What goes on behind the scenes at the International Court of Justice? Judge Bruno Simma of the International Court of Justice was invited to discuss this topic and others, such as “Where do we keep Milosevic?” The event was sponsored by the Center for International and Comparative Law.

The International Court of Justice (ICJ), located at The Hague, in the Netherlands, acts as a world court. The ICJ decides international disputes in accordance with international law and also issues advisory opinions. The Court was created in 1945 by the Charter of the United Nations to be the principal judicial arm of the United Nations.

The judges of the Court are elected by the Member States of the United Nations, and other States that are parties to the ICJ Statute. The number of judges is fixed at fifteen, with judges holding office for a term of nine years. The current composition of the judges include five members from the permanent members of the security council (U.K., France, China, U.S. and Russia), two members from Western Europe and Oceania, one from the Eastern Bloc, two from Latin America and the Caribbean, three from Africa, and two from Asia.

The Court deals with international disputes through contentious proceedings and the issuing of advisory opinions. Contentious proceedings are created by disputes on questions of law or fact, conflicts, or disagreements over legal views. Only sovereign States may bring contentious proceedings to the Court. Since States alone have the capacity to appear before the Court, groups or organizations cannot be parties to any contentious proceedings and therefore opt for advisory opinions. A current example is when a group challenged the legality of the separation fence between Palestinian-occupied lands and Israel. The Court was requested to issue an advisory opinion regarding this controversial situation in the Middle East. Little use has been made of the advisory opinion system, as only twenty-five advisory opinions have been issued since 1945.

Proceedings consist of one round of written stage followed by an oral stage. The Court has issued eighty judgments in one hundred twenty-five cases. From 1945 until the late 1980’s the Court’s role was limited as the Communist bloc
In Memoriam: A Tribute to Reuben Sobczyk

From Elizabeth Scherer

Reuben Sobczyk, a December 2003 graduate of the Law School, drowned on March 27 while swimming off the coast of Caracas, Venezuela. Reuben was in the final days of his post-bar trip to Latin America.

For those of us who knew him, Reuben Sobczyk made our lives better in unusual ways. He was extremely genuine and kind, and often, just seeing him could make a person happy. He was a unique character to meet at a law school. To many, he was an enigma.

Reuben grew up in Buffalo and graduated from Grinnell College in 1999. He worked various jobs, including serving as a union steward, for the next two years. He came to the Law School in May 2001, introducing himself to everyone as "Reuben, like the sandwich" in an unidentifiable, trying-to-be-smooth, quasi-Latina accent. We all thought he was either from South Central L.A. or Europe; we knew not where. We only knew he was unlike anyone we had met before.

During our entire existence at the Law School (including bar study), our class buzzed with stories about things that Reuben said and did. A few of the best include: making comments in class that caused everyone to question his intelligence and his sanity, but then went on to get the "A+"; getting A's in classes he went to less than five times; and saying things to prospective employers during early interview week that the rest of us only hoped to say (e.g., "Dude, what's your problem?").

Despite his high academic achievements, Reuben's mind often seemed to be on something other than his studies. Reuben much preferred a night of Red Bull, Mad Dog, and clubbing over legal research or outlining. The Heidelberg was a second home, after the Lawyer's Club (where he lived throughout law school and during bar study). He also had a healthy addiction to Play Station 2 and liked to review video games online. (Note: You can access these reviews by Googling Reuben's name.)

Reuben was happiest when he was speaking Spanish or Salsa dancing. He worked in Spain at a non-profit firm during his 1L summer and received an Individually Developed Overseas Internship Award. He loved everything Latin and pondered living in Spain or Venezuela in lieu of buckling down to an associate's lifestyle at a top U.S. firm.

We are going to miss Reuben Sobczyk deeply. We feel unfairly deprived of his company, his friendship, and our joy in hearing more of Reuben's stories. We are all grateful, however, that we got to know him at all.
Katzen Discusses Women’s Issues

By Sara Klettke MacWilliams

There is something powerfully affirming about hearing an accomplished member of your field confess to the same self-doubts with which you struggle.

