others. The LSSA sponsors a variety of events designed to enrich the community life of the law school, such as an annual Easter Egg Hunt held, as determined by the weather, on the law school lawn or in the Courtroom.

The College of Law currently supports the following student organizations:

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ACADEMIC SUPPORT & LAW LIBRARY IN FOCUS

Nancy Luebbert ’98 the College’s Academic Support Director since 2001, not only helps students “learn how to learn” but also strives to create a supportive learning community that gives students every opportunity to succeed academically, professionally, and personally.

Ms. Luebbert has structured the Office of Academic Support to help students maximize their law school success by fostering key study, analytical, and life skills. She and peer teaching fellows place a special emphasis on the development of study skills and teaching students to think analytically through a complex fact pattern. In other words, they strive to teach students to “think like a lawyer.” While academic support is available for all students, helping first-year students is a top priority.

The Academic Support Office serves students in several ways, including lectures, workshops, and academic advising and counseling. For example, each school year, Ms. Luebbert presents a series of workshops to teach basic professional skills; topics include Getting the Most Out of Class, Briefing Cases, Creating Course Summaries, and Reading for Speed and Comprehension.

In addition to teaching students the skills they need to succeed academically, Ms. Luebbert also strives to create a caring learning community that reaches out to students as individuals. She was the guiding force behind the College’s Early Welcome pre-orientation program inaugurated with the 2005-2006 academic term. This pilot project is aimed at creating a supportive learning community among its participants so they can achieve their personal best in law school. In conjunction with the student organization, Sexual Orientation Diversity Alliance, Ms. Luebbert helps coordinate the College’s SafeZone training, a University program designed to provide safe and accepting communities for gay, lesbian, bisexual, and transgender individuals and for those who may be questioning their sexual identities.

Says Associate Dean Ben Beard, “Nancy has brought dedication and devotion to the welfare of our students. Her approach is caring, yet firm. Students are expected to take responsibility for their academic success and are provided with help in acquiring the tools they need to be successful.”

A non-traditional student, Ms. Luebbert graduated magna cum laude from the College of Law. After clerking for the Honorable Wayne Kidwell of the Idaho Supreme Court, she worked as a contract attorney for the Idaho State Appellate Public Defender where she represented indigent defendants before the Idaho Supreme Court and Idaho Court of Appeals. Ms. Luebbert also has represented indigent clients before the Ninth Circuit Court of Appeals and served as an extern clerk to the Honorable Thomas G. Nelson.

Ms. Luebbert received the Idaho State Bar’s Denise O’Donnell-Day Pro Bono Award in 2001 for her work for the Idaho Volunteer Lawyers Program. She has been a member of the Editorial Advisory Board for the Advocate and an editor for the Idaho Bench Guide and Clerk’s Manual, a project of the Idaho Supreme Court.

Law Library Faculty Add to Research Productivity

The law library is an integral part of the College of Law. The Law Library Director, Professor John Hasko, is a regular member of the law faculty. Three professional librarians, known as law library faculty, are members of the University’s “faculty at large.” They perform an important range of professional service, research, and occasional teaching functions in the College.

Ruth Funabiki is the Head of Technical Services. She recently co-authored a paper on media literacy training that was presented at the annual meeting of the International Communication Association. She is now working on a collaborative piece regarding relationships between mass media messages and voter behavior.

Michael Greenlee is Head of Public Services. He recently produced a compendium of Idaho law-related state documents for the American Association of Law Libraries and a handbook on intellectual freedom for librarians. He is currently researching the application of international law to the rights of religious minorities.

Jean Mattimoe, who joined the law library faculty this year, is the Collection Development/Reference Librarian. She has created an extensive pathfinder on the topic of Social Security privatization and is now exploring the possibility of using this research tool for an article on Social Security reform.

Jean is a 2005 graduate of the University of Arizona where she earned a Master of Arts degree in Information Resources and Library Science. She is also an alumna of the University of Wyoming where she earned a B.A. in History and her J.D. degree. A member of the Wyoming Bar since 1998, Ms. Mattimoe spent four years with Wyoming Legal Services assisting low-income applicants with various civil legal issues.
Describing it as the “happiest day in the cycle of academic life,” Dean Donald Burnett welcomed students, faculty, family, and friends to the College of Law’s 2005 Commencement.

