Right to Die Debated at MLR Symposium

By Sumeera Younis

On November 8, the University of Michigan Law Review hosted a symposium titled Death, Dying and the Constitution. The first half of the symposium took a look back on Washington v. Glucksberg, with four scholars debating whether there is a constitutional right to assistance in suicide. Both sides passionately defended their stances, making for a heated debate.

Constitutional Law scholar Erwin Chemerinsky framed his argument with the story of his dying father, who asked to be put to death in the last stages of his terminal illness. Chemerinsky argued that there is no viable state interest in prolonging the life of someone who is days away from death. Chemerinsky reasoned that it is better to allow that person to choose to end his or her life than to subject him or her to extended suffering.

Kathryn Tucker, Legal Affairs Director of Compassion & Choices, a choice-in-dying advocacy group, largely agreed with Professor Chemerinsky. Tucker discussed the Oregon Death With Dignity Act, conveying stories of terminally ill individuals being allowed to have peaceful deaths surrounded by family members and loved ones. She argued that many of the concerns that critics have with a patient's right to choose are overblown and that the success of the Oregon model empirically disproves many objections.

The opposing viewpoints were argued by Yale Kamisar, the Law School's own Clarence Darrow Distinguished University Professor of Law Emeritus, and Herbert Hendin, M.D., President and Medical Director, Suicide Prevention International, and Professor of Psychiatry, New York Medical College. Professor Kamisar challenged the characterization of euthanasia as "death with dignity," arguing that this phrase implies that that people who do not support it want undignified deaths for the individuals. Prof. Kamisar described a different reality than the one Tucker had discussed. He noted that 15 to 25 percent of the people who had assistance in ending their life under the Oregon Act faced complications which traumatized them, not allowing them to die peacefully at all. He also argued that asserting that only terminally ill patients had a right to assisted suicide was arbitrary, questioning whether paraplegics, handicapped individuals or people with other difficulties should also be allowed physician assisted suicide under this rationale.

Dr. Hendin noted further that it was

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Editorial

Waitlisted . . .

The current class registration system for seminars (“PRS Round One”) randomizes seminar registration by failing to provide incentives for thoughtful selection. Since seminar registration takes place before regular registration, students have every reason to apply for any seminar in which they have the slightest interest, even before they have determined whether there are regular classes that they would rather take at the same time slot. If students later decide to enroll in the regular class, they simply drop the seminar.

Also, the PRS system solicits up to seven seminar selections from each student (though students will be enrolled in at most one seminar), encouraging students to apply for a multitude of seminars, even those that they have no real interest in taking.

While Round One may seem student-friendly, it actually works to randomize the process by allowing students to bid on classes that they aren’t committed to taking. The system on the whole encourages a wait-and-see attitude, allowing students halfheartedly to take precious spots in 15-student classes that their fellow students may be eagerly waiting to fill. Banished to the waitlist, a student that really wants to take a seminar may prefer to fill that time with another class rather than face the uncertainty of gaining entry off the waitlist.

A simple solution would be to impose some sort of penalty on students who drop seminars once they are enrolled. Facing a penalty if they don’t enroll carefully, students would likely apply only for seminars that they really want to take. Simply reducing the number of seminars that students are allowed to request may also help by limiting the total number of requested seats, thus ensuring that students will only bid on their top two or three seminar choices, rather than applying for their top seven.

Waitlists of 50 and 60 students demonstrate great interest in certain seminars, but they also show that too many students are allowed to select too many seminars. Forcing students to think before they apply will reduce the total number of bids and make the process less random by forcing students to think before they apply.
BLA Speaker Tackles Subprime Mortgages

By Sarah Rizzo

Today, it is difficult to open the newspaper without reading about the elusive subprime mortgage crisis. Thankfully, on November 1, the Michigan Business Law Association welcomed Ross School of Business Professor Robert Van Order to provide some much needed information about the crisis, in a talk titled “Sub Prime Markets, Securitization and Housing.” Van Order, who came to Michigan after stints as the former Chief International Economist of Freddie Mac and the Housing Finance Analysis Director of the U.S. Department of Housing and Urban Development (HUD), explained the crisis, why it occurred, and what is going to happen next.