I walked into Sally Katzen’s brown bag lunch talk by mistake. I had promised our trusty Editor-in-Chief that I would cover another event happening the same day. My 11:15 class runs until 12:30, so I walked into room 218 late, when the only seats left on the end of rows were in the very back, stuffed between backpacks. But I had written the room number down wrong, so instead of the man I was expecting to report on, there was a smiling woman sitting on a table, talking to the group. She was talking about the difficulties of being one of six women in her law school class in the late 1960s. During Vietnam, she was explaining, men member of your field confess to the same how we young women don’t assume that whenever someone wants to talk to her specifically, that she must have done something wrong.

I sat up straight. So accomplished female attorneys do that? And most men don’t?

Katzen emphasized that even though law schools are now almost fifty percent female, women do not feel equal to their male colleagues. She pointed to several possible causes of this, including the unequal representation of women in partnerships, boardrooms, professorships, and positions of power.

Katzen believes that many women do not flourish in the confrontational teaching tactics traditionally used at law schools. She said that more male students than women will react to a professor’s critique with a harsh “F-you, I knew that was right!” whereas more women will concede their mistake in a soft voice. She also said that women are reluctant to raise their hands in class, whereas men will jump into discussions, even when they don’t know what they are talking about.

Katzen began calling on the women, which proved that the women had interesting things to contribute to the discussion, but did not solve the problem of women’s reticence. She noticed the same disparity in her staff. The men working for her would enthusiastically take assignments, promising quick results. The women, on the other hand, tended to talk softer and question their own ability. This frustrated her, especially when the de­mure women were much more capable than the men were. “Women do not respond to confrontation,” she said. “Women like collegiality. We deserve that. We won’t always get it.” She said that law school administration efforts to tone down the confrontational teaching tactics may make women feel more equal to their classmates, but she questioned whether too much softening is wise, given that women will ultimately face confrontation outside of law school.

Katzen encouraged her audience to befri­end the support staff and non-legal personnel who may resent a young fe­male lawyer’s power and prestige. She told the story of a secretary who had worked for the partner of her law firm for 35 years reacting with hostility toward her when the partner told Katzen to use his first name. “You have advantages,” Katzen told the group. “Realize there are people who don’t have that. Think about how fortunate you are and go for it.”

Katzen encouraged the young women to avoid having a chip on their shoulders. She told a story of being asked to fetch coffee by a male client. She had not yet been introduced by her partner as an as­sociate, and the client had mistaken her for a secretary. When he realized his mis­take, he was embarrassed and tried to compensate by cheering every idea she mentioned. Professor Katzen said that when she told the story, she saw ey­ebrows in the audience raise at the idea of a female attorney being asked to fetch coffee. “You may be asked to Xerox something,” she told the group. “not because you are a woman, or not because you’re the youngest on staff, but because you made eye contact and they really need help and would appreciate it.”

Katzen also talked about finding bal­ance in her life between her roles as an accomplished attorney, a wife, and a mother. Katzen described her commute, a twenty minute torture session in which she spent the first ten minutes beating herself up about everything she had not accomplished at the office, and the second ten minutes beating herself up about everything that she was not doing as a mother. She had a great nanny, a support­ive husband and family, and a promising law career at a firm that valued her work, yet she was falling apart. “You cannot have it all,” she told the group. “You start cheating, and the first person you cheat is yourself. I could do without the bubble baths. But sleep, you need sleep.” This tug of war, which she says is common to

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Justice Markman Discusses Proper Role of Judges

By John Fedynsky

The Law School's chapter of the Republican National Lawyers Association welcomed Justice Stephen J. Markman, Michigan's 103rd Supreme Court Justice, to campus for a lunchtime speaking and question and answer event on Tuesday, March 23.

Markman warmed the crowd up with a little humor. He complimented Matt Nolan, 1L, for his introduction, comparing it favorably to that of another person who made the gaff of calling Markman "the finest justice money can buy" and his wife "the finest lady to walk the street."

Self-deprecating humor aside, Markman came to campus to discuss his judicial philosophy and "a few thoughts about what I see as the great judicial debate," he said. Markman has seen that debate firsthand, serving for four years as Assistant Attorney General of the United States after being nominated by President Ronald Reagan and confirmed by the United States Senate. In that position, he headed the Justice Department's Office of Legal Policy, which served as the principal policy development office within the Department and which coordinated the federal judicial selection process.