Student Bar Association president Suzanne Fegelein introduced graduation speaker David Z. Nevin ’78. Mr. Nevin, selected by the graduating students to be their commencement speaker, called upon the Class of 2005 to show respect for the legal system while also working creatively to improve it. Speaking to an audience of approximately 900 in the Student Union Ballroom on the University of Idaho campus, the Boise trial lawyer noted that preparation, civility, and the courage of one’s convictions are the hallmarks of effective trial advocacy. Quoting, among others, Sigmund Freud, Isaac Asimov, and William O. Douglas, Nevins urged the graduates to put substance over style in their careers, despite the attention-mongering behavior they see in media depictions of the legal profession. The graduating class of 98 students included 85 spring graduates and 13 students who graduated at the end of the previous fall semester.

During the Commencement ceremonies, Pamela L. Jacklin ’78 was honored with the Award of Legal Merit, voted by the law faculty in recognition of distinctive achievements and service to the legal profession. Ms. Jacklin, who practices in Portland, Oregon, with the firm of Stoel Rives LLP, is one of the Northwest’s foremost experts in energy and public utility law. She also is a role model for lawyers who combine success in private practice with a dedication to the public good. She is a founder of the “I Have a Dream Foundation” of Oregon, providing educational enhancements and scholarship assistance to disadvantaged youths. She received the President’s Public Service Award of the Oregon State Bar, the Rotary Club Meritorious Service Award, and the Judge Mercedes Deiz Award from Oregon Women Lawyers. In addition, she has been recognized by the Northwest Women’s Law Center for pro bono contributions. Ms. Jacklin graduated with honors from Wesleyan University of Illinois and received a Master of Arts in Law and Diplomacy.

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from the Fletcher School of Law and Diplomacy, before choosing a career in law and earning her law degree at the University of Idaho.

Allen Derr ’51 and ’59 was recognized as the recipient of the University of Idaho Alumni Hall of Fame Award for his distinguished career as a public interest lawyer. Mr. Derr, who was a newspaper correspondent before attending law school, is widely recognized in Idaho for his expertise on First Amendment issues and his ongoing advocacy for the “public’s right to know.” He is best known, however, as the Boise lawyer who took the case of Sally Reed to the United States Supreme Court. There he argued successfully that the Court should declare unconstitutional a statute requiring a man to be appointed in preference to a woman when two qualified individuals apply to become the administrator of a decedent’s estate. The case of Reed v. Reed, 404 U.S. 71 (1971) established the fundamental principle that the Fourteenth Amendment to the United States Constitution protects against gender discrimination under color of state law.

Students were also recognized for their achievements. Sarah Elizabeth Davis received the faculty-established “Award of Legal Achievement,” presented to the graduating law student with the highest cumulative grade point average. Two awards, determined by class vote, were also presented. Alycia Truax Feindel received the “Spirit of the Class Award,” which honors a classmate who demonstrated that the values of the class go beyond academic performance. Suzanne Mary Fegelein, past president of the Student Bar Association, received the “Outstanding Student Service Award,” given in recognition of unselfish efforts on behalf of the law school community. Ms. Fegelein delivered the student address at Commencement, in which she noted the College’s emphasis upon ethics and professionalism.

The graduates also conferred vote-based awards upon members of the faculty. Associate Professor Richard H. Seamon received the “Peter E. Heiser Award for Excellence in Teaching,” and the “Outstanding Faculty Service Award” was presented to Associate Professor Russell A. Miller. During the Commencement ceremony, student speakers joined Dean Burnett in expressing appreciation to retiring faculty member Professor Joann Henderson for her 30 years of service and commitment to academic excellence.

Rosholt Roundtable Features Corporate Counsel Pioneer

From the Aurora Room atop the University of Idaho Commons, Lucinda Weiss ’73 was the featured speaker of the 2005 Rosholt Roundtable. Joining Ms. Weiss, one of the legal profession’s true trailblazers, at the head table were John and Karen Rosholt. In 2001, the Rosholts established the John A. Rosholt Roundtable for Visiting Professionals endowment to fund expenses related to bringing legal professionals to the College of Law. The Roundtable was created to give law students a unique experience to learn from successful graduates, to ask questions about life after law school, and to learn about the many options available when making decisions about career paths, especially nontraditional career choices.

