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University of Michigan Law School

The Res Gestae

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Terrorism Symposium Sparks Debate

By Kelly O'Donnell
Contributing Editor

Photo by Jami Jarosch

It's a good thing no aspiring Unabomber targeted Ann Arbor recently. With dozens of government and academic experts gathered for a terrorism symposium, he would have faced a tough crowd.

There was Lisa Gordon-Hagerty, who is in charge of the federal government's response to an attack involving weapons of mass destruction. Then there was Cherif Bassiouni, an internationally renowned scholar of international criminal law. Two dozen other speakers from the CIA, DEA, Treasury and Defense Departments — as well as various U.S. and foreign law schools — spent the weekend exploring the meaning of terrorism and its potential effects.

Sponsored by the Michigan Journal of International Law, the two-day symposium brought together the people who think and write about terrorism's legal aspects and the people who deal with its repercussions. Day one was devoted to academic discussions ranging from how antiterrorism efforts endanger human rights, to how the "war on drugs" was waged, to terrorism's financial aspects. On the final day, panelists focused on procedural questions such as evidence gathering.

During one lively discussion, the prosecuting and defense attorneys who once squared off at the 1993 World Trade Center bombing trial traded friendly insults. Former Assistant U.S. Attorney Gilmore Childers, who is now building a white-collar criminal defense practice, debated with law school public service director Robert Precht, who defended one suspect in the case. Each discussed the formidable challenges he faced. Childers told of how most of the bomb's chemical residue was washed away by the hundreds of thousands of gallons of sewage which spilled from the building's ruptured pipes, while Precht spoke about the difficulty of interviewing non-citizen witnesses who feared the FBI

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Success for Jessup Team

By Kelly O'Donnell
Contributing Editor

They call it "the Socratic method on crack."

You may think you've been there: twisting uncomfortably in your seat as a prickly professor dissects your futile attempts at argument.

But try making your case to a panel of judges who pepper you with questions, before an audience of fellow law students itching to take you apart. After spending hundreds of hours preparing your case, you could orate for an hour on the intricacies of international intellectual property law. But the judges just won't let you; they've got too many tough questions to hurl at you first.

It's not some *Paper Chase* nightmare; it's the Jessup Moot Court competition. And as grueling as it sounds, Michigan's team members say their only regret is not winning. Placing second in the regional round, the

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JESSUP, from page 1

team racked up several impressive awards: Matthew Ralph was named best overall speaker, while Anders Wick placed fourth (out of 38 competitors). The team's brief took third place out of a field of 10 Midwestern schools at the February 5-7 event in Chicago.

"Our team completely swept the opening four rounds," said head coach Brian Newquist. "All four speakers won unanimous decisions in every round. They did not drop a single speaker point between them."

Only later did the team — composed of Giji John, Sarah Rathke, Ralph, and Wick, along with alternate Jean-Marc Corredor — run into trouble. After beating John Marshall's contingent in the semifinal round, they fell to the University of Illinois in the finals.

The event centered on the fictional developing country of Pagonia's attempt to protect its culture through industry-wide nationalization of foreign majority ownership interests in its domestic media and entertainment companies. The wealthier country of Bretoria objected, worried about the widespread piracy of its products as well as its citizens, ownership interests in Pagonian companies. To research the issue, team members had to comb through treaties and agreements like GATT as well as decisions from the International Court of Justice.

After devoting 20 hours per week last semester — not to mention 100 hours of the last week of winter vacation — preparing for the competition, the participants had evolved from international law amateurs to reach a polished familiarity with the subject.

"It was amazing to me to see all these people go from mumbling — they could barely get through their oral arguments, and didn't know the basis of international law — to their performance at the competition," said assistant coach Ken Pippin, who, along with Newquist, competed last year. "They were composed and quite knowledgeable about the issues. It impressed me."

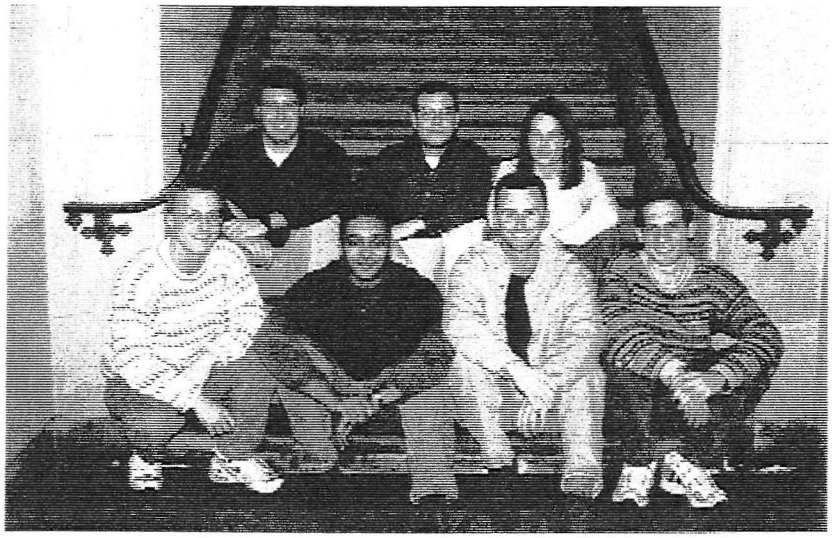

Photo by Jami Jarosch

Aside from their newfound advocacy skills, team members said their favorite aspect of the event was the close friendship they developed. And after practicing their arguments all semester, everyone was familiar with every possible argument that could be made, which came in handy once it was time to face the judges.

"The whole thing is about answering hostile questions," Ralph said. "You'd like to just present your side, but they don't let you do that."