"The role of the judiciary will determine the rule of law for us," said Markman. He shared a number of observations about the judicial debate. First, it "does not belong to lawyers and judges," he said, but to the people.

Markman stressed accessibility - the importance of having laws that regular citizens can read to understand their rights and obligations. He advocated a theory of textualism (though he said that he preferred the name interpretivism) as a "starting point" that would narrow disputes about the meaning of laws. Under that theory, for example, "30 days means 30 days," he said. During questions, Markman conceded that more abstract words like "equal protection" are open to greater interpretation, which is intended.

According to Markman, by relying on the plain meaning of constitutions and statutes, judges are bound by the law, which promotes stability and predictability. "The role of judges is to say what the law is, not what it should be," he said. He added that separation of powers must be respected to avoid tyranny.

"The role of the judge is to faithfully interpret the rule of the lawmaker and to let the chips fall where they may," said Markman. He stated that there is a great "judicial temptation" to see the imperfections and irrationality of particular laws and to conclude, "I can do a better job." He said that judges must not give in to that temptation if America is to have a government of laws and not men.

Markman also discussed the role of personal responsibility and individual accountability in America's constitutional system. He noted that the Michigan Supreme Court receives about 125 criminal cases a month that he takes very seriously since "if you make an error either way, the consequences are tragic," he said.

He reiterated that the outcome of the judicial debate will determine what kind of government and what kind of rule of law America will have. He called it a debate in which all should take part. "The debate is not about liberals versus conservatives or Republicans versus Democrats," he said, "because the Constitution is neither liberal or conservative or Republican or Democratic."

Prior to his appointment by former Governor John Engler and his subsequent election to the Michigan Supreme Court, Markman served on the Michigan Court of Appeals after a few years of private practice in Detroit. He was U.S. Attorney for the Eastern District of Michigan under President George H.W. Bush. Markman teaches constitutional law at Hillsdale College. He has traveled to Ukraine on two occasions, on behalf of the State Department and the American Bar Association, to provide assistance in the development of Ukraine's new constitution.
WAMM! Law School Community Explores Self-Defense Training

By Jessie Grodstein Kennedy

As a survivor of rape, incest, and assault, Katy Mattingly, who now runs an organization dedicated to teaching every interested woman self-defense, was one of the more atypical lunchtime speakers to grace Hutchins Hall last month. Acknowledging that sexual and physical violence is “heavy stuff to digest with your pizza,” Mattingly, who currently serves as Director of Washtenaw Area Model Mugging (“WAMM”) nonetheless delved into an impassioned discussion of violence and the need for realistic self-defense training. The Women’s Law Student’s Association and the Office of Student Services sponsored the well-attended event.

From the beginning of her presentation, Mattingly made clear that any practical conversation about self-defense first requires an open conversation about the prevalence of violence in our culture. “I just don’t believe its true that people don’t know others affected by violence,” Mattingly commented, reflecting on the silence that surrounds the topic of violence against women. And while so many of us are affected by violence, so rarely do we discuss its causes, its devastating effects, or its possible solutions. Tellingly, Mattingly drew together a wide range of Law School community members — from faculty assistants to students — interested in breaking down barriers to effective self-defense training. “Our chances of being assaulted are astronomically higher than our chances of drowning,” Mattingly explained, “swimming lessons are routinely offered, so why aren’t self-defense courses?”

And yet addressing the need for self-defense training in the Law School presents an interesting juxtaposition. After all, this is a forum where all students, both men and women, are taught to be aggressive and argumentative. Passivity is rarely rewarded and, in my experience, most women seem as self-assured in the classroom as their male counterparts. But judging by the audience response to Mattingly’s presentation, classroom confidence and bodily confidence don’t necessarily correlate. Several people nodded vigorously when asked if there were times when they felt scared walking alone in Ann Arbor. Others acknowledged that they sometimes sprinted towards their doors or glanced nervously over their shoulders late at night.