Following Dean Burnett’s welcome, Mr. Rosholt ’64 went on to become one of the nation’s premier water law attorneys, introduced Ms. Weiss. Recently retired from the Goodyear Tire & Rubber Company in Akron, Ohio, Ms. Weiss, an Ohio native, came to the University of Idaho College of Law in 1970; she was 19-years-old and one of just seven women in the entire law school. As a law student, she participated in the College’s first clinical program and in 1972 became the first woman at the University of Idaho to
Meeting the Challenge: Friends and Alumni Accept the Rogers Challenge

In 2003, friend and benefactor James E. Rogers established the James E. Rogers Scholarship Challenge (Rogers Challenge) at the University of Idaho College of Law. Rogers announced this challenge when he created a set of eight scholarships beginning with the 2004-2005 academic year, and said he would create another set in 2005-2006 if additional donors would match his contribution. The object of the Rogers scholarships and the matched scholarships from other donors is to enhance the ability of the College of Law to attract highly competitive applicants, especially those who are Idaho residents or who have Idaho connections.

Responding to the Challenge, eight donors (or donor groups) stepped forward this year to establish a set of three-year recruiting scholarships in amounts closely approximating fees paid by Idaho resident law students. Donors who enabled the College of Law to meet the Rogers Challenge are:

- Hall Farley Oberrecht & Blanton (Boise)
- Holden Kidwell Hahn & Crapo (Idaho Falls)
- Holland & Hart (Boise)
- Northwest Nazarene University graduates (Boise area),¹
- Racine Olson Nye Budge & Bailey (Pocatello)
- Stoel Rives (Boise)
- University of Idaho College of Law Class of 1971 (multiple locations),²
- Dennis and Jackie Wheeler (Coeur d’Alene)

These additional scholarships have had an enormous impact on the financial status of our incoming students. While one-third of the Class of 2007 received some form of scholarship, over half of the Class of 2008 received a full or partial scholarship. As a result of the Challenge, more scholarship funds were available to more students, and more “full-ride” scholarships existed to attract the best and the brightest to the University of Idaho. This year’s highly credentialed class is a direct result of the generosity made possible through the Rogers Challenge.

The College of Law sincerely thanks everyone who accepted the Rogers Challenge!

Footnotes

¹NNU graduates participating are Dennis Johnson, Randal Peterman, Bill Russell, and Randall Barton. Includes the United Heritage Fund.
Celebrating Idaho’s “First Fifty”

In March of this year, the College of Law joined with the Idaho State Bar to honor the first 53 (numbers 50-53 “tied”) women admitted to the Idaho State Bar. Taking the form of a reception and dinner at Boise’s Grove Hotel, the special event was the culmination of a sweeping project undertaken by Bar Commissioner and President Debora K. Kristensen to document the personal and professional biographies of Idaho’s trailblazing female attorneys.

In 1895, when Idaho women did not yet have the right to vote, Helen L. Young became the first woman to be admitted to the Bar. But it wouldn’t be until 1975—nearly a century later—that the total number of women admitted to the Idaho Bar would exceed 50. In 2002, motivated by her own ignorance of the role of women in Idaho’s legal history, Ms. Kristensen began to gather the personal histories of Idaho’s “early” women lawyers to provide a chronicle of their lives and accomplishments. Each of the stories Ms. Kristensen collected are included in her book, The First 50 Women In Idaho Law, which was distributed to those attending the dinner.

The most senior honoree present at the tribute was Rei Kihara Osaki ’43. A native of Washington State, Mrs. Osaki escaped relocation during World War II by attending law school at the University of Idaho. Joining her, the first Japanese-American to be admitted to the Idaho Bar, were 16 other honorees and the family members of five other honorees.

Those in attendance from the College of Law were Dean Don Burnett, who offered opening remarks, Associate Dean Benjamin Beard and faculty members Lee Dillion, Joann Henderson ’73, Maureen Laffin, Jack Miller, and Monica Schurtman. Career Services Director Anne-Marie Fulfer ’99, Academic Support Director Nancy Luebbert ’98, and Boise Clinic Administrative Assistant Elaine Kempton also attended as did nearly two dozen current Idaho law students.

Among the 53 honorees, 19 graduated from the University of Idaho College of Law: Kathryn Claire Drong Ahrens ’45, Bernice Bacharach ’42, Judge Linda Jean Cook ’73, Ina Mae Wheeler Hanford ’52, Judith K. Holcombe ’68, Linda Palmer Judd ’70, Maureen M. Jones Warren Meehl ’67, Rei Kihara Osaki ’43, Alberta M. Phillips ’41, Jeanne S. Pollett ’52, Rita T. Reusch ’75, Mary E. Schmitt ’40, Nancy Louise Grubb Simpson ’67, Ursula Irmgard Kettlewell Spilger ’74, Kristie Kunau Stafford ’74, Myrna Anne Itzen Stahmen ’74, Lucinda Weiss ’73, Maxine Whitney ’48, and Judge Darla Sanders Williamson ’72.