John concurs. "You'll have what you want to say, and the judges will take you to where you don't want to go."

Ralph did learn one neat trick, though. "When you get asked a question you don't know, just keep repeating the same thing. You get points for being tenacious."

With all that tenacity buzzing around, some team members even argued in their sleep. John woke up one morning to find himself addressing his alarm clock as "Your Excellency" in a plea to get 10 more minutes of rest.

Even though their effort ultimately fell short, the participants enjoyed the experience.

"We all work really well together," John said. "We're all really close."

RG

Environmental Law Moot Court Team advances to Semi-Finals

The Environmental Law moot court team of Tom Cosgrove(1L), Sanne Knudsen(1L), and Vivek Sankaran(1L) advanced to the semi-finals of the Pace University Envrionmental Law Moot Court competition on Saturday February 20. In addition, the team was awarded one of three best brief awards for their appellate brief representing the Friends of the Roaritan, an environmental organization involved in a dispute with a manufacturing company about violations of the Clean Water Act. In all, there were 68 teams in the competion from all over the country. In the semi-finals, Michign faced Drake and the University of Hawaii. Hawaii won the round and advanced to the finals where they went on to win the national championship. Of special note is that Michigan was the only team in the entire competition that was comprised entirely of 1L students. The team is indebted to Brian Gruber and Jamie Zysk who helped the team research and organize their arguments.

The Res Gestae

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Commentary

Paul Diller's discussion of the recent colloquialization of the word "nazi" reflects only one aspect of the "language revolution" that appears to be going on in today. Society has become desensitized to many words that used to connote reprehensible ideals or offensive views. Whatever the implications of this desensitization, there is a battle being waged on the other side of the spectrum that is, in my opinion, worthy of even more concern. This is the demand from some members of society to cull our vocabularies of not only those words that we wouldn't use in public, but also any word that even *sounds* like one of those words.

The particular event that really set me to fuming was the recent situation in Washington, DC with new mayor Anthony Williams' white aide, David Howard. If you don't already know all about this, Howard used the word "niggardly" in a conversation with two other aides and resigned a week and a half later amid rumors that he had used a racial epithet. Though recent developments indicate that he will be returning to work (Williams now believes he acted too hastily in accepting Howard's resignation), the bitter residue of the whole incident still lingers.

My anger lies not only with the individual who started the rumors of racism before picking up a dictionary, but also with Mayor Williams for accepting Howard's resignation. The press had reported that Howard's resignation was completely voluntary and done in recognition of poor judgment. I find it hard to believe that this resignation was devoid of political pressure; what I see is another individual falling victim to the rumor mill and rampant, irrational paranoia with respect to our language and its contents. Doesn't Washington seem childish enough when our representatives can't even bring themselves to say "penis" in discussing whether to impeach our president?

I think the Washington Post hit the nail on the head when it wrote a sarcastic editorial calling for the elimination of words like "despicable" from our vocabulary, because of its negative connotation and the presence of the racial slur "spic" right in the middle of it. This whole episode is ridiculous. Certain words should not be used in conversation, but to damn their homonyms as well is just too much.

Uh oh, did I say "homo"? I mean, uh, words that sound alike...

By Bruce Manning

Three Second Memory

I recently took an informal survey of faculty members at this august institution and was surprised to find that more professors understood the Rule Against Perpetuities (three) than could identify what exactly it means to "think like a lawyer" (none). Do you know what either of these mysterious concepts means?

I first encountered the "think like a lawyer" buzzphrase in the view book and course guide the Law School Admissions Office sent me. It was liberally sprinkled throughout the class listings that sounded overwhelmingly dull ("Trusts and Estates Advanced Seminar: When Great Aunt Frieda Kicks It"), absurdly irrelevant ("Enterprise Organizations III: The Search for Spock"), or painstakingly elitist ("*Coito Ergo Sum*: Plain English and the Law; Why Bother?"). For example, from page 68 of the current guide to the Law School: "In addition to bleeding you to the tune of $98,000, the University of Michigan Law School will teach you to *think like a lawyer*."

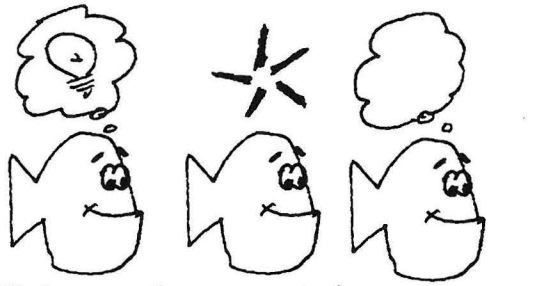
Oddly, I thought that the sentence implied that I would learn to *think like a mugging victim*.

Way back in 1997, during my first week here at the Law School, I went to one of those orientation lectures in Room 100. Except for the occasional use of the word 'impact' as a verb, which sends me over the edge, the first half of the program was dull. "You will impact the lives of your fellow citizens," one of the speakers remarked, intending to motivate those of us who were already scratching our heads in vocational self-doubt. Then Dean Lehman stepped up to the podium. I was ready to be inspired but his words left me at somewhat of a loss: He intoned that after three years in the hallowed halls of the Law School I would go forth and be able to *think like a lawyer*.

Oddly, shortly thereafter I went to Dominic's for the first time where I discovered that what Dean Lehman must have meant is that I would go forth to *drink* like a lawyer.

One fine October day in Torts class, we read a case about a woman who had suffered a spontaneous outbreak of hemorrhoids after looking at a photograph in a magazine of the Leaning Tower of Pisa. The photographer, the magazine and Italy were named as defendants. A fellow student had just pontificated on the need to find liability with the manufacturers of everything in creation if some nitwit had managed to injure himself with it. His closing statement was "Italy should have its wages garnished." "Yes!" the professor ejaculated, "You have learned to *think like a lawyer*."

