Flyin' High with J.J. White

By John Fedynsky and Andy Daly

Professor J.J. White must enjoy a bird’s-eye view of the world. Perhaps it started with piloting planes for the Air Force. Or maybe it was the distinction of being first in his class at the Law School. Standing at the top of his profession as a noted author and expert on commercial law is another summit he has reached.

Fittingly enough, his corner office is on the tenth floor of the Legal Research Building, an elevator ride plus a flight of stairs away from the ground floor. Between noting the red office door, his grandfather’s 1902 diploma from the Law School and an 1898 casebook on damages, Res Gestae sat down with White, the Robert A. Sullivan Professor of Law, to take in the view.

What does the second “J” in your name stand for?

Justesen. It’s a Danish family name.

From your mother’s side?

Yes.

Tell us about your military background.

I was in ROTC. When I started college in 1952, the Korean War still sort of on. When I got out I had to serve in the Air Force and I was in the air force for three years and flew. I served as an instructor pilot down in Texas. Then I got out and came to law school. And I got into the National Guard Unit down in Toledo. We were flying F-84s at the time.

Then right in my last year of law school we got called backed into service when President Kennedy got elected. He called up a bunch of Guard units when they built the Berlin Wall – to threaten the Russians, I guess. I was in the Air Force for another year. Then I went and practiced law out in Los Angeles. When I came back here I joined the Guard again and I was in the Guard for about twenty years.

Are you still an avid flyer?

I still got a pilot’s license but I’m not flying. I own an airplane, which I’m trying to sell. But I haven’t been flying for the last three or four years. The idea was that I would fly the airplane on business, going places. Turns out, given the weather in Michigan and the fact that the airplane is not de-iced, it really isn’t a very effective way to get around. When you’re not doing something with the airplane other than flying places, it’s not as much fun to fly as it used to be.

When we interviewed Professor Simpson last semester he mentioned that he had taken flying lessons and heard you up in the air.

I know he took flying lessons. The most interesting part about Brian’s flying lessons was the day that he turned the engine off in a single engine airplane in the pattern. He didn’t tell you about that?

Yeah, he did.

I mean, you only get to do that once with me. Man, I’d say, “Brian, we’re not flying again.”

He also quoted you saying, “get that limey out of the air!”

Well, I don’t know what his instructor said. I’m sure she said let’s – after she got the engine started again – said, “I need to get on the ground to clean out my pants.” Brian is oblivious to these things and completely innocent. He was in the pattern, which means he’s probably at a thousand or 1,500 feet. And it means unless the engine starts, they’re going to be on the ground in, you know, about three or four minutes.

Has your military career influenced the manner in which you conduct your classroom?

I don’t think so.

Next semester you’re teaching Sales at eight in the morning. Would you describe yourself as a morning person?

Yes.

Is that a long-standing character trait?

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Summer Jobs
Involving
“Something (il)Legal”

By John “Try the Fish” Fedynsky and
Jessie “I’ll Be Here All Week” Grodstein Kennedy

As Assistant Dean for Career Services Susan Guindi once said, “Your exact job this summer doesn’t matter, so long as you do something legal.” Well, the RG has some ideas...

Does Brad Pitt really have washboard abs? Does Calista Flockhart really eat? Join the Orange County Prosecutor’s Office and find out just how good the law is at protecting a celeb’s privacy. Report back once safely inside celebrity’s gated compound.

Intern with the Siegfried and Roy Foundation: Visit local pounds to purchase exotic African mammals. How did you think Siegfried and Roy, or that guy in Harlem, got all those tigers anyway?

Independent Research: Is Gambling the next Asbestos? Can a young lawyer take down the MGM Grand? Perform a two-month research project set in the perpetual neon ambiance of your local casino.

Volunteer with the Department of Homeland Security’s Special Ops Team: Test Security systems at various malls across the country to find out just how safe this country really is – and whether or not those plastic tags actually do anything. Promotions available at Washington D.C.’s Cannon Office Building.

Get Outside! See the Country. Fun-filled road trip helping local police calibrate their speed detection systems. It’s a lead-footer’s dream, unless you drive a Pinto.

Public Service Opportunity! Help the undocumented find their way across the border under cover of darkness. Applicant must also be able to coordinate water drops. Weak swimmers need not apply.

Register with your local police precinct’s vice squad: Dust off your pimp and/or ho costume and get ready to pound the pavement. Or you can be a john!

Become a field investigator for consumer advocacy groups. Penetrate local fast food providers posing as employee to find out just how much that quarter-pounder actually weighs. Want fries with that?

Intern at NORML – Armed with your legal education and a bag of Fritos, you too can help your fellow stoners achieve the dream of legalization. If you get around to it...

Intern at Public Defender’s Office: Help clean out the “Evidence Room” in Cook County, Illinois. Great resume fodder and as well as opportunity to obtain valuable drug money – oh yeah, and drugs.


Have An Opinion?
E-Mail Us Your
Submissions!
rg@umich.edu
Are Animals People Too?
SALDF Hosts Talk on Integration of Animals into the Legal System

By Rebecca Chavez

The Student Animal Legal Defense Fund hosted on Tuesday, November 4 a talk by Professor David Favre of Michigan State University entitled, “Establishing Animal Rights in the Legal System.” Professor Favre, who teaches courses on animal law at Detroit College of Law at Michigan State University, has been integral in the foundation of the Animal Legal & Historical Web Center (www.animallaw.info). The purpose of this site is to provide a reference resource compiling a full set of legal material relating to animals, including all levels in the United States and international law. He described his work in animal law as “the only thing I do.” In his talk, he shared with a collection of both law and undergraduate students his impressions of the current position of animals in the legal system and his views for securing them further legal rights in the future.

First clarifying the difference between legal and moral rights, he urged listeners to purge the words “animal rights” from their vocabulary because of all of the non-legal rhetoric and “baggage” associated with it. He explained that he had not come to speak about what is traditionally thought of as animal rights. As he pointed out, no one would bother to attend the lecture if they were not concerned with the welfare of animals on a philosophical level. What he was there to speak about was the integration of animals into the legal system.