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FRIENDS IN FOCUS

Student Organizations, continued from page 25

American Civil Liberties Union
American Constitution Society
Association of Trial Lawyers of America
Board of Student Advocates
Christian Legal Society
Delta Theta Phi
Environmental Law Society
Federalist Society
Hunting and Fishing Club
Idaho Association of Criminal Defense Attorneys
Idaho Law Review
Idaho Trial Lawyers Association
Idaho Innocence Project
inter alia
International Law Students Association
J. Reuben Clark Law Society
Law Student Support Association
Law Students for Appropriate Dispute Resolution
Multicultural Law Caucus
National Lawyers Guild
Non-traditional Students
Phi Alpha Delta Legal Fraternity, Borah Chapter
Sexual Orientation Diversity Alliance
Spanish Speaking Law Students
Sports Law
Student Bar Association
Volunteer Income Tax Assistance
Women’s Law Caucus

Rei Kihara Osaki ’43

Jacqueline Groff ’07 and Megan Yeates ’07

Erica White ’06 and Andrea Schiers ’06.
Dear Fellow Law Graduates:

In fulfillment of its ambition to be “America’s best small state law school,” the College of Law is attracting increasingly diverse and well-credentialed students and faculty. To realize fully for current and future students the distinctively rich and intimate law school experience which is part of Dean Burnett’s vision, the College is focused on improving faculty-student ratios through smaller class size and expansion of the curriculum, broadening and deepening the College’s recognized areas of expertise, and exposing students to the skills and values that will enrich their professional lives.

Much has been accomplished. Clinical externship and skills-based opportunities have been expanded, such as the Boise Semester in Practice program and the Indian Probate and Estate Planning program. The depth of the College’s principal areas of focus – environmental and natural resources law, advocacy and dispute resolution, and business law and entrepreneurship – continues to increase.

But much remains to be done to prepare students to practice law in the 21st century. Both public and private resources are needed, and your contributions and support are essential and most appreciated. In describing the bond that ties us to the College and each other, Dean Burnett has remarked that you never forget what defines you. I encourage you all to remember the unique educational opportunity, which we share through your continued generous support.

Best regards,
Cynthia J. Larsen ’78

COLLEGE OF LAW
**Admissions: Class of 2008**

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of applicants</td>
<td>828</td>
</tr>
<tr>
<td>Number of matriculating students</td>
<td>104</td>
</tr>
<tr>
<td>Median LSAT score</td>
<td>156 (68th national percentile)</td>
</tr>
<tr>
<td>Median Undergrad GPA</td>
<td>3.39%</td>
</tr>
<tr>
<td>Percentage of women</td>
<td>40.4%</td>
</tr>
<tr>
<td>Percentage of minority students</td>
<td>12.0%</td>
</tr>
<tr>
<td>Percentage of Idaho residents</td>
<td>72.0%</td>
</tr>
</tbody>
</table>

**Careers: Class of 2004**

Statistics for the 104 members of the Class of 2004 show 98.1% of the class obtaining employment, enrolling in post-J.D. educational programs, or engaging in full-time study for the Bar.

**Type of Employment**

<table>
<thead>
<tr>
<th>Type</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private law firm</td>
<td>31</td>
</tr>
<tr>
<td>Judicial clerkships</td>
<td>24</td>
</tr>
<tr>
<td>Government</td>
<td>17</td>
</tr>
<tr>
<td>Public Interest</td>
<td>7</td>
</tr>
<tr>
<td>Academic</td>
<td>2</td>
</tr>
<tr>
<td>Business</td>
<td>4</td>
</tr>
<tr>
<td>Total Employed</td>
<td>85</td>
</tr>
<tr>
<td>Class of 2004 Total</td>
<td>104</td>
</tr>
</tbody>
</table>