Subprime lending is the practice of making loans to borrowers who do not qualify for market interest rates because of their poor credit history. “Subprime” refers not to the loan’s interest rate but to the borrower’s credit rating, based on his or her credit history. Van Order reports that subprime loans grew from about 10 percent of the market to up to one-third of the market after 2003.

According to Van Order, the markets in which subprime loans are securitized and then traded publicly have more or less collapsed. The securitization of subprime loans is not new; indeed, securitization has been a mainstay of the mortgage business for 30 years.

In the late 1990s, investors began to package subprime loans into big pools of securities, pooling them together with other loans of varying levels of risk and return. With final investors largely distanced from the original loan, an asymmetrical information problem arose, and it became difficult for investors to know the true value and risk of the securities. In some situations, “principals” (those responsible for collecting loans for securitization and then selling the shares in the collected pool to other investors) purposely pooled risky but theoretically high-yield loans with more stable but less lucrative loans. This allowed some less scrupulous lenders to profit on both ends by making predatory loans to less creditworthy borrowers, securitizing them together with “good loans” and then selling the securities, thus passing the risk of default on to unwitting investors.

Van Order partly attributes the problems with securities trading today to pure uncertainty by institutional investors. With the deterioration of historical models, as well as agency problems whereby unscrupulous fund managers purposely mix good loans with bad, investors do not know what they are getting in the loan pools. While it has never been a secret that subprime loans are risky, uncertainty has spooked investors. Whereas risk can be properly assessed in the markets, uncertainty cannot. Consequently, investors do not

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Holding Doors for Strangers and Correcting Absentminded Errors

By Nate Kurtis

Just last week, I was walking into Hutchins Hall carrying a box of canned goods for one of the recent food drives. This box was so large that I was not sure how I would manage to both hold it up and simultaneously open one of the ancient doors of our hallowed institution of higher learning. Fortunately, I happened to be walking behind another law student who was entering the school at the same time. I asked her to hold open the door as she opened it, and was rewarded for my efforts by slamming, box-first, into the door as it slammed shut behind her.

This is certainly not the sort of behavior one would hope to see in our law school! This community of helpful, friendly people is what drew many of us to the frozen tundra of Ann Arbor in the first place!

Given how very un-Michigan-like this girl’s behavior was, I am refraining from using her name. This is also because I don’t know what it is; but, hopefully she will read these words and know exactly who she is....

...Or maybe not. You see, I think the reason for her behavior, beyond any specific self-centeredness or an inherent streak of rudeness, might have had something to do with the cell phone she was busy blathering on. She was, I imagine, so caught up in the narrative of her friend’s recent bar night debauchery that what little of her attention could be spared was needed, entirely, to open the door for just herself.

Many of you who may have shared my dissatisfaction with this girl’s conduct before are now likely much less concerned knowing that her actions were the result of a cell phone conversation. Indeed, cell phone-induced zombification is so prevalent that it isn’t hard to imagine this sort of thing happening to each of us quite often. Yet, just because it is so common an occurrence these days doesn’t mean it is the way things should be in a perfect world. Nor, sadly, is the cell phone the only example of this sort of behavior. Indeed, I believe that the cell phone is just one more example of a whole suite of situations and activities which we do so often that we no longer even think about them – nor, it seems, do we think about much else around us.

These common activities, ever-increasing in number, are the activities which we do most often, the events and situations which we encounter so frequently that we are able to do them without thinking. And, while we absentmindedly go through the motions of these activities, we inadvertently make errors in judgment which we wouldn’t otherwise make if we were actually paying attention. I imagine that this girl, had she been paying attention, would have been happy to hold the door open for me. Instead, her otherwise good nature was suppressed by her absentminded cell phone use.

This is really the point I want to make: There is, in our daily lives, so very much we take for granted. There are so many circumstances, and even relationships, in which we go through the motions absentmindedly.

We shouldn’t!

