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Confronting the Supremes
Defendant asks: Can I get a witness?

By Eli Braun

Suppose you’re arrested. The police take a blood sample at the stationhouse and send it to their laboratory. An analyst creates a “DNA profile.” The police also recover semen from the crime scene and send it to a different lab. A second analyst creates another DNA profile. At your trial, the prosecution calls a third DNA analyst, someone who is not affiliated with either lab, as an expert witness. She examines the two profiles and declares a “match.” Case closed; the prosecution rests; you must have been the culprit. You object. The DNA profiles were never introduced into evidence. No one from the second lab testified about their procedures, their accreditation, or their analysts’ qualifications. Electrophoresis is a complicated process, you point out. Opportunities for error abound. Yet there was no direct examination, much less a cross. For all you know, the police could have mistakenly sent the same sample both places.

You demand your Sixth Amendment right “to be confronted with the witnesses against you,” and you take your case, Williams v. Illinois, all the way to the U.S. Supreme Court. On the way from Chicago, where your case originated, you stop by Ann Arbor to confer with

Professor Richard D. Friedman, noted Confrontation Clause enthusiast. For several years now, Professor Friedman has been writing amicus briefs to the Supreme Court as his own interested party in Confrontation Clause cases. He not only arranges a moot for the defendant’s counsel, but creates a mini-seminar, “A Supreme Court Case in Progress,” for 12 law students to follow along.

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Do a Barrel Roll!

Professor/Fighter Pilot J.J. White could give Star Fox a run for his money.

"Flying Professor" Named "Top Gun" in Competition

White, a member of the 180th Tactical Fighter Group of the Ohio Air National Guard and commander of the 112th squadron, flew an F-100 in the competition. The "flying professor" had the highest aggregate score in dive-bombing, low-angle bombing, and strafing among 32 pilots. He was competing against pilots not only from the 180th fighter group but also from groups in Columbus and Springfield, Ohio, and Pittsburgh, Pa.

Top 10 J.J. White Quotes
Compiled by EFGH Class of 2013

#1: (on airline stewardesses) “We used to call them hostitutes.”

#2: Student: “This isn’t under the UCC.” White: “What? You can’t sell babies?”

#3: “You know what a cockroach is, right? They’ve been around since the time of Christ & beyond. They’re not an endangered species.”

#4: “You should all make friends with Jeremy instead of spitting on him for being a nerd. Jeremy, your day is coming!” (made much funnier by the fact that Jeremy is not a nerd at all, or not more so than everyone else at UMich Law).

#5: “It was called Prohibition. It was an exciting, weird time.”

#6: (on plane failing) “You have all that kinetic energy that needs to dissipate. And if it dissipates by hitting the ground at a sharp angle, you die.”

#7: “We had hokey arguments. You know--constitutional arguments.”

#8: “I didn’t ask the question very well. See if you can figure out what the question is.”

#9: “This is the liberal dilemma, which I love to see. Because I’m mean, I guess.” (on Williams v. Walker-Thomas Furniture)

#10: “You all think you’re going to work for snails or little bitty fish. But the truth is, you’re going to work for people tougher & scarier than me. Capitalists. That’s who you’re REALLY going to work for.”
Valentine’s Day Edition

By Sage Vanden Heuvel

The year began with such promise. You partied with friends and/or family, you made lots of ambitious New Year’s resolutions, you watched Michigan win the Sugar Bowl, and you thought to yourself “Yep, 2012 is going to be awesome.”

When grades came in, you dismissed them as a lingering reminder of the terrible, no-good, awful year that was 2011. Those exams were in the past, but you were headed into the future. 2012, full of such promise! New classes, new professors, a new outlook on life. Even the weather couldn’t get you down.

But then Valentine’s Day rolled around. You began to notice all the happy couples with their happy faces and their giggles and kisses and their nonstop “liking” of each other’s Facebook posts. As much as you wanted to hate them for their happiness, inside you knew you were just jealous. It should be YOU who is smiling and kissing someone and acting a fool on Facebook. This is 2012, the year things were supposed to be amazing and fun. So why are you so damn miserable?