**Location of Employment**

<table>
<thead>
<tr>
<th>Location</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Idaho*</td>
<td>45</td>
</tr>
<tr>
<td>Utah</td>
<td>12</td>
</tr>
<tr>
<td>Washington</td>
<td>11</td>
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<tr>
<td>Colorado</td>
<td>11</td>
</tr>
<tr>
<td>Alaska</td>
<td>3</td>
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<td>Arizona</td>
<td>2</td>
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<tr>
<td>California</td>
<td>2</td>
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<tr>
<td>Washington DC</td>
<td>2</td>
</tr>
<tr>
<td>Mississippi</td>
<td>1</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
</tr>
<tr>
<td>Nevada</td>
<td>1</td>
</tr>
<tr>
<td>Oregon</td>
<td>2</td>
</tr>
<tr>
<td>Saipan, MP</td>
<td>1</td>
</tr>
</tbody>
</table>

Funding for Excellence

During the fiscal year ending June 30, 2005, a total of $250,744 in gifts and pledges designated specifically to the College of Law was received. As of June 30, 2005, the endowment principle at market (all endowments combined) was $9,113,898, and $330,985 of the earnings were distributed to the College of Law for scholarships, lectures, and visiting legal academicians and practitioners.

All of the endowments and funds listed provide for a specific program or scholarship. They were established to pay tribute to a family member or honor an accomplished practitioner or judge, a friend or a professional associate. And they were created for the same reason, the honoree and/or donor held a love and an appreciation for the College of Law and the legal education Idaho provides. If you are considering establishing an endowment or recurring fund (our minimum for an endowment is $25,000) it can be set up over time or with a one-time gift. If you are interested in contributing to an existing endowment or fund, please consider those listed below:

Endowments:
Judge J. Blaine Anderson Memorial Scholarship Endowment
Bernice Bacharach College of Law Endowment
Bernice Bacharach College of Law Scholarship Endowment
Leland D. Beckman Foundation Law Scholarship Endowment
Sherman J. Bellwood Lectures Endowment
Herbert A. Berman Memorial Scholarship Endowment
Laurence S. Bogert Memorial Lecture in Law and Business
Justice Alfred Budge Visiting Jurist Endowment
Cenarrusa Eiguren Endowment
William H. Clagett Memorial Endowment
Robert H. Copple Memorial Law Endowment
John S. Cushman Scholarship Endowment
Charles H. Darling Law Scholarship Endowment
Burton F. “Humpy” and Dee H. Ellis Academic Excellence Endowment
Paul Ennis Memorial Scholarship Endowment
Felton Family Law Scholarship Endowment
William and Carolyn Fozz Scholarship Endowment Fund
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H.F.C. Scholarship
Idaho Law Review Endowment
Langroise Law Scholarship Endowment
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Lucinda Weiss College of Law Fund
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James E. Wilson Memorial Endowment Fund

Named scholarships, fellowships and programs that are not endowed but are supported each year by annual gifts:
American Indian Law Initiatives
William F. and Joan L. Boyd Teaching Excellence Fellow
College of Law Innocence Program
College of Law Library
Copple/BSU Law Scholarship Fund
Eberle Berlin College of Law Scholarship
L.E. Elam Memorial Law Fund
Hall Farley Oberrecht & Blanton College of Law Scholarship
Holden Kidwell Hahn & Crapo College of Law Scholarship
Holland & Hart LLP College of Law Scholarship
Idaho Law Review
Law Class of 1971 College of Law Scholarship
Law Class of 1973 Fund
Law Class of 1978 Fund
Law Class of 1979 Fund
Law Class of 1984 Fund
Law Dean’s Fund for Excellence
Law Public Interest Fellowship
Minas-Hansen-Slavin Memorial Law Fund
NNU Scholar College of Law Scholarship
Racine Olson College of Law Scholarship
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James E. Rogers Fellow in American Indian Law
James E. Rogers College of Law Scholarships
Schreck Professionalism Fund
Stoel Rives College of Law Scholarship
Fred M. Taylor Memorial Law Fund
Douglas VanderBoegh Memorial Law Scholarship
Dennis E. and Jacqueline R. Wheeler College of Law Scholarship
Contributions from friends and alumni support our efforts to attract and educate highly qualified students. The following list honors those who have generously donated to the College of Law only, throughout the fiscal year July 1, 2004, through June 30, 2005.

† indicates deceased

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Law alumni and friends, corporations, and/or law firms whose cumulative giving to the University of Idaho and/or the College of Law totals $1,000,000 or more.

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Simmons, June V.