Just because we happen to be on a cell phone, connecting with people far away from us, doesn’t mean we should then ignore the people who are actually in the immediate vicinity. Just because this is our third year of law school doesn’t mean we should phone in the effort in our classes... at least the few we bother to attend. Just because we have been in a relationship with someone for some time doesn’t mean we should take that relationship, or any relationships we have with people around us, for granted.

We should rebel against wandering our way through our days! We should choose to take active, concrete steps to reverse this troublesome trend in daily life!

We 3Ls should hearken back to our 1L days, when we actually read a case book and trembled at the thought of missing classes.

Those of us in relationships should take this opportunity to do something for, with, or to our partners. If you find yourself needing suggestions, turn to “Between the Briefs” on the next page.

As for the rest of you: hang up your damn cell phones and get the door for me! This box is getting heavy!!

Nate Kurtis is a 3L and the Editor-in-Chief of Res Gestae. He can still be reached with comments or questions at nkurtis@umich.edu.

No Other Warranties, Expressed or Implied
I Will Not Eat It, Spam I Am
15 USC § 7703

By Rooks

Though I’m a big supporter of artist unions, and bearing in mind that this Res Gestae gig doesn’t pay very well, I nonetheless decided that my loyalties this week lie not with the Writer’s Guild of America but with my fellow law students. So I’m not on strike (you’re all terribly relieved, I’m sure), but I will say that the blow of being a scab was weighing on me. Then one morning, a few days ago, I opened my inbox to two amazing, tangentially related things. The first was that LSSS is finally rectifying the [lawstudents] confusion, saving my (and everyone else’s) Umich e-mail account from complete anarchy; the second was that, for once, I had no spam. None. Not one piece of unsolicited crap.

Ok, obviously it doesn’t take a lot to amuse me these days, but this was, to my mind, pretty major.

As much as I sometimes have the urge to e-yell (read: type in all caps) at my classmates that no, I am not selling, nor am I buying, an Ohio State ticket, and that I have no idea what the readings for 1st Amendment are, [lawopen] nevertheless serves a valuable, if inbox-cluttering, function. Actual spam, on the other hand, is friggin’ useless. Awesome as it would be to work from home and make thousands of dollars a week, I realize that I’m a deeply flawed individual, and that it’s incredibly unlikely that I’d spend any of my newly discovered free time actually studying, choosing instead to roll around in piles and piles of easily garnered filthy lucre, Scrooge McDuck-style. Further, I honestly have no need for Viagra or MILF gangbangs or hot, barely legal babes. (Hey, if you do, that’s totally your business.)

Apparenty the Federal Trade Commission and I are on the same page, as this past month they successfully prosecuted two men who were behind an international porn spam ring (U.S. v. Kilbride) under the CAN-SPAM act. (I can’t even fathom how long the congressional session was the day figuring out a viable acronym for the Controlling the Assault of Non-Solicited Pornography and Marketing Act was on the agenda.) CAN-SPAM doesn’t make spam illegal, unfortunate though it may be for the sanctity of your e-mail account, but it does restrict they ways in which spam can be sent and even, to an extent, the kind of content that is initially viewable.

Though this isn’t the first successful spam prosecution since the inception of CAN-SPAM, it is notable in that it is the first that is coupled with obscenity charges. This matters because it greatly increases the penalty for spamming unsuspecting citizens with the best bestiality on the web, from a mere $11,000 fine to jail time. The defendants in Kilbride each got roughly five years, plus $100,000 in fines, all because, beyond violating restrictions about misleading subject lines and sender identification, the two men placed photos of anal fisting and rimming in the initially viewable body of the spam. (Yet another reason not to check your email in class.) That’s very, very illegal, and the charges of obscenity, coupled with CAN-SPAM and a wee bit of money laundering, effectively put the kibosh on at least one porn spam ring. Unfortunately, at just over a million bucks, it seems that this ring was relatively small-time, especially when compared to past CAN-SPAM targets, some of whom were getting $100,000 a month in sales.