Comparing the evolution of animal legal rights to that experienced by non-smokers since the 70s, he suggested that animals’ interests needed to be worked into the legal system slowly such that basic recognition of them eventually develops into the dominant point of view. He cautioned that an attempt to force animal rights upon the public may result in a backlash by those who are afraid of having animals’ interests placed above their own and that of other humans. He stressed that the one idea he wanted attendees to walk away with was that animals do have a presence, albeit a small one, in our current legal system. This presence needs only to be enlarged to protect animals’ welfare on a more moralistic level.

Professor Favre then went on to describe the history of animals in the law, going all the way back to the 1867 formation of New York’s anti-cruelty law. That law recognized an interest against cruelty beyond the property interest of the owner, which had been the earlier rationale for anti-cruelty laws. He also discussed the Federal Animal Welfare Act, which requires research institutions to take the psychological well being of primate subjects into account, and the Uniform Trust Act, which allows for animals to be the beneficiary of a trust. Although he admits that the concepts embodied in these acts have thus far been poorly implemented, he points to the fact that they have helped to change people’s overall concept of animals. The basic premise behind these two laws is the recognition of animals as having minds comparable to humans and as “lives in being” under property law.

Favre closed with suggestions on how best to continue integrating animals into the legal system. Saying that there is unlikely to be a change in laws at the federal level within the next few years, he advises that focusing on state level changes will, if nothing else, raise public consciousness regarding animal welfare. The changes he recommends are “evolutionary and not revolutionary”. He suggests legislation that allows judges to take into account the best interests of the animal in divorce “custody” cases, as some have already chosen to do. He also advocates the promotion of a special prosecutor to investigate animal cruelty cases. Finally, he mentions that animal rescue organizations are currently fighting for the ability to retain some control over an animal even after it has been adopted out to a new family.

In an as yet unpublished law review article, Favre argues for the creation of a new tort, making it illegal for a human to interfere with a “fundamental right” of an animal. He suggests a three part test that asks whether the right is of

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Students Discuss Summer Jobs in Criminal Law

By Sarah Rykowski

Amid the flurry of applications, interviews, callbacks, and offers for private law firms that occurs about this time of year for 2Ls, and begins for 1Ls, a group of students gathered to hear four of their peers talk about their summer experiences at district or U.S. attorney’s offices, and at county and federal public defender offices. Katie Kiefer, Mike Kabakoff, Jason Mills, and Rosemary Caballero, all 3Ls, related their various summer experiences.

Kiefer worked for the U.S. Attorney’s Office in Washington, D.C., and then for the District Attorney’s office in Philadelphia. She reported that the U.S. Attorney’s office and City Attorney in Washington are combined, but lamented that because of mail delays in the “minimal” security checks required for the position, the program began in June and failed to meet SFF’s length requirement. Still, she enjoyed her internship. “I spent my first summer writing responses to appellate briefs,” Kiefer said. “I found it to be a really useful writing sample going into 2L interviews.”

In her second summer, Kiefer had tasks and responsibilities similar to “what a first-year DA can do. The pace of the courtroom moved so quickly, and the order in which they call cases makes it hard to keep track of things. It’s a trial-by-fire experience.”

Kiefer spent his third rotation in that office working on habeas petitions again—which she was able to do because of her previous experience. Kiefer said that the DA’s office in Philadelphia pays students from schools without an SFF program, and 50% of the 2L student attorneys in the program are given permanent offers.

Kabakoff spent his first summer at the Manhattan DA’s office, and his second with New York City’s Law Department. At the DA’s office, Kabakoff requested the felony narcotics division, and primarily worked on Fourth Amendment and suppression cases, as well as some jurisdictional cases, briefing a lot of the respective issues. He also sat in on some confidential informant briefings.

Typically, Kabakoff said, interns were not allowed to do their own cases, but the prosecutor could request that an intern be second-chair in a particular trial. In Kabakoff’s case, the judge declined the prosecutor’s request, but he reported that “the case exploded on the judge botching issues, and” Kabakoff got to work on the interlocutory appeal against her.

Kabakoff also had the chance to work with a Michigan graduate on a first-degree murder trial. Interns at that office, Kabakoff reported, were paid, and he suggested going to their website for more information. “It’s a very ethical office,” he said.

Mills contacted Robin Kaplan in Career Services and told her what he wanted to do and where, and she gave him a list of alums. “What I thought was a phone conversation turned out to be a job interview,” Mills said.

Mills spent his first summer at the public defender’s office in Tampa, and her second at the Federal Public Defender’s capital habeas unit in Philadelphia, where she had lived for a year after college. “We were in court every day, interviewing client, interacting with them and their families,” Caballero said. “The attorneys I worked for were willing to let me work on anything.”

Caballero’s position in Tampa was paid, which is unique for many public defender’s offices.

As a part of King County’s first-year summer program, Mills got a chance to look at the inner workings of the criminal justice system. “I had no idea what I wanted to do, so I checked this out in case I wanted to do criminal law,” Mills said. “I got to see what it was like to be a DA, and got to know how much control judges have.” He spent much of his time watching and processing what he saw. Mills’ duties included, among others, coming up with questions for voir dire. “It was a good DA’s office,” Mills said.

All four agreed that spending a summer working on one side of the criminal justice system does not necessarily damage a student’s chances of getting a job on the other side after graduation, but that students should proceed with caution. “You need to be careful how you go back and forth,” Kiefer said. “You want to know what your office’s policies are before you start.

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Analysis: FEC Commissioner Skeptical of Finance Reform

By Matt Nolan

Although too lazy to do the actual research, I would assume that statistics show that a majority of us will be expected to contribute to political campaigns upon graduation, and that professors and alumni alike give at a much higher rate than the general population. What else are you going to do with your $125,000/year in your 20’s, right? (other than paying off the corresponding 6 digit debt, that is).

The Federalist Society brought in Commissioner Bradley Smith of the Federal Election Commission (a Clinton appointee) to discuss the state of regulation surrounding these donations and other campaign finance issues last Wednesday, and the meeting’s 75+ attendance reflected the importance of the issue to current students.

Smith started with anecdotal examples, pointing out that under McCain-Feingold, it is actually illegal for an 8 year-old to purchase cotton candy from a political party’s booth at a local fair. In another case, candidate Ferguson inherited a trust from his grandfather and wanted to use half of it for his campaign; it was ruled by the FEC to be a contribution to his campaign instead of his own inherited trust, and he was fined $210,000! Smith saw this disparate treatment as a violation of the First Amendment, as speech is inherently tied up with money and how people choose to spend it. Why can candidates speak their minds to the tune of millions when donors to their campaigns are banned from speaking louder than the arbitrarily set amount of $1,000 per candidate?