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Rosholt, John A. ’64 and Karen R.
Ryan, Ann
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Smith, N. Randy and LaDean E.
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Landsgaard, Olaf Arthur ’86
Jones, Rory Rolland ’82 and Lisa Jane
Landsgaard, Olaf Arthur ’86
Luebbert, Nancy Connell ’98 and
Landsgaard, Olaf Arthur ’86
Jones, Rory Rolland ’82 and Lisa Jane
Landsgaard, Olaf Arthur ’86
Luebbert, Nancy Connell ’98 and

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Guerry, Mark James ’90 and Lisa
Hadley, David William ’81 and Adams,
Aracella
Hahn, Fred J. and Pearl M.
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Hannah, Henry Carroll ’96
Hansen, Timothy Lee ’84 and Mary D.
Hanson, Jay M. ’65 and Judy K.
Harden, Quentin F. ’72 and Kathryn A.
Hartwell-Beal, Kelvin Patrick ’98 and
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Haukaas, H. Craig ’87 and Anita Kay
Hensley, David Fermin ’02
Himam, Michael Howard ’76 and
Margaret B. ’86
Hobson, Mary Stiles ’77 and Frank Don
Hoffman Ricky L. ’79 and Cindy Olin
Horton, Paul F. ’73 and Roberta J.
Hutchinson, John R. ’87
Jaffke, Cheyanna Lynn ’96
Jensen, Everand
Joanis, Lance Eric ’04 and Jennifer ’04
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Judge, John Crawford ’84 and Mary Ann
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Kozak, Charles R. ’68 and Susan K.
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Leaverton, Jack D. ’78 and Diane R.
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Loo, Lamont C. ’95 and Lesle E.
Lytle, Patricia M. and Howard
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Richard S.
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Dawn Marie
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James David
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Donna Kay
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Duskin, David E. ’74 and Kay E.
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Ellis, Darrel R. ’72 and G. Charlene
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Friel, Wallis W. ’56 and Sue C.
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Lytle, Patricia M. and Howard
MacGregor, Wayne C. ’52 and Nancy
Mann, Andrew Cooper ’79
Manning D. James ’67 and Sharon L.
McBurney, Patrick David ’92
McCabe, Thomas James ’80 and
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McCrea, Stephen B. ’74
McCreddy, John C. ’87 and Julie
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Power, Michele L. ’95 and Gale Wayne
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Anne-Marie ’99
Randall, Gary C. ’64 and Sharon A.
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Ritzau, Lee Philip ’95
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Schindele, Michael Louis ’76
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Scrivner, Wesley Landon ’78 and
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Selman, John R. ’68 and Sherilyn
Service, Archie W. ’53
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Should Torture be a Tort? continued from page 11

provision barred medical malpractice claim against military doctor even though an FTCA claim against the United States for the doctor’s malpractice was barred by the FTCA’s foreign country exception.

20 28 U.S.C. § 2679(b)(2)(A) [exclusivity provision does not extend to civil action against federal employee “which is brought for a violation of the Constitution of the United States”].


22 See, e.g., Carlson v. Green, 446 U.S. 14, 18 (1980).


24 See id. at 818; see also Wilson v. Layne, 526 U.S. 603, 617 (1999) (stating that Marshals Service policy authorizing defendant officials’ conduct was “important” to Court’s conclusion that those officials had qualified immunity, because “the state of the law ... was at best undeveloped”).

25 See Elaine Scarry, THE BODY IN PAIN 56-59 (1985) (explaining that torture is designed to translate or transform individual human suffering into “an emblem of the regime’s strength”).


27 See Maine v. Thiboutot, 448 U.S. 1, 4-8 (1980).

28 See Memorandum from William J. Haynes II, General Counsel, Department of Defense, to Secretary of Defense re Counter-Resistance Techniques (Nov. 27, 2002), in TORTURE PAPERS, supra note __, at 253-55 (summarizing relevant federal statutes); Working Group Report, supra note __, at 290-302 & 325-330 (summarizing relevant federal statutes and UCMJ provisions); Lieutenant General Anthony R. Jones & Major General George R. Fay, Investigation of Intelligence Activities at Abu Ghraib [Fay-Jones Report, in TORTURE PAPERS, supra note __, at 1033-34 (summarizing relevant military directives); Charge Sheet for Charles A. Graner, Jr. [charging participant in Abu Ghraib prison abuses with violations of five articles of UCMJ], available at http://www.findlaw.com/htdocs/iraq/.

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