Despite the fact that CAN-SPAM was enacted in 2003, I still get weekly offers for a miracle drug to make my penis three times larger. (One of my favorites actually said “let your small penis grow into a purple-headed demon.” I really fail to see how demonic possession of one’s bits is a good thing.) Though I suppose there’s some small comfort in going from sighing about how there oughta be a law (as you patiently delete images of octogenarian oral sex out of your email) to knowing that there is a law (as you patiently delete images of octogenarian oral sex out of your email), CAN-SPAM appears to be just a finger in the dam in the face of approximately 2.5 billion porn spam emails sent daily. Indeed, as of last year spam actually accounted for a greater percentage of all mail than it did in 2003.

Although there’s a lot of debate about the potential harms or merits of pornography, most everyone agrees that the spamming should cease, and there’s a few things folks on both sides of the argument can do to stop the spam. Beyond using a spam filter, don’t be hesitant to report

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SFF Poker Tournament Raises Money and Spirits

November 2, 2007
Michigan Union

Photos by Matt Weiser
Save Yourself: A Semester-Long Exercise in Perspective

When the Going Gets Tough, the Tough Drink Coffee

By Liz Polizzi

Here in Ann Arbor, as we all know, action and adventure wait around every corner, and there’s never enough time to do all the fun stuff there is out there. Apple-picking seems like a nice thing to do this time of year – remember those lovely autumn weekend days, walking around with a paper sack full of apples, cheeks flushed from the almost-cold weather, and nothing to do later but drink cider and read a book? Oh, and not to get too produce-intense, but the Farmer’s Market in Kerrytown must be at its peak this time of year. And if you’re really in the mood for adventure, you could drive out to Detroit and spend all day Saturday strolling the Eastern Market and adjacent shops.

But alas, there comes a time in every law student’s semester when there is simply no time for such frivolity, and one just hopes that every waking hour is enough to get done what needs to be done. For many, including me, that time is now. So I offer you, in place of an action-packed non-law-school adventure-in-waiting, my top three spots to go when I need to get work done but still want a break from feeling like a law student.

Crazy Wisdom Tea Shop

The Crazy Wisdom Tea Shop on Main Street (between Washington and Huron) is basically the opposite of law school, and being there makes you feel like the last thing you could possibly imagine doing or thinking is anything that would make you seem or feel like a lawyer-in-waiting. Yes, the first floor is a New Age bookstore, full of incense and little statues of Buddha. The reading selection runs from magical spell books to yoga guides to a self-help department that’s guaranteed to have something for every neurotic type-A personality (hint hint). If you’re looking for a crystal to help polarize your chakras or a crystal ball to help you decide which firm job to take, this is the place for you.

But upstairs is where the magic really happens. As you ascend the twisty staircase to the second floor, past ancient magical charms encased behind glass, New Age music tinkles in your ears, and you begin to notice the warm, homey smell of baked goods. Reaching the top of the stairs, you turn right and are greeted by a kind-faced earthy young woman, ready to prepare for you a pot of tea, or organic fair-trade coffee, or some delicious soup or other warm and peaceful food. As you proceed into the room with your tea or coffee, the atmosphere is quiet and serene, the chairs are comfortable, and best of all, one entire wall is lined with huge picture windows facing Main Street, offering lots of light and quite enchanting views when it snows.

But like I said, the best thing about Crazy Wisdom is that no matter how deep your nose is stuck in that Evidence casebook, part of you will be drifting on a peaceful cloud of meditation, grasping truths beyond the rule against hearsay.

Rendezvous Café

The Rendezvous Café on South University (just east of East University) has the distinct honor of being the only coffee shop in Ann Arbor where smoking is still allowed indoors. Don’t let this daunt you if you’re a nonsmoker, though – the smoking is sequestered on the second floor and is almost unnoticeable downstairs. The best thing about this place is the vast selection of coffee (including several fair-trade choices) and the fact that it never (I repeat never) has a line like you’ll see across the street at Espresso Royale. Its clientele is very eclectic—yes, it has its share of undergrads, but it also has all sorts of other types of people (although curiously not many law students). The thing that everyone seems to have in common is that they’re relatively quiet and respectful.