Further, my assumptions about the level of comfort that female law students feel in the classroom is open to question. 3L Anma Akbar admitted that she became much more comfortable talking in class after participating in a WAMM course. “I think it’s important to understand the way that violence against women affects us, including our psychology and self-confidence, in pervasive ways, and we cannot run away from that in the classroom,” she stated.

Moreover, even if the classroom is a forum where women feel less threatened, streets and public spaces are still areas where women are expected to be polite. Bars are places where a woman is to act “appropriately,” which may mean stumbling through the parking lot but certainly doesn’t include karate chopping her way towards the bartender. In fact, a woman is commonly told that fighting back will just make things worse, that it is easier not to make a public scene, no matter how uncomfortable she may feel and regardless of the violence to which she is subjected.

Mattingly spoke of this need to be nice as one of the many barriers to effective self-defense. Another barrier is racism. “There is the myth of the African-American male who seeks to rape the white woman,” she explained, “Well my job as a white person is to start pulling that untruth apart. Most rapes and assaults occur within particular ethnic/racial groups.” Similarly, most self-defense courses teach women to beware of the attacker in the bushes or the man on the corner. Mattingly suggested that violence is often closer to home - many women are assaulted by friends, lovers, family members, and acquaintances.

WAMM is committed to teaching holistic self-defense — physical, verbal, and emotional — in order to train women to effectively defend themselves in real-world scenarios. The idea behind these classes is not that men are evil or that women should rally together in order to treat “The Man” as a punching bag. Rather, the focus is to teach women to trust their instincts and to give women the physical and emotional tools to defend themselves against violence, assault, and rape.

WAMM trains its students by presenting them with realistic mugging situations in order to train the body to react effectively to assault and violence rather than to freeze up in panic. Mattingly stressed that in most cases attackers are not looking for fair fights, but rather easy targets. As a result, any resistance is helpful, from kicking and punching to just plain shouting. Mattingly explained the feeling of finally realizing that she didn’t have to be scared. “All of a sudden I felt in my body that I could stop someone from attacking me,” she explained, “And it changed my life.”
O-ye, O-ye, O-ye! 80th Annual Campbell Competition Shines

By John Fedynsky

All rise! Court was in session. Students, faculty and guests crowded Room 100 on the afternoon of Friday, March 26, 2004 for the final round of the 80th Annual Henry M. Campbell Moot Court Competition. Two teams - 3Ls Jessie Gabriel and Katie Lorenz and 2Ls Steve Sanders and Aaron Page - were the only ones left standing after three rounds of competition beginning with a 41-team bracket.

Three federal judges judged the fourth and final round - Ann Williams of the Seventh Circuit, Norman Stahl of the First Circuit, and Arthur Tarnow of the Eastern District of Michigan.

The case concerned the constitutionality of the Defense of Marriage Act (DOMA) under the Full Faith and Credit and Fifth Amendment Due Process Clauses of the U.S. Constitution. Sanders and Page represented the petitioner, an individual seeking to recover a money judgment based on a tort action. Gabriel and Lorenz represented the respondent, a corporation seeking protection from the judgment under DOMA, which contains a provision stating that no state shall be forced to recognize another state’s judgment if it is based on a claim arising from a same-sex marriage.

The judges, who declined comment on the merits of the case, issued a split decision on the competitors as advocates. Gabriel and Lorenz were the winning team. Sanders was chosen best oralist. The judges commended all of the finalists for their hard work, preparation and presentation. Judge Williams compared them favorably to practicing attorneys in the real world.

After sustained applause for the finalists, Judge Williams elicited applause for Senior Judge Stahl, who made the trip to judge the competition despite his head cold. “My wife thought I was crazy,” he said, as the gallery roared with laughter.

Judge Tarnow echoed the praise of the other judges, who admitted regularly discussing with colleagues or clerks the performances of attorneys who appear in their respective courts. In response, Tarnow, who practiced as an appellate attorney, said that he never figured that judges were evaluating his skills as an attorney.

Eric Evans, Travis Fleming, Aaron Lewis, Dao Ngo, Jennifer Reddien, and Joanne Werdel comprised this year’s Campbell Executive Board. Tom Seymour served as faculty advisor, Rick Hills, Charlotte Johnson, Richard Friedman and Trudy Feldkamp provided much support and advice throughout the year.

