

inter alia

wednesday, november 16, 2005

Thoughts on War and Peace

By Kirk O'Reilly

Torture. I can't tell if the Administration is for it or against it. While the President was proudly stating that America does not condone torture, the Vice President was on Capital Hill twisting arms trying to get the Senate to drop wording from a bill that reminds the Administration that America does not condone torture. Sure doesn't help one's already low credibility when both stories come out in the same news cycle.

But hypocrisy has been part of the response to the torture scandal since the story broke. Instead of supporting the troops, the White House immediately turned on the reservists who were implementing its policy. So Citizen Soldiers who should never have been asked to leave their families in West Virginia are now rotting in jail, while the officers who brought the Rumsfeld Two-Step from Washington and Guantanamo to Abu Ghraib, General Miller and Colonel Pappas, are still free. The White House lawyers who helped shred the Geneva Convention and International Convention Against Torture have done even better as they have since been promoted to Attorney General and Chief Justice of the Supreme Court. But then the powers that be always looked out for their own, while letting the little guy pay the price.

Just when one thought the story couldn't get any stranger, the news comes out that the Administration has taken over Soviet era prison camps to implement its "no torture" torture policy away from prying eyes. Didn't we spend 50-plus years on the moral high ground trying to get those places shut down? Gives a

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## SBA Council Holds Special Budget Meeting

By Christopher Taylor

MOSCOW, ID—The Student Bar Association Council held a special meeting to react to SBA President Taylor Mossman's exercise of her line-item veto power on certain student organization's Spring budget allocations on Monday, November 14. The Council, rather than attempt to override President Mossman's veto, reconsidered each of the vetoed allocations in turn, and passed set of budget allocations.

Last week, President Mossman, taking issue with the process by which SBA money was allocated at the prior budget meeting on November 7, vetoed the allocations for BSA, ITLA, Law Review, LSADR, MLC, VITA, and SBA itself. The allocations for ACLU, ELS, the Federalist Society, ILSA, LSSA, NLG, SODA, SSLS, and WLC were approved by President Mossman at that time.

President Mossman outlined her objections to certain allocations in a memorandum on Monday. The memo recommended cutting BSA and Law Review's allocations further in light of their extensive outside sources of funding. It also objected to the size of VITA's allocation in light of its lack of a Fall charitable event. Furthermore, the memo suggested, because SBA's proposed out-going professor "roast" was not yet a fully cognizable event, it should not be funded. The memo suggested that the SBA Constitutional requirement that an organization be represented at the budget meeting be waived with regard to ITLA. It also characterized "diversity" as being an important goal for the College of Law, and connected MLC's mission

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Taylor continued on page three.

Incoherent Observations

By Jim Bielenberg Jr.

• Dear Law School Publishers: If I spend \$120 on a book you publish only to find out the back fifth of it is nothing but blank pages, expect me to show up at your office with a tire iron and a bad attitude. Isn't it enough that you are charging cartel-esque prices for your new edition, which is exactly the same as your old edition save for a "new and improved" foreword by some yahoo professor from a school I've never heard of? You're going to charge me for blank pages! What's next? Is Mad Libs going to start a law school series? "The defense pooped (verb, past tense) the witness to the doggy (noun)." Tee-hee, how fun!

• Why, exactly, is one goal of the legal community to *decrease* litigation? That's a little like Nike starting a "Barefoot is Cool" advertising campaign.

• Has anyone noticed that law school is eerily similar to Junior High School? You have all of your classes with the same people. There are cliques. Girls change their friends every two weeks based on insanely irrelevant occurrences. There's even a lunch-lady. I'm just waiting for the day a 3L takes my coffee-money, gives me a swirly and shoves me into my carrel. There is one difference, though. Your school's football team was a lot better than.