The truth is, V-Day is designed to depress you. Think of all the booze people buy to drown their sorrows. Think of all the chocolate people eat to compensate for their loneliness. This holiday reminds you that life still sucks no matter what year it is, and such reminders are pretty good for business. The fact that it makes couples also spend ridiculous amounts of money on crap is merely an added bonus.

So I’m really starting to like one of my classmates. He sits next to me in Property and—

ABORT. ABORT. Before you go any further, I can tell you that this is an awful idea. You are making three fundamental law school relationship mistakes. One, you are thinking of dating another law student. Does that make any sense to you? If you can find a group of more socially awkward, dull, alcoholic individuals then I’d really like to know. Okay, maybe the business school students seeking Master’s in accounting. But still—law student? No.

Second, you should avoid sectioncest at all costs. Sectioncest is exactly what the name implies: dating someone from your section. It’s a bad idea for multiple reasons, the most obvious being that if you break up, you still have to see that person three times a week, and you still have to listen to their voice in class. Worse, if that person starts seeing someone else in your section, then the level of awkward quickly escalates.

Third, the person next to you? Come on, that’s like sectioncest on steroids. There is an unwritten rule that you shall not date anyone who is next to you in the seating chart. If things really go wrong in your relationship, you’ll never want to come to class again. And lest you forget, you came to school for the classes, the grades,

Headnotes temporarily turned MLAW into a “Glee” episode by delivering Val-o-grams on Valentine’s Day.

Photo by Tish Holbrook.
VALENTINE from p. 3

and ultimately the job. You did not come to make poor dating decisions that fill your life with unnecessary drama. At the very least, wait until a post-finals party to make your move.

I’m on Law Review and was thinking of using that as dropping hints about that when I’m meeting ladies. Do you think this is a good plan?

Dude, WTF? Think about what you are saying. Telling a girl the equivalent of “Yo, I spend a lot of time in the library and have mad Bluebooking skillz” is about the lamest opener I can think of. But let’s explore this a little further. If the girl you approach isn’t a law student, then she probably won’t know or care what Law Review is. If she is a law student and this pick-up line actually works on her, then I’d advise you to run away fast. Her mind has been so blitzed by law school that she actually thinks Law Review makes you cool and desirable. It doesn’t. It merely means you are better at being a law school nerd than the rest of us.

My prof is pretty hot and he’s single. Since we’re both adults, can I make moves on him?

Yes, you are both adults. Perhaps your crush on Prof. So-and-So will one day blossom into a happy marriage. But unless you like seeing your name on Above the Law, beneath a title that says “Michigan Prof Fired For Sleeping With Student,” I advise you to wait until he no longer controls your grade before “making moves.”

What’s up with girls who dress in mini-skirts and sleeveless tops when there’s a freaking blizzard going on?

You know, this is one of the great mysteries of our time. As a male, I can only speculate. Women have a higher tolerance for pain than men do, so maybe this translates to a higher tolerance for cold. Perhaps these girls are like those old fat guys who jump in icy lakes for fun, such that freezing their asses off on the way to a party gives them an adrenalin rush. Maybe they simply couldn’t find a coat that matched their shoes and decided to let fashion, rather than comfort, rule the day. Or maybe they’ve had so much to drink that they don’t notice the icicles forming on their bangs and clutched elbows. I did ask a female classmate what the deal was, and she simply shook her head and said “They’re young and dumb.” So who knows.

I’ve been friends with benefits with this guy for a while, but now he told Facebook that we are “in a relationship.” What should I do?

Ah, the good old no-strings-attached situation where somebody inevitably gets attached. This is a pretty tricky situation, especially with Facebook essentially wiping out your last semblance of privacy. Although this presents some great trolling opportunities, whereby you scare him off with all the baggage that comes in a real relationship (expensive dinners, meeting your crazy family, calling him daily to vent about law school), honestly that’s just too much work for the lulz it would bring. You just have to talk to him and make sure you see eye-to-eye on where things stand. If you really think he’s developing feelings and you are not, it would be smart to simply break things off and move on.

That’s it for this edition of the Mailbag. Keep the letters coming!
I'm back! I'm sure the end of last semester was a dark time filled with mediocre beer and sadness without my fabulous beer reviews, or at least more filled with mediocre beer and sadness than the law school norm.