The Campbell Moot Court Competition is an annual intra-mural competition run by students. It is named in honor of Henry Munroe Campbell, a distinguished lawyer who served as legal counsel to the University of Michigan’s Board of Regents for several years. In the case Board of Regents of the University of Michigan v. Auditor General (1911), he successfully argued to establish the principle of constitutional autonomy for the University and its governing body. He founded a law firm that continues today as Detroit-based Dickinson Wright PLLC. Each year prizes are paid from the income of the trust fund to the finalists in the Henry M. Campbell Moot Court Competition. This year, the winning team will share a cash prize of $800 and the second place team will share a cash prize of $600.

Past winners have gone on to, among other things, clerkships on the U.S. Supreme Court. Past judges include U.S. Supreme Court justices, state supreme court justices and federal appellate judges.

Sports Moot Court Post-Game

What would happen if disgruntled college football teams brought a federal anti-trust cause of action in the imaginary 14th Circuit? 2Ls Michael B. Daniel and Dominic J. Ferullo found out at the Tulane Sports Law Moot Court Competition, held in New Orleans the week before spring break.

The issue involved whether the Bowl Championship Series (BCS) system for selecting a national college football champion violated the Sherman Anti-Trust Act.

The teammates played their way past the first round with quick no-look responses and verbal head fakes, but lost to a tough Connecticut squad in the second round.
Criminal, Environmental Law Moot Court Teams Represent

Environmental Team Wins Awards

By Erica Tennyson

Are non-contact cooling water discharge and summer-month flow limitations more stringent than or beyond the scope of the Clean Water Act? When a state enforcement agency has assessed penalties against a polluting company, may citizens groups seek further penalties or injunctive relief?

These were some of the issues that the Michigan Environmental Law Moot Court Team addressed this year. 1Ls Doug Chartier and Richard Lee and 3L Erica Tennyson knew very little about environmental law when they first got the competition problem. In fact, the hyper-technical fictitious district court opinion was nearly impossible for them to read. However, after working for a few months, the team mastered these technical concepts and advanced legal issues well enough to win the “Best Brief for Amicus EPA” award.

Michigan also performed well in the oral argument stage of the National Environmental Law Moot Court Competition. After honing its oral arguments, the team competed against 72 other teams in the national competition hosted by Pace University Law School in White Plains, New York on February 19-21, 2004. Michigan was one of 27 teams to make it to the quarter-final rounds, and both Doug Chartier and Erica Tennyson won “Best Oralist” awards in the prelim rounds.

Aside from its subject matter, the Environmental Law Moot Court experience differs from the other moot courts in several ways. The brief is written over a two-month span in the Fall Semester, during which time the team met on a weekly basis to exchange drafts, discuss the issues and arguments, and get feedback from one another. Oral argument preparation began after Winter Break. This year, the team practiced once or twice a week for a month with Professor David Santacroce and student coaches Andrea Delgadillo, 2L summer starter, and Erica Soderdahl, 3L, both of whom were on the 2002-2003 team. Professor Santacroce also accompanied the team to the national competition and offered feedback throughout the rounds. Although the team gets to choose which of three parties it will write its brief on behalf, of it must be prepared to argue all three sides at the competition.

Michigan has been competing in the National Environmental Moot Court Competition for several years now. Three team members are selected each fall from a pool of students who write a 5-6 page memo on a given Clean Water Act issue and defend their position orally.

Participating in any moot court takes a fair amount of time. However, the time commitment for the team-based moot courts is spread out over several months. The Environmental Law Moot Court is a great experience for anyone who wants to work closely with other students and professors to make real improvements in their brief-writing and oral arguing skills.

Cruel and Unusual?

Criminal Law Moot Court Argues the Case

By Bob Koch

Is it cruel and unusual to execute juvenile offenders, defendants who commit murder at the age of 17? The U.S. Supreme Court has answered this question by examining “evolving standards of decency,” asking whether a national consensus has emerged against such executions, and whether execution is proportional for juveniles. In its 1989 case of Stanford v. Kentucky, the Court held that juvenile executions were constitutional, but have standards evolved since then?