Despite being adverse to free speech, Buckley v. Valeo, doesn’t fully limit political speech – it only limits spending that expressly advocates the election, defeat, etc. of a candidate. Candidates can spend at any rate both the money donated to them and their personal money. However, issue advertisements are considered “soft” money, as it is acceptable to spend any amount to advocate an issue or position under Buckley, just not expressly candidates. For instance, an advertisement can say, “Call Senator Levin and tell him to stop family cronyism,” but it must not say, “Defeat Senator Levin because he practices family cronyism.”

McCain/Feingold, if upheld, changes the law through new restrictions; 1) federal political parties can no longer accept any soft money; 2) state political parties cannot spend soft money; 3) any advertisement run within 30 days of a primary election or within 60 days of a general election must be paid for with federally regulated money, including money spent by individuals or organizations such as the NRA, Greenpeace, etc.

The case on McCain/Feingold’s constitutionality is pending in the U.S. Supreme Court. According to Smith, the goal of campaign finance and McCain/Feingold is to curb government corruption – unfortunately, people always have and always will feel the government is corrupt, despite the lack of evidence for such beliefs (see: 1798 Alien and Sedition Acts). Groups outside the political party system are already forming to replace the functions of the party; reformers themselves are upset that the bill already is not working. Smith doesn’t see logic behind limiting campaign financing, especially since powerful special interests spend exponentially more money on lobbying, not campaigns.

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Can We Trust the Cops?
Visiting Professor Warns to Think Twice

By Sarah Rykowski

Law-abiding Americans can be subject to discrimination simply for walking down the street or driving a car. So concluded visiting Law School Professor Kim Forde-Mazrui in his lunchtime talk on Police Discretionary Power on October 29, 2003.

Forde-Mazrui is studying the use of police discretion in stopping motorists for investigatory purposes, and presented his still-in-progress work to students and faculty for feedback. "My impression of students here is that you have a lot to offer," Forde-Mazrui began. "I'm very interested in hearing your ideas."

Edward Lawson, Forde-Mazrui said, is a businessman in the Los Angeles area, and a civil rights activist. Lawson enjoys long walks in "nice safe neighborhoods, which also happen to be wealthy and white." Lawson, Ford-Mazrui stated, is black and wears his hair in dreadlocks. "[Lawson] has been stopped fifteen times by police in two years," Forde-Mazrui said. "He has been arrested fifteen times for not providing reliable identification for police."

According to a local ordinance, citizens are to provide proper identification upon request by law enforcement. Police have discretion to decide the validity of the proffered identification. "The police have to be satisfied that the identification you provide is reliable," Forde-Mazrui stated. "For whatever reason, they decided not to believe him."

Lawson was prosecuted twice, although the charges were dropped once. Lawson sued and took his case all the way to the Supreme Court, where the law was struck down under the void for vagueness doctrine. The Court stated that laws must give fair warning to the public so the public will know what conduct will trigger prosecution.

"The laws must be precise, to guide police in their use of discretion," Forde-Mazrui stated. "If the laws are too vague, police can arrest anyone they want. If police are to be restrained from discrimination, precise laws ensure police are given too much discretion with regard to arrest procedures."

Traffic regulations, Forde-Mazrui told his audience, are a prime example of police discretionary power. Because they are so specific, nearly everyone is in violation. As everyone is in violation, the police can pick and choose whom to stop. "Conspicuous adherence to traffic laws in some areas can be grounds for suspicion," Forde-Mazrui said. "Even if you comply with traffic regulations, you're spending too much time watching the signs, and you end up being stopped for driving too slow. The average speed

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What to Do When the First Wave of Recruiters Passes You By

By Sara Klettke MacWilliams

When the offer from U-M Law arrives, everything is supposed to fall into place. Borrowing power suddenly increases. Parents suddenly stop asking what you are going to do with your life. A job is supposed to be easy to find.

The career counselors in the Career Services know how wrong that optimism can be, especially in a sluggish economy. In hosting “Outside the Box: the Job Search Beyond OCI” on November 6, a panel of U-M alumni addressed how to find a firm job outside of campus interviewing. Career Services correctly anticipated a crowd of 100 or more students and prepared accordingly with mass quantities of free pizza.

Panel members were Misha Gibbons (’00), associate at Zausmer Kaufman August & Caldwell in Farmington Hills (Detroit area), Ricardo Egozcue (’01), attorney at Robins Kaplan Miller & Cireci in Minneapolis, and Craig Lawler (’02), associate at Sherman and Howard in Denver. The group gave general advice on how law students can find firm jobs outside the OCI program. While the advice applied to all law students, each panel member addressed specifically their experience job searching as a 3L and “the panic of facing down graduation without a job”.

Gibbons was unsuccessful finding an offer through OCI. She spent her 2L summer at the San Francisco Public Defender’s office and planned to “get serious” about finding a firm job during her 3L year, but found OCI very difficult.

Egozcue landed a firm job in Portland, OR while a 2L, but when the tech bubble began to burst and attorneys he enjoyed working with left the firm, he decided he should look for a new job. He planned to interview during his 3L year with firms coming to campus in September, but right after September 11, 2001, firms declined to travel to campus.

3Ls might remember Lawler’s song “My Favorite Ding” from the Law School talent show two years ago. The firm Lawler summered at as a 2L dinged him, leaving him to start the firm search over.

The panelists stressed one instruction to students facing a similar frantic job search: talk to, and continue to talk to your Career Services counselor. The office can provide students with alumni contacts, resume tips, etc. “If nothing else,” said Gibbons, talk to a counselor “to deal with the emotions of defeat, because when you interview, you don’t want to look desperate.”

Lawler also emphasized one additional resource: Professors. He let Professor James Boyd White know that he was still looking for a job, and White put him in contact with some of his old colleagues from the Denver area – one of whom eventually offered Lawler a job.

Egozcue offered one word of comfort for those students who have accepted a job with a firm and are not sure that they made the right choice: www.lawcrossing.com. “Once you have one or two years of experience, it’s a lot easier” to find a new job, he said, and internet resources like www.lawcrossing.com, as well as continued networking, can help lawyers keep pressing for the right job long after graduation.