Oddly, I thought that he had learned to *think like an idiot*.



This summer I will be overpaid at the upstanding law firm of —. I was told many times by many lawyers there that I would be given challenging tasks, interesting legal assignments and tickets to sporting events. When I visited the firm, wearing a suit that turned out to be identical to everyone else's, I was walked through a mock 'typical day.' My mock 'typical' assignment was "Research the licensing and liability issues associated with senior partner Joe Dempsey's inflatable fishing raft." Then I was shown to the corner that would be my space in the summer: West Cubicle 23C. Over lunch, one gentleman remarked that the most important aspect of my hands-on legal training was to start as a summer associate but that what mattered most is that I already had the right tools for the job: I knew how to *think like a lawyer*.

Oddly, I thought that what attracted this firm to me was that I knew how to *think like a drone*.

In a surprising turn of events, I attended a party the other day. It was a party at which I was the only law student. After the mandatory chug-a-lug contests and partner-swapping, the revelers settled down to play "Taboo," that game where you have to make your teammates say the word on the card without using any of the other five forbidden words on the card. I drew a card that said "Loiter," and I came out with "the crime charged against those people in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)." A-hah, I said to myself, now I know what it feels like to *think like a lawyer*.

Oddly, the other people at the party were convinced that all I knew how to do was to *think like a total loser*.

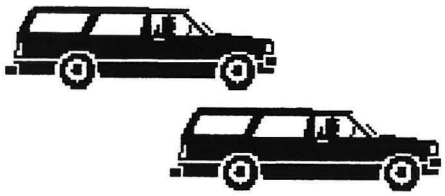
Seeking enlightenment, I called up my friend Jeff who graduated from this fine institution a few terms back and is now a bona fide lawyer in glorious D.C. I said "Hey, Jeff, what does it mean to 'think like a lawyer'?" Jeff replied, "The law is mostly a boring profession full of boring people shuffling boring papers around their boring desks and eventually leaving their boring offices to return to their boring lives. If you can learn to accept this as a glorious and desirable profession," he continued, "Then you have learned to *think like a lawyer*."

Oddly, I thought that would be to learn to *think like a delusional lunatic*.

But maybe that's what I'm supposed to be learning. Are you prepared to *think like a lawyer*?

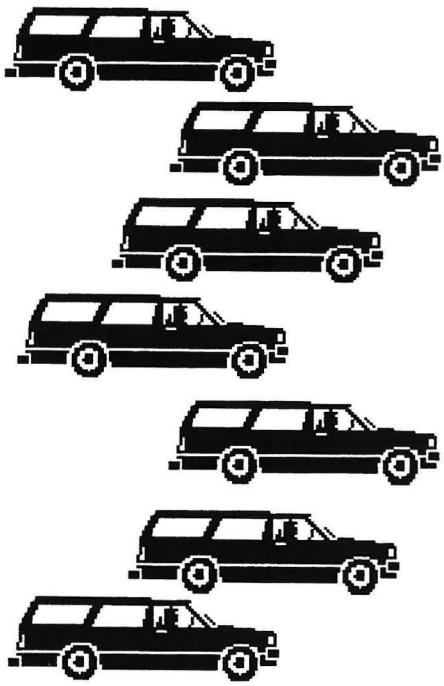
Oh, and the Rule Against Perpetuities is "No interest is good unless it must vest, if at all, no later than 21 years after some life in being at the creation of the interest."

RG



THE S.U.V. MENACE ?

By Josh Turner
Contributing Editor



Despite offering zero sport and very little utility, the ironically named sport utility vehicles (SUVs) have become a full-fledged phenomenon in the automotive industry. Every major automaker either offers an SUV or has one in the development stages. Some have several, with more on the way. Even companies like BMW and Porsche with no truck history at all are rolling out SUVs, driven by the economic opportunities afforded by the segment. Ford, for example, makes roughly $15,000 per Navigator sold.

SUVs evolved from trucks, and many of the current models are still directly related to their more *de classe* pickup truck brethren. This parentage gives the SUVs their distinctive, rugged character, but it also demands some important compromises. Because they are "light" trucks (the word "light" being used in relation to 18 wheelers, aircraft carriers, and medium sized countries, rather than cars), they are very, very heavy. Despite enormous engines, with fuel consumption measured in tons rather than gallons, they are painfully slow; some of GM's cheapest economy cars would embarrass its most expensive SUVs in any acceleration test. The sheer size of SUVs also produces handling that can best be described as queasy and ill-tempered, and braking that borders on the homicidal. And for much of the population, a stepladder or a grappling hook is required for entry; even for six-footers, those grab handles on the Expedition's interior aren't merely decorative. The typical SUV is also quite space inefficient. Storage space is roughly the same as in a similarly sized station wagon, and far lower than even the smallest minivan.

So why have these behemoths become so popular? Some wags have blamed the industry itself, citing the enormous profitability of these vehicles. Perhaps the attorneys that are currently suing the nation's gun dealers will someday prove that SUVs are also being pushed on the American public, but until then, the blame has to be laid at the feet of consumers. Americans just like big things. Maybe it's a leftover of our Manifest Destiny days, but it is no accident that the majority of those multi-ton light trucks are parked in the garages of 4,000 square foot, three-bedroom houses.