Hopefully I'll think of some creative, or at least vaguely themed, article topics eventually. Until then, here are some reviews of beers I drank over the holidays while I was busy watching unhealthy amounts of HIMYM on Netflix:

**Old Engine Oil:** (Harviestoun Brewery Ltd.) This is a black ale from Scotland with a 6% ABV. The bottle describes the beer as “viscous, chocolatey, and roasty” and that is definitely a truthful description. The beer is utterly delicious. It’s very rich, thick and syrupy without being overly sweet. It has a heavy mouthfeel with some very delicate, but noticeable, carbonation. The initial flavor is a mix of blackberries, caramel, and mocha. The finish contains a touch of hoppy bitterness which lingers. This is an excellent winter beer, something to sip in front of a fireplace (or, let’s be realistic, a casebook) while the snow/rain/sleet/whatever-Michigan-decides-to-dump-on-us-next falls outside.

**Cappuccino Stout:** (Lagunitas Brewing Company) This is an American Imperial Stout with an 8.8% ABV. The beer is very dark with a fairly thin, tan head. It has a nice chocolatey, roasty flavor and the cappuccino is not overpowering. The mouthfeel is fairly average for the style -- much heavier than your standard POS Lager, but light in comparison to many of its robust Imperial Stout brethren. Overall, this was a solid beer which I would certainly drink again, but it didn’t blow me away. However, it is also a very good winter beer and might be a bit less intense than the Old Engine Oil, if that’s what you’re looking for.

**Frugal Joe’s Ordinary Beer:** (Steinhaus Brewing Company) Frugal Joe’s is a big change of pace, both from the previously mentioned heavy-hitting winter beers and from my usual overall beer preferences. Frugal Joe’s, despite the label saying Steinhaus, is a Trader Joe’s store brand. I picked it up because, at $5 for a 6-pack, why not? Although I tend to prefer IPAs, Double IPAs, Imperial Stouts, and other heavy, complex beers, even I occasionally want a basic ale or lager. Frugal Joe’s is just that. The color is exceedingly pale, perhaps even paler than Budweiser, and the beer is quite carbonated. The taste is very inoffensive. There’s not a lot going on but at least it lacks the thoroughly unpleasant aftertaste of most domestics – I’m looking at you MillerCoors. I can honestly say that, for the style, this is a surprisingly good beer. If you’re in the mood for a lager that tastes almost like water, I highly recommend this beer. It’s a pretty good summer beer and at $5 for a 6-pack, it’s far preferable to Coors, Budweiser, Miller High Life, etc.

That’s it for now. As always, feel free to contact me with any questions, comments, suggestions, or gifts of delicious beer.

Until next time, Bottoms up!
LLSA Presents:

Mr. Wolverine 2012

Photos by Nick Hirst
When You Were Cooler

1L Klara Stephens Takes Ecuador

By Sally Larsen

Klara Stephens is a 1L from North Carolina who spent two years teaching English in Ecuador before coming to Michigan Law. Before becoming a teacher she worked for her uncle's probate practice in Dallas and lived in Zurich for five months.

I thought about doing my Ph.D., but then I realized I didn’t want to do “publish or perish,” and I wanted to work more directly with people. But I still was attracted to teaching, plus you can never go wrong with some of the skills teaching [gives you] — a way to talk to people, to appeal to the way that they think. I knew I wanted to go abroad, and I knew I wanted to work on my Spanish, and I knew I wanted to do something service oriented. I’d already lived and done my thesis in Chile, and I wanted to experience something new, so I decided to go to Ecuador.

[Adjusting to life in] less-developed countries can be really difficult. And for a lot of people in the WorldTeach program it was really, really hard. Ecuador is super beautiful and fascinating, but it’s also corrupt, unstructured — it’s Murphy’s Law all over the place. If something can go wrong, it definitely will. [But] when I lived in Beijing it was even harder because I also really couldn’t communicate with the people. They’re not as receptive to foreigners. So for me it was easier in Ecuador, because I could communicate with the people and they were really nice. But a lot of other people had issues with how things didn’t work.