• Don't ever start a question in class with the phrase: "Does it matter if..." Yes, it matters. The rest of the sentence is what we in the law school world refer to as a "hypothetical." Teachers use these devices

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*Bielenberg continued on page four.*

## Religion and Masturbation

By Christopher Taylor

Came to a conclusion lately: religion is a lot like masturbation. Both are perfectly natural, healthy, widely practiced activities. Both are looked upon disapprovingly by certain narrow-minded individuals. Both are often practiced by those same narrow-minded individuals. There's money to be made in the penumbra of both, although both are essentially free, noncommercial activities. And it is not really appropriate to do either in public. Or talk about either topic with strangers. Or try to coerce others into adopting your particular way of doing things. Sure, it isn't at all unusual or rude to have discussions, including making suggestions about technique and form, among friends. But the proselytizing over the radio--the "shock jocks" who suggest sitting on your hand so it feels like someone else is helping you out, or the "evangelists" who suggest eternal hellfire will follow nonbelievers--are simply rude. Of course I'm enough of a First Amendment junkie that I recognize banning these practices does more harm than good. But come on people. It just isn't cool to press the particulars of your button-pressing and prayer-beading on others. Especially strangers. And I think the sooner we as a society recognize this, the sooner we'll all be comfortable around most everyone.

## The Fine Art of the Discurrence

By Jeff Dearing

In this article I seek to inject a new phrase into our dusty legal vernacular. By doing so I hope to finally see my name in a law review. Of course, I will never actually write anything for a law review because my knowledge of the law is tenuous at best and potentially criminal at worst. I am what Professor Anderson might call "minimally competent." Instead, I want this article to show up in footnotes in law reviews across the nation for generations to come. I want to be the Blackstone of third-rate legal jargon. Thus, I present to you Dearing's Theory of Discurrence.

The term is "discurrence," as indicated by the title of this piece. What is a discurrence you may ask? A discurrence is a judicial opinion in which the authoring judge manages to agree with the holding but disagree with the result. Allow me to demonstrate.

There are two types of discurrence, special and general, much like relativity.

General Discurrence:

This first type of discurrence is seen frequently in the writings of Justice Ginsburg, particularly in her work on the DC Circuit court.

These discurrences amount to the discurrer saying, "Nice work on the opinion. It's well written and your argumentation is perfect. However, you're completely wrong." This is to be distinguished from the normal concurrence in that the discurrer will only occasionally offer an alternative path to the result and if they do it's usually from the damn moon.

Special or Blackian Discurrence:

This type of discurrence is most pronounced in the writings of the late Justice Black. Justice Black frequently dissented in cases in which he felt the majority was being hostile to free speech or privacy rights. This was the case in *Poe v. Ullman*, 367 US 497, a case in which Connecticut's ban on contraceptives was at issue. Well it wasn't at issue, the court actually dodged the issue entirely and focused on something called "justiciability" instead. It is also a shining example of Blackian Discurrence.

The entirety of Black's opinion is as follows:

"Mr. Justice Black dissents because he believes that the constitutional questions should be reached and decided."

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### inter alia

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*inter alia* is the University of Idaho, College of Law's official humor and opinion pamphlet, published on alternating Wednesdays. Submissions for publication are encouraged. Any opinions represented herein are those of the indicated author or *inter alia*'s staff and in no way represent the opinions of the Student Bar Association. *inter alia* doesn't bother milking and blending before consuming Mexican chocolate.

Letters to the Editor:

Two previous and regular contributors to *inter alia* run the risk of breach of contract litigation. They advertised a contest to win a dream date with one of them. The contest was open to current University of Idaho law students or whoever read that issue of *inter alia* (even if it was left at the Greyhound station). First place winner gets to pick either Dale or Jeff and second place gets date with the other one. Third place gets a set of steak knives. Only one entry was entered and received over a week ago by Dale and Jeff, but so far no date for these two ladies, Ann and Amber. And no steak knives for their mentor, Sarah Bradley. What's up! It would seem with only one entry these guys can't afford to welsh.