The nation flirted with (perhaps it would be more apt to say, "was stalked by") smaller cars in the wake of the oil crises of the '70s. This was expressed (as such things inevitably are) in Federal regulation in the form of Corporate Average Fuel Economy (CAFE) standards, which fined automakers for building cars that used a lot of gas. In other words, the government forced the car companies to build little, fuel efficient cars, when what the public desperately wanted were big gas hogs. Nature abhors a vacuum, and the CAFE legislation itself provided the answer: Make a vehicle big enough, and it qualified as a "light" truck, which had much lower fuel efficiency standards. The automakers could thus build the rolling palaces that people wanted, without incurring the wrath of the EPA. Rolls-Royce was actually the first to build a "crossover" vehicle (i.e., one with the characteristics of both a truck and a car); its cars of the late '80s were heavy enough to officially qualify as trucks.

There are moves afoot in Washington to correct what is now perceived as a loophole. Those who still think that the government can have any real impact on the market are insisting that the favored status of SUVs be done away with, so that we can get back to driving Geo Metros and whatnot. Government intervention is necessary, of course, because the energy crises that triggered CAFE are almost two decades in the past; an entire generation has grown up thinking of gas as being more abundant and cheaper than water.

It's hard to imagine, though, that the mere threat of a government fine (and its concurrent price increase) will derail the SUV craze. After all, people have already shown that they are willing to pay a huge premium for the privilege of driving a big, slow, poor-handling, mountain of a vehicle. Mere rationality, clearly, cannot stop the continuing SUV onslaught. No, it will take something much more powerful to do that - a generation of kids, raised in their parents' SUVs, who will eventually come to view them as just as square and uncool as the station wagons and minivans that came before. How will they rebel? The mind reels...

The Casual "Nazi"

By Paul Diller
Contributing Editor

Most of us fondly remember the Seinfeld episode from a few years ago—"The Soup Nazi"—about the martinet New York soup vendor who intimidates customers with his dictatorial management style. I enjoyed it too, but as I joined my friends in laughter I felt a little uneasy about this casual use of "Nazi". I considered this innocuous use of a term once synonymous with horror and cruelty to be a troubling development.

Little did Jerry Seinfeld know, but that episode greatly accelerated a disturbing trend in American language, the use of the term "nazi" to describe anyone who is strict, uncompromising, or overzealous. I now hear the term bandied about frequently. Students refer to Ann Arbor's ultra-efficient parking meter attendants as "parking nazis". People too quick to criticize others' poor taste in clothes are dubbed "fashion nazis". Someone cut off by another driver yells out, "traffic nazi". The "n" in nazi needn't be capitalized anymore as it's now a common noun, capable of describing anyone. Indeed, Webster's College Dictionary plans to legitimate this new connotation in its forthcoming edition by extending the traditional definition of "Nazi" to include, "a person who is fanatically dedicated to or seeks to control a specified activity, practice, etc."

I can't help but feel that this nonchalant use of "nazi" is insensitive and offensive. When I think of the Nazis I think of a brutal regime responsible for the senseless murder of millions, not some lady who writes you a parking ticket upon the immediate expiration of your last dime's worth of time. The passage of time, of course, can have an anesthetizing effect. Words and names that once stung may gradually lose their bite. During the 1950s, at the height of Cold War tension and the McCarthyism hysteria, the label of "communist" could end a career and wreck a life. In our current post-Berlin Wall era, however, "communist" is generally a nonthreatening anachronism. Indeed, Soviet-era military fatigues prominently featuring the hammer and sickle are now considered chic, not menacing. Unlike the communist threat, however, the Nazis' evil was never exaggerated, nor are they an entirely vanquished foe. The recent lynching of James Boyd, Jr. in east Texas by white supremacist neo-Nazis serves as a powerful reminder of the enduring legacy of the real Nazis that so many present-day hate groups embrace.

As the memories of World War II and the Holocaust become more distant, I fear that these events will also seem more harmless in murky retrospect. The mere utterance of "Nazi" doesn't give us the shudders it gave our grandparents. Nor do names like "Hitler", "Fuhrer", "Gestapo", and "SS", which have also crept into the vernacular, resonate with the same dread as they once did. Some recent events illustrate the increasing acceptance of their cheapened usage: President Clinton's aides denounce Kenneth Starr's investigation as "Gestapo-like". Ted Turner refers to his business rival Rupert Murdoch as "Hitler". To register his dismay with the stricter regulations on leashing dogs in city parks, a New York cartoonist depicts the parks commissioner in a Gestapo uniform. Politicians slur their political opponents as "der Fuhrer" or "Joseph Goebbels".

Although the English language is an ever-evolving organism, as its speakers we must use it responsibly. This responsibility includes reserving words for their appropriate meanings, especially those words that evoke tragedy and evil of such magnitude. The pervasive fast-and-loose use of Nazi imagery is dangerously desensitizing. Abraham Foxman, a Holocaust survivor and director of the Anti-Defamation League, an organization devoted to fighting anti-Semitism and other bigotry, has noted that, "If the language and images of the Holocaust become debased, we will lose the ability to identify and grapple with crucial issues in our society." By using words and names once exclusively associated with unspeakable tragedy in such an insouciant manner, we dilute their original power and trivialize the horrors perpetrated by the real Nazis. The "boy who cried wolf" is now crying "nazi". I hope that our society's vigilance against bigotry and hatred does not erode as a consequence.

AN HISTORICAL FOOTNOTE

By Charles Keckler
Contributing Editor

"Something like the return of *droit de seigneur* is represented as the epitome of nigh-Olympian wisdom and sophistication. To raise one's eyebrows over this hardly seems to me an example of 'neo-Puritan zeal,' whoever is doing the eyebrow-arching."