A Big Carrot for 3Ls to Give Back

By Michael Murphy

The office of Development & Alumni Relations is giving 3Ls some unilateral purchasing power. As part of the Nannes Third Year Challenge, 3Ls can have a say in how $25,000 gets spent for the Law School.

To participate in the Challenge, 3Ls can submit a pledge card that directs $250 in past alumni donations to a journal or a student group. In return, 3L pledges to make a “good faith” contribution of an unspecified amount to the Law School Fund or a program of their choice during each of the following three years. The challenge is distributed in one hundred allotments in the amount of $250, and as of Friday, 63 remain. Last year, 90 3Ls took the challenge. There is no limit to the amount a single organization can receive.

The Challenge has an immediate impact on student groups’ budgets, and helps ensure the continued practice of alumni donation. It also gives individual students control over the $250 allotments, which can bolster the budgets of fledgling student groups. Challenge forms can be turned in before November 14. Only the first 100 will be valid.

This year, like last year, John Nannes, ’73, donated the entire $25,000 amount. Nannes, a partner in Skadden, Arps’ Washington, D.C. office, has been involved for over ten years in promoting giving to the Law School, both as a donor and encouraging gifts from alumni.

Gerti Arnold, from the Office of Development and Alumni Relations is coordinating the Challenge. Arnold can be reached at glarnold@umich.edu.
NLRB Chairman Returns To Law School, Talks Shop

By John Fedynksy

The Employment & Labor Law Association landed quite the coup: a visit by Robert J. Battista, Chairman of the National Relations Board. He spoke about "Procedures, Problems, and Possibilities" on Monday, November 10 in Room 150 of Hutchins Hall. Professor Elizabeth Kinney introduced Battista, Bush appointee and a 1964 graduate of the Law School. He is from Detroit and worked for over 37 years representing management for the law firm of Butzel Long.

Battista began with a brief overview of the NLRB, which was founded in 1935 to administer the "contentious" National Labor Relations Act. The Act largely governs the relationship between organized employers and labor unions. It regulates union elections and collective bargaining, and bans unfair labor practices such as management refusal to bargain.

The Board consists of five members appointed by the President and confirmed by the Senate. Three members are from the President’s party and two are from the opposition party. The Board issues the final administrative review of cases under the Act before appeal can be taken to a federal court of appeals.

Much like the story of how a bill becomes a law, Battista laid out the contours of how a complaint arises and progresses through the procedural matrix of the NLRB. There are general counsel in over 35 regional offices and sub-offices who investigate and prosecute cases. Most cases are dismissed long before reaching the Board, or even achieving the status of a formal complaint, said Battista.

Battista also explained how members of the Board communicate and interact with one another. Typically, three-member panels decide cases. But routine cases get expedited review and "significant" cases go to the full board. Battista described the flurry of memoranda, drafts and other communiqués that are exchanged in the eve of a formal decision. Currently, the Board has 500 cases pending. "Every case that's before the Board is important," said Battista.

"It's a very interesting agency to work with," he said. "The issues are fun and complex."

During a question and answer session following his prepared remarks, Battista briefly mentioned some of the upcoming issues that the Board will consider. Among them are whether graduate students who are teaching assistants count as employees and whether registered nurses are employees or supervisors. The latter case is on remand from the United States Supreme Court. The Board requested and received 27 amicus briefs. The Board will also consider whether non-union employees have the right to have a fellow employee present at an investigatory interview that could lead to discipline.

When asked about following precedent decided during the Clinton administration, Battista answered diplomatically. "We will follow the decisions of previous Boards to the extent that we believe that they were correctly decided," he said. He also noted that "changed circumstances" can alter interpretation of the 68 year-old Act. "The Board can interpret the Act to apply to today’s workplace," he said. Though he did say that parts of the Act could use amendment, Battista surmised that the high stakes surrounding the Act will preclude much legislative tinkering since neither labor nor management want to risk a worse deal.

Battista spoke about his confirmation process. "The NLRB is a very contentious agency, unfortunately," he said. Battista said that after he was approached about applying for the job, he applied, was interviewed and then "sort of twisted in the wind" as he gathered letters of support from both management and labor. James Hoffa, Jr. and the Teamsters supported Battista, based largely on his personal experience with Hoffa as a fellow law student at the Law School and as opposing counsel in a case in Downriver Detroit. "I had the respect of [labor]," Battista said. "I didn’t always have their love." Though his nomination was part of a package deal for all five members of the Board, "getting through the Senate took some time," said Battista. Some senators put a "hold" on his nomination due to disputes involving different presidential appointments. He moved his family to Washington in August 2001 but was not confirmed until December 2001. Notwithstanding his experience with the Senate, Battista concluded, "it’s an awful lot of fun."

Tuesday, Nov. 25

THEODORE SHAW
DEPUTY COUNSEL FOR THE NAACP
12:15 - 1:30 P.M.
ROOM 150 HH
SPONSORED BY THE OFFICE OF ACADEMIC SERVICES
Immigration Law After 9/11: A Discussion with Prof. Bo Cooper

By Jessie Grodstein
Kennedy

Although recently reinvented as the United States Citizenship and Immigration Services, most people still think of that fabled department responsible for screening new immigrants to the United States as the INS, the Immigration and Naturalization Service.

We Americans like to think of this country as the Land of the Free, Home of the Brave, but in fact, those phrases come with fine-print, little asterisks buried in the lyrics. Bo Cooper, who teaches asylum and refugee law at the Law School, explained some of the tension built into this country’s mission statement at a lunchtime discussion on November 6.

As Cooper explained, the practice of asylum law can be approached by reference to three distinct questions: (1) To what extent is the United States meeting its obligations to refugees? (2) To what extent does system create unacceptable immigration law enforcement vulnerability (i.e. are we unable to enforce basic rules about who can come into the states and remain here?) (3) And finally, does the current refugee system create an unacceptable national security vulnerability?

These last two questions have become particularly pertinent in the wake of September 11, 2001. The essential problem relates to the difficulty in maintaining a balance between keeping this country safe while at the same time providing the world’s refugees with a safe-haven. And, unfortunately for those in favor of liberal asylum laws, Cooper’s prognosis as to the state of the law today is not great. “Given the movement towards security,” Cooper advised, “There is likely to be a rough road for asylum protection in the next few years.”