I lived in Riobamba, a city that is three hours south of Quito... or seven hours, depending on whether there is a strike or not. It was at an elevation of about 7,600 feet. I was really altitude-sick for the first two weeks — nausea, headaches and not being able to sleep. And I certainly couldn’t run. I started to run, and I almost died. It’s really brutal. But then you get used to it, and you feel awesome later when you can run really far and everybody else is struggling.

My evening students from 7 pm to 9 pm were all professionals. I had doctors, I had lawyers, I had accountants, and sometimes it would be a mother and her daughter. [But] the overwhelming majority of the students in my evening classes were English teachers. I taught the highest level of English, so I taught things like phrasal verbs. A phrasal verb is when you put a verb and a preposition together and they make something other than what you might think. For example, when you say “throw up,” you would think it means to physically throw something in the air, but it really means to vomit. My students [said], “Hahaha, teacher, no is true, no is true!”

[My] students usually don’t expect to have to turn things in on time. And nobody gives a syllabus because things are really unpredictable in general. So if I wanted to have a test one day, all of a sudden there would be a soccer

See ECUADOR, page 11
Across programs and departments and in both undergraduate and graduate or professional schools, most students and faculty at the University of Michigan live academic life on "Michigan Time." Michigan Time is the practice of starting every class, meeting and event ten minutes later than its scheduled start time.

The existence of Michigan Time may surprise you if you haven’t attended Michigan as an undergraduate or in one of its many non-law graduate programs, or otherwise taken classes outside of the law school, but it’s a real and widespread institution. It’s the grace that protects you when, lost in a book or project, you lose track of time and rush to class at the last minute; the hidden tolerance and slack that turns a hectic, tightly scheduled day into a manageable one.

This proposal is a sincere attempt to convince you that we, the 1,106 students at Michigan Law School, should implement Michigan Time as soon as possible.

Why? Because it will:

• Strengthen our connection to the University’s larger student culture. Our connection to the overall student body at the University of Michigan is greater than we tend to acknowledge. Among other things, we share in the victories and defeats of what is, at its core, the most successful college football program in the history of the world. We all occupy the same campus and the same small city; we are subject to the same capricious Michigan weather. For the most part, we are all young people about to enter a world that is, increasingly, beset by challenges. Michigan Time is a unique institution, inspired and maintained by students against the odds. We should support it—because supporting Michigan Time means supporting our fellow students.

• Build a more emotionally healthy environment at the law school. Michigan Law is home to talented and motivated students, hard workers and careful thinkers. And its academic program is demanding. Both of these qualities are uncommon virtues, and we should work to maintain them. But without a moderating factor, the drive, intensity and focus that are brought about in students risk making us stressed, brittle and angst-filled. I am convinced that Michigan Time would improve the emotional lives of law students because it would temper the hard edges of our institution’s culture. Without compromising excellence, Michigan Time would allow us to acknowledge our humanity and fallibility, and provide ourselves more openness, flexibility, and the space for freer forms of interaction.

• Help students become more fully involved in the life of the Law School. Students need more practical experience for changes to the law school, and in creating and carrying through initiatives of their own. Implementing Michigan Time would help students come into their own as a main constituency of the law school and as determinants, not merely consumers, of its social and academic culture. By putting Michigan Time into place, students would symbolically claim agency for themselves, while taking the educational environment at the law school into their own hands.

Solution to Crossword on page 20:
I was one such student. Meeting in Friedman’s living room, our class began by reading the cert petitions and the major precedent. We read the top-side and bottom-side briefs as they came out. In November, the defendant’s counsel, a young appellate public defender, gave a moot before a panel of Michigan Law faculty. It was a slaughter. After the moot, we took him out for pizza and beer in the basement of Dominick’s, where he looked a bit more comfortable.

Next came the oral argument, which we attended in style, with reserved tickets, courtesy of the old boys’ network (specifically, Justice Scalia and his former clerk, Professor Joan Larsen). Justice Scalia may not be a defendant’s best friend, but he is, like Friedman, a Confrontation Clause junkie. In Crawford v. Washington (2004), Scalia led the court in holding, for the first time, that a defendant must have the opportunity at trial, through the “crucible” of cross-examination, to challenge the credibility of any person who makes “testimonial” statements against him. A series of clarifying cases followed. In Melendez-Diaz v. Massachusetts (2008), Scalia, still acting as the Court’s mouthpiece, applied the rule to lab analysts.