- Helen Hall

The allegations made by Ms. Helen Hall are scurrilous and libelous. To be victim to such claims are harmful to both my reputation in the law school and endangers my position as acting Vice President of the Idaho Recreational Legume Farmers Union. I feel that I not only need to defend my honor but also respond to this insult. I thought I was still living in America but apparently I was wrong. I should study up on the Constitution of Nazi Russia instead.

Why should I be exempted from any responsibility?

1. Advertisements aren't contracts in and of themselves. This is clear from the law. Seriously, just look it up. Further, since the advertisement was directed towards any and all who might see it, there's no way it could be thought of as directed to the entrants in particular.

2. There were extenuating circumstances. Through the process of discovery I have discovered that one of the entrants is currently in a relationship, thus voiding her right to participate. Since the entrants submitted a joint entry the entirety of the entry should be voided.

3. Eighth Amendment of the U.S. Constitution. From what

I recall there is something in there about "cruel and unusual punishments". And while contract enforcement isn't a punishment per se, forcing me to fulfill a contract that didn't exist seems rather punishing to me. Also, while there is nothing cruel about spending time with either of the respondents in question it is unusual that anyone would seek me out for such an activity. Thus making it half-unconstitutional (based on the presence of the word "and") and that's half too much.

4. Thirteenth Amendment of the US Constitution. There was no contract requiring Mr. Slack and I to participate thus requiring us to do so violates Section 1 of the Thirteenth Amendment. That's involuntary servitude, buddy.

5. Article IX, Section 2 of the Idaho Constitution. That section specifies that the state board of education shall be responsible for "general supervision" of the state educational institutions. And I'm just going to make something up here and say that because the advertisement was run in an official publication of the state-run law school this should be heard before the state board of education.

6. Article I, Section 7 of the Idaho Constitution. Okay, so you didn't buy the board of education thing, fine. Well Article I, Section 7 says that all civil defendants are entitled to a trial by jury. I want my jury of twelve, sure it only takes eight to vote against me but I'm willing to roll the dice on this one. If that doesn't happen then you run into...

7. Fourteenth Amendment of the US Constitution. That's due process. And I think I am well overdue for some process.

8. Lanham Act. I don't know how it applies but Professor Dykas said to always include it in a filing because most people have no idea what it is, so there you go.

For all the above reasons Mr. Slack and myself should be relieved of any supposed duty under the alleged contract. Further affiant sayeth naught.

- Jeff Dearing, 19th Grade, Home Room

Events and Announcements

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Send event details and announcements to [crtaylor@uidaho.edu](mailto:crtaylor@uidaho.edu).

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with that goal in suggested additional monies be there allocated.

The Council took some of President Mossman's suggestions to heart. BSA and Law Review both had their original allocations reduced, largely because of the existence of outside sources of income. MLC did see its allocation raised. And SBA did see its allocation reduced to remove the "roast" line item. However the Council did not budge on its \$0 allocation to ITLA or its \$1100 allocation to VITA. In the former case, it was Councilwoman Jennifer Faverty's clarifying that ITLA "have now had two chances to come before the Council... and they didn't show up. This [meeting] was their chance to redeem themselves and no one is here from ITLA. No one being here affirms it." In the latter case, while there was some question about the extent to which VITA benefits the College of Law locally—VITA's primary expenses surround its trip to rural Alaska to help fill out tax returns—ultimately the Council decided that because they had already allocated so little relative to VITA's request, and because their expenses are not likely to change, they would not alter their allocation. However there was a suggestion, again from Councilwoman Faverty, that VITA may be "weaned off" SBA funds in coming years.

In the end, the allocations were as follows:

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| ACLU: \$865.      | BSA: \$2500.      |
| ELS: \$350.       | Fed. Soc.: \$900. |
| ILSA: \$465.      | ITLA: \$0.        |
| Law Rev.: \$2400. | LSSA: \$275.      |
| MLC: \$2100.      | NLG: \$125.       |
| SBA: \$5394.      | SODA: \$450.      |
| SSLS: \$276.      | VITA: \$1100.     |
| WLC: \$800.       |                   |

*Bielenberg continued from page one.*

to drive home points and get you to think about the material you are studying. It is mildly annoying when teachers use them, and infinitely more so when you do.