Some of the current issues surrounding this delicate balance include the detention of asylum seekers. It used to be that this country’s asylum laws where focused on helping those in flight from persecution get protection, while the law is now refocused on terrorism.

Recent developments include increased attention to this country’s waters. A recent tactic by USCIS officials for asylum. If not, then the coast guard won’t even let that person step foot on U.S. soil. Related to this technique is the new legislation requiring anyone who comes into this country by sea to prove that they have been here more than two years. If proof is unavailable, that person will be removed if found anywhere on the soil of this country. Generally no right of appeal exists, apart from under the most limited circumstances.

Another new and more restrictive approach recently gaining popularity is the process of “tethering” asylum seekers. Essentially, the movements of those seeking asylum are restricted and monitored by public officials while their refugee status is determined.

And finally, the U.S. has decided to clamp down on its relationship with Canada, a country which is known for its liberal asylum laws. Under a new agreement between the two countries, the United States retains its ability to screen refugees who enter this country first and then make their ways across our Northern border. Basically, if someone tries to present a claim for asylum in Canada, the U.S. is entitled to first dibs if that person entered the United States on their way. Though this is a reciprocal agreement, more
Better than 220 law students packed Honigman Auditorium on the night before Halloween, and over 20 made the highest bid at the First Annual Black Law Students Alliance (BLSA) Date Auction.

The event raised more than $3,500, much of which will go to support Doris McCree Day and other BLSA community service activities. As part of Doris McCree Day, BLSA brings high school students from the Detroit and Ann Arbor area to the Law School to live the life of a law student for a day next semester.

The auction was hosted by 2Ls Jennifer DeCasper (BLSA’s Fundraising Chair) and Christopher Reynolds (BLSA’s Community Service Chair). BLSA’s Fundraising Committee organized the event.

The auction, which promises to be an annual event, may return as early as next semester.
Eligible Michigan Law Student?

1Ls
Waltreese Carroll - $45
Angela Hamby - $130
Mandy Legal - $30
Sacha Montas - $60
Justin Solomon - $35
Fernando Tamayo - $29

3Ls
Selia Acevedo - $300
Eric Carsten - $110
Rashad Nelms - $300
Mackenzie Phillips - $300
Liza Rios - $180
Keenan Whitehurst - $200

2Ls
Marisa Bono - $100
Sarika Doshi - $140
Alicia Gimenez - $270
David Osei - $85
Samy Sadighi - $90
Stan Shepard - $80
Jeff Young - $80

Hosts:
Jennifer DeCasper - $150
Chris Reynolds - $250

... PRICELESS!
I like to teach early in the day, because it means you’ve got the day free for other things. There is a kind of anxiety associated with having a class. In other words, you keep saying, “Well, should I read that case over, should I do this, should I do some sort of preparation?” If you teach at 8 a.m., the preparation for the very class can only come that morning. And that means the rest of the day you’re free to work on something, whatever you’re doing. And it means you get whatever classroom you want and you don’t have conflicts with other people teaching. So, I’ve always liked that.

Do the students perform better or differently that early in the morning?

I don’t think they perform much differently. My guess would be the worst time to teach would be right after lunch, when people are sleepy. The students, obviously, also divide themselves into morning and night people. And the night people probably don’t do so well at eight in the morning. But they might not take my class too.

How would you characterize your teaching style?

I don’t know. I more or less use the Socratic method, because I would be bored otherwise. If you really looked at a class – students would all say, well, “Socratic method” – but in fact lots of the class is lecture. But I suppose on a scale of, in this school, lecture to Socratic, I’m on the Socratic end, asking more questions and giving fewer answers.

We’ve heard that in your negotiation seminar you base the grade entirely on people’s negotiation outcomes.

That’s right.

Has that been an effective method for you?

I think it’s very effective. It makes the students negotiate because there’s something in it for them. It’s actually too effective because it makes them do things – it’s a pain because it then stimulates them to want to negotiate with me over what happened in the negotiation and hard to make up non zero-sum games. In other words, it’s hard to make up problems where there are joint games vis-à-vis someone else. You can do it. For example, you can say, “if you don’t get a settlement, I’m going to put numbers in a hat and those numbers will be worse for both sides. It’s hard to do that. But the real answer is, it does stimulate real negotiation, the students get a real experience as real negotiators as their grades are important to most of them. So you get to see real behavior. This is how these people are going to behave when they are in practice.

Have you ever had what you might call a rogue student who took it pass/fail?

You can’t take it pass/fail. There certainly are rogue students, but you can’t take it pass/fail.

Tell us about the seminar you have slated for next semester: Advanced Chapter 11 Bankruptcy.

What it’s going to be is, in ever class or in every week at least – we’re going to meet twice a week through February – I’m going to have a distinguished practitioner talking about various topics. It will be really interesting for me and probably for the students. People are coming so far. Rick Cieri, who is our graduate - he just switched from Jones Day to Gibson Dunn – and he is one of the leading debtor bankruptcy lawyers. Marty Bienenstock, who was the lawyer for Enron, is one our graduates. Bob White, who is with O’Melveny and now mostly represents creditors. And another guy by the name of Jamie Sprayregen who is the lawyer for United Airlines. So we will cover
specific problems, such as negotiating the
debtor in possession loan at the
beginning, and negotiating the plan at the
end, and certain things that happen in
between.

Do you have a preference between
teaching and research?

Well, I like both of them, I guess. To
some extent, lots of research is really, is
dull—it's not fun. On the other hand, you
like to publish things that other people
think well of. So, it is more complex,
whereas in teaching you get an
instantaneous payoff of not. I mean,
students are happy or sad, or you have a
good time teaching or you don't when
you leave class. So it's a different
experience.

I rarely have a case where I will say,
"they just don't understand this." Usually
when that happens, it's because the
problem is bad. Occasionally, you will get
a payoff in the sense of saying, "boy,
here's somebody who really knows that
they're talking about." I don't know if
you've ever graded exams, but if you do,
what you will see is—let's say you have
100 exams. After you've graded 30 of
them, they'll fall into three sets. They'll
be people that say X and are having
trouble figuring out what the issue is.
People that say Y and generally
understand things. And people who say
Z who really understand things. The last
70, all of them will fall under, more or less,
one of those groups. Occasionally, there'll
be one paper that is far and away the best,
or one or two that are far and way the
worst. But in general they will fall into
some sort of categories. Occasionally
there will be big issues the students will
see in the problem that students that you
didn't put in there, or didn't think of
there. But that's unusual.