The food is also quite good, for lunch or just a snack while studying. Clearly Middle Eastern in influence (their lentil soup and hummus are both amazingly delicious), the menu is diverse and includes most sandwich “staples.” And its proximity to the Law School makes it a reasonable place to go for a few hours, just to get away for a brief respite during your hectic day.

The Ugly Mug Café

As I write this, I worry that the Ypsilanti punk world will somehow retaliate if they catch wind that I’ve divulged the location of their central gathering place to a bunch of straight-laced law students. But I’ll take my chances, because if you leave Ann Arbor without ever visiting the Ugly Mug Café, you will truly be missing out.

The floors are concrete, the décor is old-couch, movie-theater-seat, diner-booth kitsch (in the best sense of the word) – in other words, it’s everything a coffee shop should be.
Symposium (continued)

As I listened to the speakers at the Law Review Symposium, as much as I tried, I couldn’t understand why the state or the federal government has the authority to dictate whether an individual has a right to seek assistance in taking his own life. Perhaps some of you are reading this and have lost a friend or family member to suicide and such a proposition is offensive. That is because we are standing on the side that wants life. But there are those who are standing on the other side, who have continuous struggles that amount to a sustained desire not to live. They are the ones that parents find dead, and those are the ones that we hear about on the six o’clock news; having driven off the road killing themselves and others. As grotesque a picture as that may be, it is the reality we have created. Ignoring that suicide is a reality in this country and the world, in this age and the ages before it, is turning a blind eye to a serious social issue.

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objectionable content to the FTC. You'll know it's illegal if there's no opt-out button, if the content is viewable right away, or if the sender or subject line is fraudulent. (Like if the subject line said “Get the Right Tools in Your Box for Law School” and then the text...ok, you probably get the idea). Also, if porn’s your thing, or a thing you’re looking into, now might be a good time to consider boycotting the purveyors who advertise via spam. There are many ways to discover new, interesting or different pornography beyond what ever manages to filter its way into your email (though that's a column for another day). Paying someone to completely clog your (and everyone else's) inbox makes even less sense than not getting [lawopen] as a digest.
The coffee is roasted on-site and is by far the most delicious to be had in greater Washtenaw County. In short, this is not your average study-hall coffee shop. This is the sort of place you would go to write that heady post-modern novel you’ve been thinking about, while smoking clove cigarettes and pondering the futility of human existence; this is the sort of place where people meet to plan revolutions . . . but I’m sure they won’t mind if you drag out your Fed Courts casebook and set your mind to the perplexing plot-twists of the Rehnquist court – in fact, you might just meet a proselytizing nihilist who can help you make sense of it all.

Being that the place is in Ypsilanti, it’s rather essential that you have a car for this one (or be willing to endure a half hour on the bus—the Ann Arbor Transit Authority 3, 4, and 5 all go there) and even then it’s not easy to find. The address is 317 Cross Street; you’re on your own from there.

The subprime loan problems are no longer isolated to subprime-mortgage lenders, either. As Van Order pointed out, the crisis is spreading unpredictably across markets and countries. He adds that these strange spillovers are hard to understand because of “the lack of public data available.” Van Order remains skeptical of enacting policy changes today. Critically, he does not rule out the possibility that investors can solve this problem.

Investors are not the only ones being affected by the subprime mortgage crisis. The large number of students who attended Van Order’s talk speaks to the problem’s relevancy in the field of law as well. Van Order discussed law firms’ participation in the pooling of mortgage loans into securities, and several lawsuits have recently arisen over investors’ inability to sell back troubled securities to the originators.

suicide program may be one way of addressing it.

The word dignity was often used at the symposium, and perhaps we don’t want the government to say it is permissible to help someone take his own life because it undermines our conception of the dignity of human life. When we strip individual’s of the autonomy to make personal choices that are best for them, and when the government steps in and dictates morality, that is the true assault on dignity. Just as the symposium could not begin to scratch the surface of the right to an assisted death in the case of terminally ill patients, this note cannot begin to address the various considerations and implications of federally regulated assisted suicide. Instead, as we reflect on the ten-year anniversary of Washington v. Glucksberg I invite you to consider that the choices that are best for you are not those that are the best for everyone and the truths that we take as apparent today were not always so clear.