The grandeur of the Supreme Court courtroom, with its stone engravings and decorated ceiling, is only diminished by the rigidity of its cramped, wooden benches. Oyez! Oyez! From behind the velvet curtain, in walked our third branch of government, cloaked in solemn black.

The State of Illinois argued that the DNA profiles were outside the Confrontation Clause. Not only were they not introduced into evidence, but the expert witness did not offer them “for the truth of the matter asserted.” Instead, they served merely as a basis for her “independent” opinion, just like other background material she might consult while preparing to testify. Justice Ginsburg scoffed: “It can’t be independent of them because it is entirely dependent on them.”

Justice Kennedy seemed to have a revelation. Dissenting in Melendez-Diaz, he had warned that “the sky would fall” if the prosecution had to haul every petty lab analyst into court to testify. (Justice Scalia had replied that “the best indication that the sky will not fall . . . is that it has not done so already.”) Now Justice Kennedy appeared to switch course. “The key actor in the play, the Hamlet in the play, is the person who did the test,” he said. “And she or he is not here.”

Justice Breyer, not a fan of the revitalized Confrontation Clause, stared down Justice Scalia in a five-minute volley that eclipsed the lawyers before them. Justice Sotomayor, adorned with a dozen gold bracelets, threw the most punches, landing the first before the state’s attorney could get past “Mr. Chief Justice and may it please the Court.” At one point, Justice Thomas cleared his throat to speak, but it was only to whisper something to Justice Breyer.

Back in Ann Arbor, we reconvened by conference call with the defendant’s counsel. Not bad, we congratulated him. Professor Friedman recited a favorite axiom: “Every oral advocate has three arguments: the organized argument you prepare; the confused argument you give; and the devastating argument you think of on the way home.” We got to hear all three.

A decision in the case is expected any day now.
match right outside my room, and you could not hear yourself think. So I had to cancel my test, and do something else off the cuff.

My students also really don’t understand plagiarism. After my first semester – when I was tempted to fail half my students because everything they wrote was copied from Wikipedia – I figured out that they just don’t realize that that’s wrong, because the internet’s kind of a new thing anyway, and the prevalent teaching method in Ecuador is rote memorization. So in the beginning I was kind of shocked. But after the first semester I laid it down on the table for my students on the first day of class, and I said “This is plagiarism.” I said if you use more than one sentence verbatim, then you need to cite it. And if you use more than a paragraph, you’re doing it wrong. At least when it comes to writing your own essay in English – you won’t learn how to write if you’re just copying and pasting.

When I first started teaching them phrasal verbs, I would give them examples in a sentence. And when I gave them their first quiz I said, “Write a sentence using this phrasal verb.” They wrote me the exact same sentence [from the example] – every single one of them. And so I had to say, “Okay, next quiz you have to give me a different sentence.” And they were all like, “Oh my god.” I had one student who was super cheeky. If I wrote, “I passed out because of the heat,” he wrote, “He passed out because of the heat.” Cheeky!

I had a pretty strict attendance policy. For Ecuador, this is strict – I said if you miss more than 25 percent of classes, I will fail you. I only ever made an exception twice, and one was a girl who had appendicitis, so she missed about two and a half weeks. She came back knowing everything - and she let me know [she would be absent]. And the other case was a woman who came from a town two hours away for my class. If there was a strike, or something that essentially made it impossible for her to travel, I would excuse those extra absences.

For the most part, it wasn’t an issue that I was teaching people older than me. I only had one student who was really disrespectful. But I was actually older than him; he was maybe a year younger than me. He did a presentation on reggaeton, the [genre of] music, and his entire video was just pictures of women’s butts. And I was tempted to laugh, but I knew he would never do that to a teacher that he respected.