— Jean Bethke Elshtain

Technically, the medieval practice of *droit de seigneur* (lord's right) referred to the legal ability of a feudal lord to appropriate the virginity of the young female peasants over whom he was master. This was sometimes (perhaps more realistically) formalized as the ability to have "sexual relations" with the bride on her wedding night, if she and her husband were among the lord's subjects. It is easy to speculate that the feudal lord, whose permission was often required for marriage, exercised this right as a kind of fee and an unforgettable reminder to all (especially himself) of his innate superiority.

Actual *droit de seigneur*, while mentioned as a potential right after the arrival the Normans, does not seem to have been used in England as it was in Continental Europe. Contra the movie *Braveheart*, it certainly was not one of the rewards promised for the subjugation of Scotland. Even if it had been, it would not have applied to William Wallace (a minor noble), because *droit de seigneur* could not be used on the "better class" of people. It actually created a *trichotomy* of rights: there was the lord, who could exercise the right, those of good birth and position who were free from his legally protected depredations, and the ignoble and servile class on whom he could exercise it with apparent impunity.

Over time, the term has come to mean more generally the situation in which a man, who has some form of legitimate authority over a woman, uses his power to extract sexual gratification. For instance, it was once a common practice for employers to prey on their domestic functionaries. So too law enforcement or public officials are said to have treated sexual favors as simply their due. Obviously this behavior goes well beyond the formal prerequisites of *droit de seigneur*. Nevertheless, procedural defects in the law effectively allowed a victim population to be treated with arrogant contempt. There were limits on the causes of action available, and in the case of an overreaching lord, one faced an even more difficult problem. The lord often had control over the local justice system, making pursuit of claims almost impossible, even where a woman was assaulted rather than just exploited.

Sometimes, of course, relations were consensual (or something intermediate) — an unsurprising observation. Particularly where the difference in position was large, substantial benefits could be obtained by becoming the mistress of a "great man." Psychologically, it is said, "power is the greatest aphrodisiac," so a system of *de facto* polygyny can easily arise in human beings. Reductionists could note here that we derive biologically from animals that formed dominance hierarchies in which the "alpha male" could monopolize sexual access. This differential access, it turns out, is the chief measure of political structure in a group of primates. So one might even say there is a sense in which politics is "just about sex": a publicly sanctioned difference in sexual rights based on social position touches something fundamental, and acknowledges a basic inequality between members of a social group. This may be why *droit de seigneur* is occasionally used to mean just "arbitrary abuse of power" (without a sexual connotation), and why in *Braveheart* it was so effective a symbol of generalized despotism.

In fact, the decline of *droit de seigneur* in the broad sense has depended more on social and cultural conditions than on legal changes. The growth of effective monogamy, sexual protection and republican equality has proceeded together. By contrast, it is the mark of a monarchical principle when people say "he is larger than us, with larger appetites; one must make allowances." Monarchy is not intrinsically coercive. It is sustained when the populace cedes their rights (or sacrifices the rights of others) to a leader in order to receive the benefits he might bring. All government involves some of this, but with monarchy, the benefits are thought to come from a particular *person* rather than merely an institution. The Faustian bargaining away of legal rights makes this *person* superior to the law and the office he holds, undermining the republican principle. With the disappearance of such sentiments in our enlightened era, legal rights defined by status rather than contract have declined, and created the current equality before the law we can all enjoy, and take pride in as citizens.

RG

A Modest Proposal

By Eric Moutz
Guest Columnist

Well, it has finally happened. After being bombarded by endless waves of University propaganda and subjected to the shrill voices of countless activists, I have finally been assimilated into the ranks of "affirmative action" supporters (I should have believed them when they told me that "resistance is futile"). After my long tryst with reasoned dissent, the recent fugue that has overtaken me has provided a pleasant respite from the rigors of the "white-male-oppressor" thinking that I was used to engaging in.

In fact, after the recent memorandum distributed to us ever so selflessly by the Dean, I dreamt while in one of my classes that not only must affirmative action be preserved, it must be radically strengthened. My subconscious mind took up the challenge immediately, and proposed to me a new means of promoting diversity at the law school - admitting the mentally deficient. Our admissions policy should be modified so that individuals who are classified as insane, mentally retarded, or just plain stupid are given substantial "consideration" beyond that given to normal applicants. This plan would further the goals of the Law School's affirmative action policy (as stated in the Dean's memo) in the following ways:

First, admitting the mentally disabled to the law school would increase diversity and thus assist us all in the process of learning. Since "students learn better when the learning occurs... where they are confronted with others... unlike themselves," (Dean's Memo, page 1) admitting the mentally challenged would allow us all to come to a more complete understanding of the law (and it would be entertaining too -- just think how much fun you have laughing at some of the people in your classes now). As what seems to be important to the law school is merely diversity of viewpoints, rather than a community of minds which are capable of challenging one another at the highest levels of intellectual achievement, my proposal would be a wonderful addition our admissions policy.

Second, as we all must deal with and communicate with many stupid people over the course of our lives, my policy would assist us in preparing for our future roles in the social machine. Exposure to the mentally challenged would prepare us to live in our "pluralistic democracy" (page 6 of the Dean's memo). This would be especially valuable since many of those not involved in B.A.M.N. are not regularly exposed to fools.

Third, my approach would offset the prejudice inherent in traditional psychometric techniques. As most standardized tests consistently disadvantage the mentally challenged, it is only logical (and I use that term loosely, in keeping with leftist tradition) to assume these tests are biased against the mentally challenged, or are generally useless in discerning ability.

The idea that differences in ability may be a result of individual characteristics or social conditions is elitist propaganda. To expect an educational institution to consider differences in ability when allocating relatively scarce resources is the essence of evil -- in fact, it sounds almost conservative, or worse... rational! Instead of considering these subversive ideas, we should simply ignore differences in ability which standardized tests purport to measure.