Yes, first-year students are much more
tractable than second or third-year
students. You've got to threaten or do
something to get second or third-year
students to do what you want them to.
Whereas for first-year students, if you say,
"read this case," they'll go read the case.
If you let them get away with it, second
and third-year students, in many cases,
will do as little as they can. They've got a
lot of calls on their time, including
Fraser's Pub and places like that. So,
you've got to do things. I mean, I find I've
got to do things, like giving quizzes. My
experience has been that quizzes make
students—they force students essentially
to keep up, and it means not only do they
know more, but they're day-to-day
presentation and recitation is much better,
because they can't just sit back there and
say, "well I'll learn enough to get a C or
get a pass at the end of the semester. So I
always give quizzes in my general
commercial transactions courses. And I
started doing that because one year I said,
you know, "if I've got to go through life
this way, with the students behaving this
way, I'll kill myself." And it changed their
behavior remarkably.

Can you shed some light on your
process of looking at students'
admissions files before they first
come to your contracts class?

It's what I do. My own experience is
you can make the classroom work better
if you know something about the
students. And so I try to find out some
things about the students. And then you
can engage them better. Sometimes, you
know because of things they've done
before that they have a particular kind of
knowledge. And sometimes you can use
that. It's a big law school and a bad
student-faculty ratio. The students
welcome somebody who has some interest
in them as individuals. They're
sort of hungry for that sort of thing. So I
it's kind of a cheap trick, I suppose, to do
it. I find it more interesting, and it's easier
to engage the students. Sometimes you
can engage them in a way that, if you
know some things about them, that

from your contracts class?

There are a limited number of students
that everybody in the Law School
remembers. They tend not necessarily to
be the best students. A good example is
this guy, Newdow. He's the guy who
brought the case against the school
district, I think it's in Sacramento, about
using "under God" in the Pledge of
Allegiance. It went to the Ninth Circuit,
now the Supreme Court has taken cert.
He is a physician, but he graduated from
here in, I don't know, the 90s. But if you
say Newdow in the faculty lounge, and
five people will remember him. This is a
guy who's taking this issue all the way to
the Supreme Court. That tells you
something about his personality. He's a
The legislature often makes specific laws with very low thresholds of conduct, such as traffic laws, criminalizing the behavior of every citizen. “When you drive, the Fourth Amendment doesn’t apply,” Forde-Mazrui said. “Basically police have unfettered discretion. Equal protection doesn’t apply.” Even the void-for-vagueness doctrine, while it applies some limits, is not enough.

Other laws are written to target specific groups of people for political reasons, in their vagueness, such as prowling by auto or loitering. “The legislature won’t get businessmen or professional women with groups of people for political reasons, in their vagueness, such as prowling by auto or loitering. “The legislature won’t get businessmen or professional women with those laws, the police know who pays their bills,” Forde-Mazrui said.

Instead, individuals such as those in the Whren case are targeted, pulled over, according to Forde-Mazrui, for taking off too fast at an intersection, by drug-officers, who were not supposed to be enforcing the traffic laws, because they believed a drug deal was going down. The officers pulled the car and its occupants over for a traffic violation and searched for drugs, which the Fourth Amendment allows as long as the officers have objective evidence of a traffic violation.

Forde-Mazrui also cited the Vista case, speaking of the animosity between the police officer and the plaintiff, whom the officer pulled over, arrested, handcuffed, and held in the police station overnight, all on the basis of a traffic violation, for failure to wear a seatbelt. “The Court acts like [the Equal Protection clause] is adequate [as a protection against discrimination], inquiring whether officers had a discriminatory purpose in their arrest,” Forde-Mazrui said. “It is inherently impossible to prove a racially discriminatory purpose. [The officers] can allege any other reason and get a pass. Discretionary decisions are difficult to monitor for racial motives.

So what can be done? There are options, Forde-Mazrui said, but not many that are viable. Officers could arrest for all violations. Legislators could strike down all laws that seem “wholly underenforced,” or laws that regulate behavior that is “too innocent,” per the courts.

Alternatively, the burden of proof could be shifted onto police if evidence of racial discrimination was found to exist. The Court has in the past required a showing of discrimination in the specific case before them, which makes detection of discrimination very difficult. “The Court today is less willing to be activist than it was in the past,” Forde-Mazrui said. “It is not recognizing principle.”

Students came up with solutions of their own, during and after the discussion. Everyone recognizes that discrimination happens, but you can’t just take away traffic laws,” Mona Youssef, a 2L, stated after the discussion. “Just bringing these issues out in the open, raising consciousness of the issue, is a solution.”

“Making the police aware of discriminatory effect of their actions, regardless of their intent, is a solution,” Rachel Dobkin, a 1L, said. “Balancing societal goals versus individual intent—It’s a cost benefit analysis. If I do this, what’s the likelihood that I get a ticket for it?”

“This is an interesting topic,” Erica Soderdahl, a member of the Criminal Law Society’s Executive Board, the sponsor of the event, said. “There are all sorts of issues involved.”

In the end, Forde-Mazrui, the student body, and the rest of the nation are still looking for a balance between vague and specific laws, to minimize police discretionary power and discrimination, and maintain a peaceful society.

COOPER, from Page 9

people go through US to Canada than the reverse.

Cooper did take the time to do some self-professed evangelizing for a few moments, despite this unsavory state of affairs in the world of refugee and asylum law since 9/11. “You are in an enviable but important stage in your lives; there is a huge opportunity for people just like you to be involved in these questions and to make a big difference.” He provided an example of a former student at American University who transformed a paper on female genital mutilation into a brief urging the courts to recognize female genital mutilation as a basis for asylum in this country. Successful in her efforts, this student managed to win the first formal decision which allowed for asylum on this basis. Other ways to effect change in this are including going into government. “It is easy to call the government an ass and complain about it, but these questions are more complex than that.” And for those interested in private practice, Cooper suggested taking a pro bono case from time to time. “The degree to which someone is represented in this practice has a significant effect on how this stuff turns out,” he advised.