We are proud to recruit at the University of Michigan.
We wish you all the best of luck on finals.
Law School Events

November 13

Campbell Moot Court Oral Arguments – Oral arguments for the first round of the 84th Annual Henry M. Campbell Moot Court Competition will occur this Tuesday, Wednesday, and Thursday. Come support your classmates as they try to advance in this year’s competition. 6 - 10 pm; Hutchins Hall.

November 14

Domestic Partner Benefits in Michigan (Outlaws) – Jay Kaplan will speak about the status of domestic partnership rights in Michigan, fresh from litigating before the Michigan Supreme Court on National Pride at Work v Granholm. 12:20 – 1:20 pm; 150 HH.

1L Job Panel - US Attorney & Capitol Hill (ACS) – An ACS Member will discuss her experience on Capitol Hill this summer working for the US Attorney Office and the judiciary committee in the Senate and take questions. 12:20 – 1:20 pm; 138 HH.

Campbell Moot Court Oral Arguments – See November 13.

November 15

Real Estate Finance and Development (RELS) – Christopher Jeffries, ’74, Founder of Millennium Partners, based in New York City, will speak about real estate finance and development. Millennium Partners is a pioneer in the development of high-end mixed-used urban living and entertainment centers. Mr. Jeffries has recently made a $5 million gift to the Law School’s building renovation and expansion project. Lunch will be provided. Sponsored by the Office of Development and Alumni Relations. 12:15pm; 138 HH.

Informal Q&A (EMALSA, IPSA) – Matt Drake, a copyright lawyer, and General Counsel of BroadClip will take your questions. 12:20 – 1:20 pm; 132 HH.

Blue Jeans Lecture (LSSS) – Prof. Rebecca Scott will speak about “Using History to Think about Law: Popular Rights-consciousness and Plessy v. Ferguson.” This is an ongoing informal opportunity for you to get to know your professors, their research and their work. 4:30 – 6:00 pm; LC Lounge.

Campbell Moot Court Oral Arguments – See November 13.

November 16

Campbell Moot Court Oral Arguments – See November 13.

November 18

What’s God Got to Do With It?! (CLS, Federalist Society) – Jeffery J. Ventrella will discuss the prima facie propriety of public religious expression, with interaction from our very own Professor Doug Laycock. Lunch will be provided. 12:20 - 1:20 pm; 218 HH.

November 19

Inspiring Paths Series with Steven Rosenbaum – Come hear Steven Rosenbaum, ’78, Section Chief of Housing and Civil Enforcement, DOJ Civil Rights Division, talk about his career as a government civil rights litigator. He will also discuss internship, externship, and honors program opportunities at the Civil Rights Division. Lunch will be provided. 12:20 – 1:20 pm; 220 HH.

Attorneys’ Role in Real Estate Development (Real Estate Law Society) – Professor Cassard will discuss his experience as a real estate developer and attorney. Great for anyone who wants to become a real estate developer! Lunch will be served. 12:20 – 1:20 pm; 138 HH.

November 28

Prof. Rosenbury on Friendship Law (MLR) – Professor Rosenbury will be at Michigan to discuss her forthcoming article in the Michigan Law Review. The event is open to all students and faculty. 12:20 – 1:20 pm; 150 HH.

November 29

So You Wanna Be A Law Professor? – Curious about teaching law, ever thought about being a law professor? Professor Prescott will be hosting a series of brownbag lunches for discussion, questions and ideas. 12:20 – 1:20 pm; 220 HH.

Panel on Iraqi Refugees (MELSA, SNARL, ILS) – A filmmaker will be showing the trailer for a documentary she is making on Iraqi refugees in Jordan, Syria, and Northern Iraq. A panel discussion will then take place, with participants including refugees, legal counsel for refugees, and representatives from several NGOs. 4:00 pm; 100 HH.