Once my plan is implemented, massive test score differences between certain groups might be noticed. While we can simply deny that these tests matter, many people will stubbornly refuse to believe us. Thankfully, the University of Michigan has already come up with a brilliant explanation of this phenomenon. In the Dean's recent memo, U of M lawyers state that differences in average test scores between groups can be explained by the presence of more members of one group than another. (See page 8 of the dean's memo. I would think that averages between groups should remain the same as long as distributions within the groups remained the same - regardless of the number of persons in each group... Guess that's why I wasn't picked to write the memo). So as long as we admit fewer numbers of mentally challenged people than "normal" people, we should be okay.

Doesn't this sound like a great plan? Even if all of these fine arguments fail to convince you that I'm right, it doesn't matter because the real purpose of my proposal is equality. Everyone in this bastion of socialist bullshit which we call the University of Michigan must agree this is a laudable goal. We all know that what really matters is socially engineering outcomes rather than considering (and remedying) the problems which plague our society and cause mental deficiencies (lead poisoning, television, listening to the Maoist crap circulating on this campus). Equality and self esteem are more important than excellence and achievement. Right?

Murders, Suicides, and Folks Just Beating the Hell Out of Each Other.

In violation of parole (possibly facing an additional four years in prison for punching a 60-year-old man, and kicking a 50-year-old man in the groin after a traffic accident) Mike Tyson may still be able to keep his day job (at night) while in prison. This arrangement should work out very nicely as it seems Mike is comfortable in prison, but prison-yard scuffles do not pay nearly as well as a well-organized to-do at the MGM Grand (where they have a much superior stereo system). However, his latest antic was throwing a television through the bars of his cell which may jeopardize the opportunity to fight anyone outside the immediate inmate population. HELLLLLLO MIKE. Anybody home? Some death penalty advocates have suggested transferring Mike to Texas and making him an option for Death Row inmates: injection, the Chair, or Iron Mike (would that be by beating or eating?).

Is Congress finished clowning around in their attempt to convict a guy for cheating on his wife? And what's the Christian right going to do next, to further their children's sex education after exposing eight-year old children to full blown media coverage of cigars in vaginas, and semen on dresses? But god forbid grade school kids should read Mark Twain.

Happiness...Is a Warm Gun

Transcript highlights from a Central Florida 911 tape:

Dispatcher: 911. Do you need [the] police?
11-year-old boy: I shot my sister.
Dispatcher: Is she okay?
11-year-old boy: I don't think so. Blood is everywhere (crying).
Dispatcher: Okay, is she breathing?
11-year-old boy: Not now. She's dead.

The 11-year-old boy had loaded nine bullets from an ammo box into the chamber of a gun sitting on a closet shelf and ("accidentally") shot his sister in the back, head, and right shoulder. Often overlooked (according to my "political-economy" friends) "these incidents usually occur where the parents both work, and the kids are home alone without adult supervision — child-care is either unavailable or economically prohibitive." For both parents to work is a foregone necessity for many striving to achieve a respectable middle-class living standard. But nevertheless, no excuse to have guns and ammunition available to the kids — predominantly influenced by movies and television shows with a minute-to-minute violent mortality rate comparable to a civil war battle, not to mention those Roadrunner cartoons (my personal favorite).

Five Day Waiting Period? I Need My Gun NOW.

First it was those frail helpless tobacco companies and now, Charlie Heston, the NRA, and the Ayn Rand Institute are whining about those poor innocent-bystander gun manufacturers grazed by a one-half of a million dollar judgment awarded by a federal jury in New York to the sole survivor of a shooting (who still has a bullet lodged in his head). Those odious plaintiffs' lawyers claimed handgun makers negligently oversupplied gun-friendly markets, knowing that excess guns would illegally flow into states with strict anti-gun laws; they claim that 90 percent of the handguns used to commit crime in New York City originate from Southern states. (That's right, always blame the Southerners.)

The United States has the highest rate of gun deaths cased by suicide, murder, and accidents, according to The National Centers for Disease Control. "However," comments Robert W. Buttinski, a flounder at the Ayn Rand Institute, "Guns don't kill people. Those pesky bullets do." Nevertheless, various stubborn big city Mayors are considering suits against gun manufacturers: in Louisiana under a product liability statute for a lack of safety features in their products; in Chicago, where "thug-type buyers" can easily purchase weapons from suburban gun dealers; and in Gary, Indiana, where the mayor wants to distance himself from the Indianapolis County Sheriff's Department who auctioned-off confiscated Saturday Night Specials to gun dealers.

Tobacco companies and gun manufacturers simply produce legal products, spouts the Troglodyte Detroit News editorial staff (even my dog refuses to take a dump on the Detroit News). Blame those nasty greed-mongering members of the Bar Association misusing the court process. KILL ALL THE LAWYERS.

Meep-meep. Okay. For you handgun enthusiasts, wishing to support gun manufacturers' rights to dump handguns in the inner cities, check out Mark Chapman's new and most popular website for aspiring rock 'n roll assailants. Or click on to <Ammo.com>. In the alternative, send (tax deductible) contributions to:

Center to Promote Handgun Violence
1731 29th Street NW #11
Washington D.C. 20009

Next week: Jokes? Maybe. And meanwhile, wishing Professor Kamisar the speediest of recoveries.

Suck it up

So here it is, the first issue in which the RG advice column is to return. Apparently none of you out there think that you need any advice because we didn't get any letters (which should be distinguished from the very different situation of us thinking that you don't need any advice). So in an effort to meet our commitment to the editors, we thought that we would clarify the name we chose for this column and expand on some of the burning advice questions that you did not ask us.