In perhaps the most interesting insight offered in his presentation, Cooper indicated that the course of asylum law is directly linked to the decision making that comes from the Executive branch. What can really make a difference in the state of the law is whether the President is going to say that he will come up with more carefully nuanced detention policies. “Truthfully,” Cooper stated, “The executive branch could come up with a more sensitive policy to recognize the particular circumstances of the asylum seeker while still accounting for abuses of the system.” Food for thought as we approach 2004.
Students and Professors Mingle Over Wine and Cheese

"Anytime someone says something violates the 'spirit of the law,' what they're really saying is that it's legal," said Smith.

If George Washington, Thomas Jefferson, Abraham Lincoln, Teddy Roosevelt, and Franklin Roosevelt are what we got with no campaign finance, and Jimmy Carter, Ronald Reagan, George Bush(s), and Bill Clinton are what we got after campaign finance (and G.W. Bush refused public financing in 2000), can we really argue that campaign finance reform increases the quality of our political leadership?

Fundamental importance, whether it has been interfered with, and whether the interest of the animal substantially outweighs the interest of the human defendant. Professor Favre, who raises sheep and llamas on his home farm, points out that this tort would be perfect for the regulation of large, wealthy agricultural production companies which have traditionally been able to avoid litigation. Many agricultural practices interfere with an animal's fundamental rights, but the only human benefit gained is cheaper meat products.

"It's an adversary system," Mills said. "There's a lot of smack talk going on."

In the end, as Caballero stated, "Both are totally different slants on the same issues." Clinical opportunities and summer jobs are also simply considered educational by most offices. "Clinical experience is a huge attribute to have on your resume, or criminal [law] experience," Kiefer said. "Employers know you were doing criminal [defense] work because you can't do the other side."
fairly compulsive, driven guy. People like that, that are deviant in way or another, strongly so probably, are people we'll remember. The conventional good student or the conventional mediocre student you might remember depending on whether you played squash with them all the time or something like that. But often you will not, after they leave here, be able to put the name and so one together. Some students I follow a lot and I've become good friends with. In general, they tend to be people who either work for me, or people I've worked with after they got out.

Are students essentially the same since you started teaching here in 1964?

Well, you know, it's hard to see changes in students because you're here every year. And there probably are incremental changes you don't see. It's like, living in Ann Arbor for four years. People come back after being away for thirty years and say, "oh, things are dramatically different." Well, I don't perceive that because I've been here. So, probably students have changed in some ways, though it's very hard to say how. There was a period in the late 60s, well in the early 70s, when the Vietnam War was on. A lot of students were gone, either in the military or avoiding the draft by teaching in schools or something. The times then were quite different and the people that were around. Students used to go to interviews barefoot. It was a seller's market at that point. They could do anything they wanted to, they figured, and get a really good job. Then the Vietnam War ended, or our engagement ended in '72, and all of a sudden everybody came back. Overnight the students started wearing neckties again and going to interviews with shined shoes. I mean, it was sad how quickly they capitulated to the market when the market changed. So that's an era where I think of where the general behavior of the students was measurably different than it is now or than it would have been before then. But otherwise, are things different now than they were in 1987, or in 1995? I would say, they might be, but I couldn't tell you how.

What about the caliber of the students?

Again, I would say there is not measurable differentiation. It's very hard in class, even when you know that you've got quite different students, to distinguish. For example, twice in the last five years I've taught at South Carolina. They've got a lot of really good students, but they have many students we would not admit. Class went more or less the same - not quite the same, but more or less the same. But on the final exam, there were radical differences. One year, for example - I gave exactly the same exam basically, an objective exam - if I had taken those students and put them in the class here, one of the students there would have gotten the second highest grade, would have had a higher grade than editor-in-chief got here. But the next student would have been in the bottom half of the class here. In other words, on balance, they performed the way you would expect if you have people with a 152 LSAT and 165 LSAT. So there are measurable differences in that respect. They're harder to see in class. What I would say is - was the class better in '85 or '95 or in '03 - would be impossible to say because of classroom performance. If you went back and you gave exactly the same test, it's conceivable there would be some differences, but I think they would be slight.

How about within the faculty?

Again, the changes are slow, but the faculty has clearly changed a lot since I've been here. When I came in '64, the faculty would have been made up almost entirely of people who are interested in doctrine and would write about doctrine. There would have been nobody on the faculty as a regular teacher like Don Herzog and Bruce Frier, people who don't have law degrees but who teach law courses. There was no such thing as law and economics, and fewer people who are really interested in philosophy like Don Regan or Phil Soper. If you take 2004 and compare it to 1965, the faculty would look a lot different. Probably the teaching, at least in a number of courses, is quite different. Nobody then would have taught a course in the way I take it Steve Croley teaches torts, where he emphasizes law and economics issues to the substantial exclusion of analyzing legal doctrine and looking at cases. That would be new.

Did you enjoy your time here as a law student?

Yes I did. I mean, when you're #1 in the class, you really like law school. Everyday it validates - you get these grades and say, "I think I'm really smart and the grades are telling me I'm really smart." People at the top of the class tend to enjoy law school. People at the bottom of the class do less so, it seems, or have got to find other interests. So it's not a clear measure. The other thing about law school for me was I'd been out and I'd been in the military for three years. My guess is people find law less threatening and more interesting who've been somewhere else - whether it's work or the military. You come right out of undergraduate school and you say, "Oh God, this is terrible. I have to work every day." Well you come from working for IBM and you say, "this is nice, I don't have to get up every day at 7 o'clock and drive into New York City." I think you have a different perspective and you're not as threatened by the fact that I'm going to get a bad grade or something like that. In my summer starting class, I guess half of the students had been in the military. It was a completely different set of people - not a completely different set of people, but people with a quite different set of experiences that you would find today.

Have you made any plans for retirement?

I'm going to go half-time starting next year. What I expect to do is teach here in the fall, although I probably won't next year, I'm not sure, but for the next few years teach here in the fall and then go to California - Palm Springs.
Unprecedented Pressure Builds as Exams Loom Large

By Michael Murphy

I remember one December back as an undergraduate when I started studying for a final six hours before the test. Intoxicated.

I went to school at Oakland University, a Division-I commuter school in the north suburbs of Detroit, up by where the Pistons play. It’s one of those school that has no problem flunking you out if you do poorly enough.

The night before this exam – civil rights history, I think – I had resolved to dig up a book or two I’d neglected to open during the semester, and to look over some notes that were also lying around, somehow.