There is still an idea [in Ecuador] that American women are easy, and I’m not sure I did too much to dissuade that notion, not because I was easy but because I did go out and dance until two in the morning. And you’d [ask] – why does that matter? Because every law student has done that at Rick’s at least once, and that doesn’t mean we’re easy. But in Ecuador, if you are a virtuous girl and if your parents are at all worth their salt, they will make sure that you are home at 10 o’clock even if you are grown and have a job.

So in a city of maybe 200,000 people, I would always see the same ten girls out dancing. And they’d be allowed to stay out till 10, maybe 12, but they certainly weren’t allowed to drink. So I think that because my male students occasionally saw me out dancing, and drinking beer, they automatically assumed that I was [easy].

The weather is always, always, always the same, because it’s at the equator. It can get down to about 40 at night, and during the day, it’s all about the sun. If the sun is out that day, you can get up to 70. If the sun’s not out, you’re probably stuck at 55.

The number one thing I missed from home was seasons. That and cheese. They have no cheese in Riobamba. They have cows, but they [use them to make] this stuff called queso fresco. It tastes like tofu but worse. One time I found a packet of parmesan, and that was amazing. I put it all over the pizza. It was bad.

The big local speciality is guinea pig. It has a very, very specific flavor. I was not a huge fan. They also roast entire pigs, and they have stalls of pigs, and people just kind of shave it off for you. That’s really good but really bad for you. The one thing I did really like was the stuff from the coast. Ceviche, that was awesome.

Initially the [World Teach] commitment is just for a year, but if you really like what you’re doing, and you feel like you haven’t done everything you want to do, or if you meet the person who you will eventually marry… you stay another year. So I stayed for two years. For one thing, I wasn’t ready to go to law school, because I was not unburned-out from undergrad yet. I also felt like I could do more work on my Spanish, so I ended up auditing a class at the university to work on my Spanish. I also really liked teaching, and I wasn’t ready to give it up. And I just… a lot of people probably feel like this when they’re in a different country for a year – right when they’re supposed to leave they’re going, “Oh my god, I just got used to this, I just really feel like I belong, and now I have to leave again!” And actually in my city there were three American volunteers besides me, and all of them stayed another year, because it was so awesome.

Klara now lives in Ann Arbor with her husband, Josue, who she met in Riobamba. She misses Ecuador, but for the time being she brings it back by cooking ceviche as the centerpiece of her Super Bowl parties.
Across
1. Pool sites
5. Certain turns
10. It might be found, appropriately, in a newspaper morgue
14. Nonclerical
15. Dickens's Heep
16. Lose support, as at campaign's end
17. Red state
19. Twerp
20. Where the river meets the sea
21. Corp. top dog
22. Intentionally vague statement
23. Tyrants
25. Hindu princess
26. Home of the N.C.A.A. Spartans
27. Kind of alert
29. Quick refresher
32. Speed
35. What an ogler gives
37. Prefix with friendly
38. Smeltery input
40. Unfairly outnumbers, with "on"
42. Little beauty
43. Former Saudi king
45. Nasty vipers
46. Uncle__
47. Taj Mahal site
48. __ Taylor, the Tool Man, on "Home Improvement"
50. Press, as to vote
52. Rappers and poets, say
56. One who needs to be rubbed out?
58. Fannie__
59. Campfire remains
61. "Metamorphoses" author
62. Blue state
64. Effect of yeast on dough
65. Actor Christopher
66. Till compartment
67. Elegant shade trees
68. Shooting game
69. Part of the country where polls close later

Down
1. Dropped, as in the polls
2. Having separate glass segments
3. Divider in the House of Representatives
4. Rob Roy and kin
5. Hon. in Hampshire
6. Put up
7. Nifty bridge play
8. South-of-the-border order
9. Timid
10. Frequently
11. Blue state
12. Beatnik's "Gotcha"
13. French head
18. Swimmers may do them
36. Successor
39. Eligible, as to vote
41. Daytime TV staple
44. Chicago-based food giant
49. Apple variety
51. Election Day freebies from party workers
53. Throw with great effort
54. French wine region
55. Tennis's Monica
56. Clinton's number two
57. The dark side
58. Docile
60. Part of CBS: Abbr.
62. "__Doubtfire"