The name is harsh. We admit it. And no, it's not a sexual reference. We will try to be sensitive, compassionate, objective, and fair, but the reality is: *life is harsh.* We figure that since you are now reading this you have a pretty bright future ahead of you, family that cared enough to send in copies of their tax returns, and at least one person from your orientation group who will join you for dollar pitcher night at Touchdown's. (If not, e-mail us at rgadvice@ umich.edu; we know a guy.)

It's not that we won't take your problems seriously. It's just that, as in most cases of people seeking advice, you probably already know what the answer is. Your friends will usually provide sympathy; we will provide the answers that everyone who has the misfortune to sit near you in the lawyer's club is thinking but has been socialized to keep to themselves.

We understand that you are very busy. For this reason, we have developed the RG advice form letter to help you:

Dear RG:

My (pick one) *lying, cheating, irritating, ugly, mean, rude, selfish, pompous, interfering, obnoxious, confused, boring, clueless, stupid, etc.*

(pick one) *girlfriend, boyfriend, best friend, spouse, class gunner, professor, parent, driver, roommate, classmate, administrative assistant, fast food worker, etc.*

ruined my life because he/she/it/they (pick one) *stole my thunder, parking space, lover, sweater, note topic; butted in to my business, love life, lunch table, "alone time"; revealed a secret, a lie, a body part; got me in the middle of a lawsuit, sex scandal, tax class.*

Please Help!

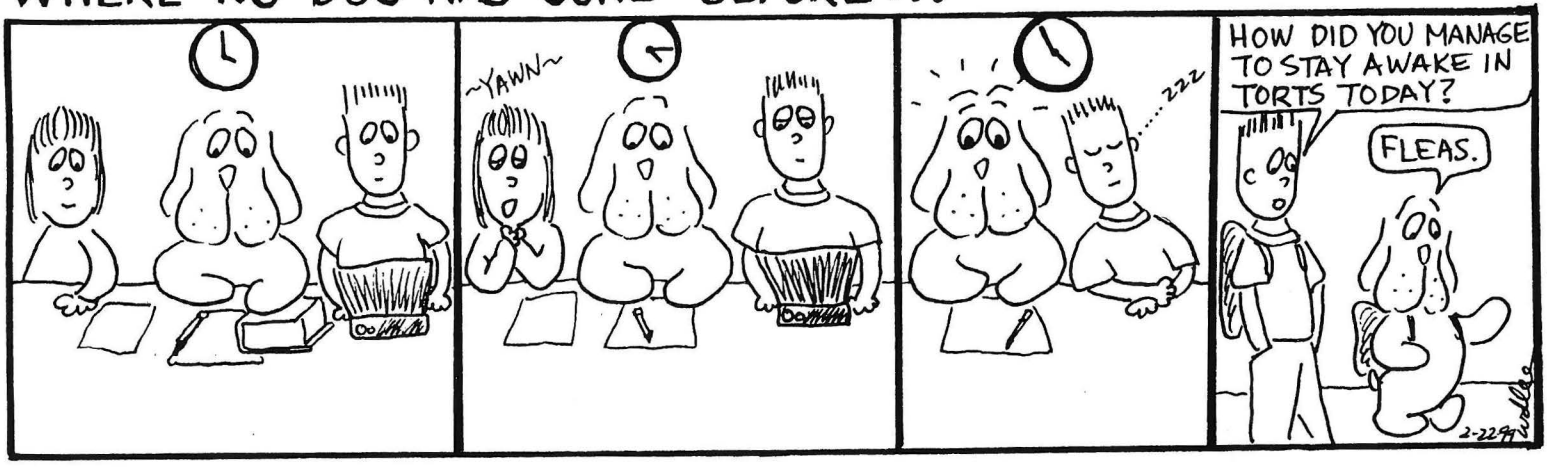
Now, just for clarification and lawsuit prevention - WE ARE NOT DOCTORS (hell, we're not even lawyers yet). One of us has a psychology degree and the other has read a lot of self help books. We are just opinionated observers of human foibles. We will maintain your complete anonymity. We provide advice on all topics, regardless of our personal limitations.

So if there's something on your mind and you would like the opinion of the cliché "perfect strangers," e-mail us here at rgadvice@umich.edu or drop off your questions in the RG pendaflex. If you don't need any real advice, make something up and e-mail us anyway. If you think that advice columns are a waste of time and ink, well just . . .

Suck it up!

-- N. M. and K. H.

WHERE NO DOG HAS GONE BEFORE...



Disclosure

A Tale of Two Reforms

By E.H. Cooper
Guest Columnist Emeritus

Rule 26(a)(1) of the Federal Rules of Civil Procedure requires a party to identify witnesses and documents that have information "relevant to disputed facts alleged with particularity in the pleadings." This disclosure procedure took effect on December 1, 1993, barely surviving a precarious journey through the perils of the Rules Enabling Act process. Less than three years later, the Civil Rules Advisory Committee began the process of amendment. A proposed new disclosure procedure was published for comment in August 1998. Many lawyers, judges, and bar groups have contributed advice on all sides of the issue. Whatever comes in the next steps, the story richly illustrates the challenges that confront any attempt to develop new procedures.

The background begins in 1990 with enactment of the Civil Justice Reform Act. The CJRA required each of the 94 United States District Courts to adopt a local plan to reduce the expense and reduction of civil litigation. Local advisory groups were formed, pilot districts were designated, and the race to improve procedure was on. In 1991, the Civil Rules Advisory Committee published for comment a proposal to supplement existing discovery procedures by a new "disclosure" procedure. Discovery works on the theory that neither an opposing party nor nonparty witnesses need provide any information until a discovery request is made. Disclosure sought to impose a new duty to volunteer information before any request is made. Reaction to the published proposal was mixed, but included strong negative comments. Defendants in product-liability litigation were particularly excited, protesting that the notice pleading complaints they typically encounter reveal so little about the litigation that disclosure is not possible. Concerned by these doubts, the Advisory Committee voted to abandon disclosure. A rebellion in the ranks was quickly organized, however, and two months later the Advisory Committee reversed itself and recommended adoption of the proposal that eventually took effect.