- All of us have imagined setting this place on fire or bringing a firearm into class. However, if the likelihood reaches the degree of “somewhat likely” as opposed to “merely possible,” remember to warn your friends before you do so. (Note to Con Law class: I’m bringing a “toy” in for show and tell on Friday. Be forewarned.)

- God has come down from heaven and authored a number of law course outlines under the nom de plume “Buckham.”

- My brother is a CPA in Arizona, and I’ve recently kicked around the idea of getting an LLM in Tax. We’d appreciate your vote for America’s Most Boring Siblings, 2005.

- I know it’s been a while, but I just thought of this today: Destiny’s Child released a song about being a gold digger (“Bills, bills, bills”) and one about being completely self-providing (“Independent women”) within the span of a couple of years. I think Snoop’s anti-drug ballad is going to be released early next year.

- The last three times I’ve been in a women’s restroom (long story) I’ve noticed that their toilets have seats that lift up, too. Someone want to explain that to me.

- On a similar note, some urinals in men’s rooms go all the way down to the floor. C’mon guys, who are we really fooling?

- I like buying used books for class for comedic purposes. Actual handwritings in margin of my used BA book: “Where the hell did this guy come from?” and my personal favorite “App. has Harry Rodd problem.” I know it’s completely immature, but if I ever see or hear that and I don’t laugh, I want someone to pull the plug, because I have ceased enjoying life.

*Dearing continued from page two.*

Bam, that’s it! Note that he says absolutely nothing about the other opinions as to whether or not their logic was sound or if they focused on the proper issues. Rather he just plows through them like a ten ton bulldozer of legal power. The thoughts of the majority matter little to the Blackian Discurrer. Rather, they simply want to make sure everyone knows they are grumpy about the whole dog and pony show and would rather have been fishing during the oral arguments.

So there you have it. The discurrance, explained in brief for you, my loyal readers. The discurrance is not for the timid or the ill-prepared. To pen a discurrance and stand by it takes nerves of steel and the cantankerousness of an old pack mule. It is my hope that someday someone from this fine school will write a discurrance. And then some other person from the school will write about it and then cite to me. In time legal minds more skilled than my own will be able to fully explore the discurrance but in the mean time at least you have something to think about. Ya know, other than all that stuff about finals and upper division writing requirements.

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whole new meaning to the phrase Red State Republicans.

Still, assuming the President is right that he has the authority to implement a policy that is abhorrent to America’s ideals and is in violation our international agreements, and assuming that any short term benefit in informa-

## Sipping Handful of Dust from the Dry Wellsprings of Imagination

By C. Dale Slack III

Some people just don’t realize how hard it is to write a quality humor piece for a small-circulation bi-weekly publication. It is a painstaking and laborious process involving several hundred hand-tooled jokes, witticisms and gimcracks. I have to pore over my last two weeks, find something amusing to comment on, polish it up and make it into a publication-worthy opus.

This week, I didn’t do that. This week I was pretty busy. You see, the life of an immigration and tribal criminal-defense intern is a busy one indeed, and I have very little time for writing anything. I have pages of notes, taken mostly while my clients talked to me or during hearings, but none of them really have that Maddenesque “pow” that my readers crave. Some aren’t even ideas. Some are completely illegible. For example:

1. Renq. diss. shoehorn gax. No.2
2. What’s the deal with ham?
3. CIS interview room smells like buffalo wings.

Those ideas just can’t be made into anything, much less a finely hewn article.

So in short, dear friends, I have nothing to bring you this week. I thought maybe I’d write 500 words on farting in court, or perhaps a dissertation on prosecuting attorneys and their verrucas, but I just can’t manage it. It’s probably for the best.

tion obtained is worth the long term threat to future American POWs and America’s tarnished standing in the eyes of the civilized world, the least he could do is take full responsibility and pardon the soldiers convicted for implementing his policy.

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A reminder: the Support the Troops supply drive is going on all week.