The Missouri Supreme Court thinks so, and reversed the death sentence of the 17 year-old offender in Roper v. Simmons. But can it do that even though Stanford has not been explicitly overruled? Bob Koch and Joshua Burns, both 1Ls, represented Michigan as one of 24 teams arguing these questions at the Herbert Wechsler National Criminal Law Moot Court Competition, hosted by the Buffalo Criminal Law Center on April 3. Named after the drafter of the Model Penal Code, the Wechsler Competition is the only national moot court competition in the United States to focus on topics in substantive criminal law.

The competition was the culmination of five months of hard work by Michigan’s inaugural Criminal Law Moot Court team. Erica Soderdahl, 3L, spearheaded the formation of a team by obtaining approval and funding from the administration. Tryouts were first held in November, consisting of a five-page brief

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Law Revue: Talented Law Students Do Something Other than Read, Drink

Weary Law Students took advantage of the rainy spring evening to storm the Mendelssohn Theatre at the Michigan League on Tuesday, Mar. 30 at 8 p.m. Hosted by 3L Addison Golladay, the show featured music from the Head Notes (featuring Dean Charolette Johnson), a trailer for "South State" (a U of M Law version of "8 Mile" featuring Professor Mark West as "Professor Doc"), a video salute to the class of 2004, and a plethora of singing and dancing. At the close of the evening, Professor Richard Primus was awarded the L. Hart Wright Teaching Award.
Screw Law School: How to Write a Bestselling Lawyer Drama Novel

By Michael Murphy

Not that I didn’t give it the old graduate school try. I did. But somewhere in between re-writing my brief and getting dinged by all those places I said were going to give me a job (can you say “jinx”?) I decide, you know what?

I’m out. I’ve given up on law school. Instead, I’m going to make a living writing popular and wildly selling law novels. It seems like the money’s better, and you can get the ideas from class!

You can do it, too. First, you need to come up with some cool sounding legal title can call it “Effective Upon Dispatch” or “Cause of Action.”

The protagonist will be a young, optimistic and rougishly handsome lawyer. Roughly handsome how? Think Brad Pitt, Jude Law or Heath Ledger (depending on which studio acquires the movie rights). We’ll call him something everyone’s mom would approve of. Something like Roger Goodguy.

And the Plot: Fresh from school, Roger Goodguy gets a job at a big New York city firm and spends several months researching a quasi-easement for a sewer system running underneath a planned development area in Manhattan. Unfortunately, Roger spent the week he learned about easements in Property class playing Spider Solitaire, read about it in Emanuel the night before the exam, got a  B- and destroyed his brain cells holding that information a few hours after the exam somewhere around the third or fourth jagerbomb at Rick’s.

As such, he routinely stays at work until the wee hours of the morning completely ignoring the bright, pretty young associate, Natalie (think Julia Stiles, only … okay, think Julia Stiles) who always stays late to help him read documents and sigh when he looks up from a brief and brushes his hair off of his eyes. One night, Natalie and Roger discover that the firm has been overbilling its clients every once in a while. Oh, snap. What does Roger do? Who does Roger talk to? And why are people chasing him all around the city? (Oh, yes. People are chasing him all around the city).

Does he talk to the tall, lean, menacing older senior partner who bears an uncanny resemblance to Christopher Walken? Or does he talk to his mentor, the kind, friendly senior associate who never got a shot at the big time (and who bears an uncanny resemblance to Morgan Freeman). In fact, screw it, let’s just call him Morgan Freeman.

“Morgan,” he said. “We’ve overbilled several clients for lunches in which we didn’t talk about their cases!”

“Sure, Roger Goodguy,” He said. “Whatever. But there’s something you don’t know. I’m pregnant.”

“Pregnant? But you’re a man!” Roger exclaimed.

“I know,” Freeman replied sadly. “I know.”

We’ll need some good suspense language in there, too. Goodguy’s on the phone with his girlfriend, who happens to be the daughter of a prominent local politician, a senior partner in the law firm, a mob boss and a priest:

“Janice, I love you!” Goodguy said.

“Sure, Roger Goodguy,” Janice said, “Whatever, but there’s something you don’t know. How do you keep an idiot in suspense?”