A mixture of reasons prompted the Advisory Committee reversal. On the merits of disclosure, the central argument was that disclosure would simply serve to require exchange of information that would be sought in the "first wave" of discovery in any event. Disclosure also was tied to a requirement that the parties meet to develop a discovery plan; it was hoped that this Rule 26(f) conference would serve to supplement the pleadings by frank discussion of the matters really in controversy, and also would encourage reasonable disclosure and discovery behavior. At least a few committee members harbored a secondary motive. They hoped that disclosure would level the playing field in cases in which counsel for one party could not manage to frame discovery questions needed to elicit crucial information. Apart from these purposes, the Committee also was concerned that several local CJRA plans had adopted disclosure requirements modeled on the 1991 proposal. Rather than leave them alone, and perhaps leave other districts to act on the 1991 proposal, the Committee thought it better to frame the best rule it could draft for the guidance of other courts. "Guidance" may seem an odd term to describe a federal rule, but guidance was all that was accomplished. Rule 26(a)(1) allows a district court to opt out of the witness and document disclosure requirements by local rule. Many districts in fact have opted out – some have adopted different disclosure requirements, and some have discarded any disclosure requirement.

Congress would have defeated disclosure if it could have got its legislative act together. A bill rejecting the proposed disclosure rule passed the House easily. Had the bill come to a vote in the Senate, it was widely agreed that an equally solid majority would have rejected disclosure. But the Senate got snarled in last-minute complications, followed a procedure that required unanimous consent to bring the bill to a vote, and fell one vote short of unanimous consent.

Solid appraisal of a new procedure such as disclosure would require at least a decade of developing experience. Lawyers and judges must become familiar with the procedure, and then accustomed to following its requirements. Clients too must become educated. It is too early to attempt rigorous assessment of disclosure practice. Such indications as are possible, however, are that disclosure works - where it is followed - to expedite discovery, reduce costs, and speed disposition. The best evidence is a Federal Judicial Center survey, but there is solid anecdotal evidence as well.

Why, then, the rush to reform? The motive is twofold. First, the wide disparities of disclosure practice run counter to the Enabling Act purpose to accomplish uniform federal procedure. An increasing number of lawyers practice in many federal courts, and yearn for a single disclosure procedure. Institutional clients also are involved in litigation in many districts, and are both confused and indignant at the variety of practice. The desire for uniformity is strong. Second, each passing year makes it more difficult to restore uniformity. Local practices become first familiar and then entrenched. The longer a uniform federal rule is postponed, the more difficult it will be to restore uniformity.

In this mood, the published proposal eliminates the opportunity for a district to opt out of disclosure by local rule. The trade-off is a sharp reduction in the information that must be disclosed. Under the proposal, a party need reveal only information that supports its position. There is no

longer any requirement to disclose unfavorable information. This trade-off does not represent any judgment that the present rule is undesirable. Instead, it flows from calculation of Enabling Act politics: it is not possible now to delete the local option provision, making the present disclosure rule mandatory in all districts. But uniformity must be sought now, lest it become impossible. A step backward in disclosure is coupled with a step forward in uniformity. After some years, it may prove possible to restore the present disclosure practice as a uniform national rule.

The vehemence of the protests, particularly by some district judges, proves the acuity of the political judgment underlying the proposal. There is fierce, at times strident, resistance to the thought that a district court should be required to follow a uniform national procedure. It is not entirely clear whether this resistance will be overcome. Whatever the result, the lesson is clear. Even under the aegis of judicial control, the path of procedural rulemaking is not paved with lofty procedural thoughts alone. The spirit that clings to the familiar, so derided when we look back at the development from common-law procedure through Code systems to federal procedure, lives on.

RG

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SYPOSIUM, from page 1

would deport them if they refused to testify for the prosecution.

Childers said until that bombing, Americans didn't feel vulnerable to terrorism at home; it has only been in the past few years that government and academic experts have thought about terrorism in the domestic criminal justice system.

"This is where the rubber meets the road, where theory gets put into practice," Childers said. "We can talk about whether the system is up to it, and whether it needs changing, but we don't know that until there's a trial."

In light of that experience, Childers says he thinks the trial process can handle the immense public pressure which followed the blast, but he'd like to see improvements in investigation and interagency cooperation.

Afterward, Michigan professor Jose Alvarez led a discussion on establishing a permanent international criminal court. Case Western Reserve University professor Henry King, who helped prosecute war crimes at the Nuremberg trials, encouraged students to support the creation of a court by joining non-governmental organizations like Amnesty International.

"We must build a permanent institution to support the rule of law," he said. "Ad hoc [institutions] like the Bosnia and Rwanda tribunals are not enough; they're here today, gone tomorrow." Symposium organizers said fostering student involvement in international law was a primary goal as well. Journal editor Joshua Levy said it took 10 months and 70 volunteers to stage the event; major players include his journal colleague Catherine Jones and former CIA general counsel Elizabeth Rindskopf, who now chairs the ABA standing committee on law and national security.

Levy said organizers hope to convince the law school to add courses in international security law and international criminal law.

"Rarely are Michigan law students able to learn about the intersection of law and international security concerns," he said. "This weekend allowed us all to do just such a thing."