Then my brother called. With free tickets to “Fight Night at the Palace.”

We’ve all been there. It was the classic mutually exclusive competing interests, where my desire to perform well academically crossed wires with my desire to watch people hit each other and drink beer.

On the one hand, I really did have half a semester of civil rights history to learn. On the other hand, the junior welterweight championship (of the world!) was going to be decided.

I waffled for a long time, at least 20 to 30 seconds, then decided that while civil rights exams come and go every couple of months, Fight Night at the Palace is a once-in-a-lifetime event.

So I went to see the boxing, came back and read all night, filled a blue book and slept the rest of the day. It wasn’t a big deal; in fact, the material was really quite fresh in my mind.

Now, I get phone calls from friends going to concerts next month, and I tell them: “Sorry man, I’ve been told not to make plans for December.”

See, Novembers showed up a little while back, and with it the horrifying realization among us 1L fall starters that we’re not just here for the food and smart talk. Not even the awesome drunken power of barnight can knock the sobering thought out of our heads that the semester is almost up, and we’re going to have to pay the piper (or the reaper, as the case may be).

I’m pretty sure this is the worst time of the semester – while there’s real pressure to worry about exams, but it’s still just too soon to really prepping.

But the stress is starting to become apparent, as tables in the reading room become more populated, circles under the eyes more pronounced, and in-class answers sound less confident. We’re organizing into tribes of study groups, cracking open those pesky study guides, and doing unconscionably nerdy things like printing out our notes and putting them into binders.

I can almost hear the derisive laughter of the upperclassmen.

Hi, guys. I wish I could subscribe to your cavalier attitude, for I know it is the light and way, but I’m telling you, peer pressure is a mofo.

The thing is, for a lot of us, especially the ones who wander the quad direct from an undergraduate institution, the bar has been significantly raised, academically speaking. We’re used to being towards the top, if not at the top, of our respective classes. Now? We’re happy to be somewhere in the middle. The pond’s gotten a lot bigger, and dealing with that is a harsh reality of being here.

But that’s the thing, and something my 3L friends and my wise FYI leader said; relax. We all deserve to be here. Nobody’s at Michigan because of their good looks (you can tell this by a quick glance through face book – and hey, before you get all pissy, I’m in there too, you know). We’re all here because the admissions office had enough faith in us to offer admission while it turned away a lot of really qualified applicants.

Sure, the majority of us 1Ls will study more (and learn more) in this three-month semester than in any previous semester of our lives. But really, is any of that acquired knowledge is useful without the confidence to apply it?

So just grip it and rip it, my gunner friends. Relax and do your breathing. We’re all in this together. We’re all going to be fine.

But, uh, nobody call me with free Pistons tickets for mid-December, okay? I have, like, plans or something.
LSSS Halloween Party Fun
Transforms Law Students into Monsters

Clint Watson, 3L, wins the prize for the individual costume contest with his convincing "Phil the Computer Lab Guy."
ACROSS

1. Slain nurse
6. Angry
9. Frills on a shirt
14. Happen
15. Climber
16. Christian love
17. Related to a chimp
18. Prefix
19. Golden times
20. Cathartic
22. Sausage
23. One, two, three, etc.
24. Spruce
26. Type of cigar
30. Designers
34. Pertaining to the third degree
35. Turn the other one!
36. North Chinese Dynasty
37. Augury
38. Husband
39. Biting comment
40. Alamos, NM
41. What kind of bird gets worm
42. Male name meaning spear carrier
43. Dire
45. Relating to the main trunk of the heart
46. Computer’s _____ and bytes
47. Question
48. Bundle of wheat
51. Noggins
57. Desert plant
58. 100 square meters
59. Roman palace
60. Era
61. Used to create roofs
62. Rumors
63. Present is one
64. Rude
65. Winter vehicles

DOWN

1. In the _____
2. Beige color
3. National Center for Atmospheric Research (acronym)
4. Drying oil used in varnishes
5. Fundamental
6. Type of dress
7. Israel: __ Aviv
8. Montezuma’s revenge
9. Cross in middle of the block
10. A rat
11. The original Roseanne
12. Op of closes
13. Frivolous mood
21. Digit
25. Leered
26. Reprimand
27. A swelling
28. More than hefty
29. Card game
30. Used to express futurity
31. Dark complexioned
32. ____ firma
33. A prophetess
35. Sparkle
38. A handle
39. Conceal
41. An imposing structure
42. Small gas-powered vehicles
44. Barbed wire barricade
45. Remains of fire
47. Bitter
48. Ella Fitzgerald specialty
49. What some frats do
50. Course in supply and demand
52. Middle Eastern
53. True
54. Stare at
55. No winner
56. Lip
Tuesday, Nov. 11

The National Lawyers Guild presents a screening of the award-winning documentary
"Doing Justice: The Life and Trials of Arthur Kino" (51 minutes)
6:30 P.M.
Room 220 HH

2003 Dean’s Special Lecture
Robert E. Rubin
Former Secretary of the Treasury
4:00 - 5:30 P.M.
Room 100 HH

Thursday, Nov. 13

The LSSS presents "The Blue Jeans Lectures" featuring
Prof. Peter Westen
4:30 P.M.
Lawyer's Club Lounge

Tips on Landing an IP Job in the Legal World
4:00 - 5:15 P.M.
Room 138 HH
Brought to You by the Office of Career Services

Friday, Nov. 14

University of Michigan Program in Society and Medicine FORUM on Health Policy
"We Need Medical Malpractice Reform:
Which Approach Is Best?"
Noon - 2:00 P.M.
Ford Amphitheater
University Hospital

Wednesday, Nov. 19

ACLU PRESENTS:
"DRIVING WHILE BLACK:
PROFILES IN INJUSTICE"
DAVID A. HARRIS
UNIV. OF TOLEDO,
COLLEGE OF LAW
12:15 - 1:15 P.M.
ROOM 150 HH

Thursday, Nov. 20

“Taking Law School Exams” Video Presentation
12:10 - 1:15 P.M.
Room 150 HH

Friday, Nov. 21

The LSSS presents the annual
Jenny Runkles Fall Ball
8:00 P.M. - Midnight
The Ann Arbor Hands-On Museum

Send Your Student Organization Announcements to rg@umich.edu