And the phone went dead.

“Janice?!” Roger exclaimed. “You’re pregnant, too! Janice?!?”

The plot’s got to thicken, and to do that, someone has to die. Naturally, it’s got to be the one character everyone likes (and who has the most to lose) which is the mentor character. We have to come up with some sort of ambiguous way for him to die, and something cryptic in the way it happens which moves the plot along and keeps the reader confused until the dumb plot device at the end (or, more politely, “in suspense”). But it’s got to be something stupid and contrived, like a message the victim writes in blood on his chest as he dies that deliberately misleads the police into thinking the protagonist is the murderer and exposing a secret society. (Ahem.)

“I’ll be right back, I have to go drop the kids off at the pool,” Morgan Freeman said.

Then he keeled over.

“…Rose… the second… of Aberlone,” Freeman gasped, and fell silent. Awfully silent. Dead silent.

“Morgan?” Goodguy gasped, through a veil of tears (if you can gasp though a veil, which is what he did). “But Morgan, what about your baby?”

Naturally, “Rose the Second of Aberlone” was Goodguy’s nickname back in law school (he never knew why since Professor White’s class was at 8 a.m.) so he - and everyone else - naturally

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Wondering What If...

By John Fedynsky

Ever wonder what if? I do. Imagination is a catalyst for change. Reminiscence is an invitation to remember – fondly, regretfully, however. To imagine and to reminisce is like a human reflex. It happens with or without one’s control. Looking around now, back then, and on yonder, I sometimes stop and wonder, what if . . .

What if someone decided to be a little more brazen than the laptop solitaire players and played the game with an actual deck of cards during class?

What if the talent on display at the Law Revue (if pursued professionally) would make people happier and the world a better place than a few more U of M Law graduates practicing law?

What if the same is true for me as a writer?

What if there was a moot court competition and no one came?

What if I bumped into an attractive young lady and suddenly she became me and I became her. Then she (who is really me) says to me (who is really her), “Wanna have sex?” Who would slap whom? It is mind-boggling, trust me.

What if the Law School community took diversity more seriously? We talk the talk, but often there is no walk. Look at the faculty. Look at student life. Look at the self-segregation that happens here. We had no symposium on the affirmative action decisions because students and the administration would not walk the walk. I served for three years on a committee that looked at proposals and decided which to fund. (Now that my service has ended and because I go to a law school that says it values academic freedom, I feel free to discuss this issue.) Last year, Journal of Race and the Law and Law Review submitted proposals before the Supreme Court decisions were released proposing symposia about the decisions – interpreting them, complying with them, etc. They had different visions and concerns about co-publication, but the committee tabled its funding decision for all proposals and asked that the two journals try to agree on a plan to work together. That agreement never happened, based I think on legitimate logistical and editorial concerns and not prejudice. But if students and the journals really cared about diversity, they would have found a way. Instead, they kicked it back to the committee and took their chances. Despite a consensus on which proposal was not just better but best on the merits compared to all other proposals, the committee decided to fund neither affirmative action symposium proposal. The committee would not walk the walk based partly and perhaps largely on the fear that the “wrong message” would be sent. An institution that fought tooth and nail to defend the diversity rationale could not put its money where its mouth was when it had a golden opportunity to host what could have been a nationally significant symposium. And the most meritorious proposal may as well have been the least meritorious, since merit was not a determining factor. It is a sad commentary on this issue when two words creep into the same sentence: diversity and hypocrisy. Hypocrisy is saying one thing and doing another – or perhaps worse, doing nothing at all.

What if I had pulled some pranks at school? Two come to mind. First, there is convincing any section of Enterprise Organization to attend class dressed as the crew of Starship Enterprise and saying things like “beam me up, Scotty!” in unison.

The second one would take a little more doing. Imagine sitting in Yale Kamisar’s Criminal Procedure class. He was wont to mock the police for requesting unreasonable searches and seizures of duffel bags, asking in his legendary politically incorrect style, “Do they think there’s a midget in there with a gun or a bomb?” On this day, there would be a large black duffel bag near the lectern. In the middle of the class, an exotic dancer dressed as a police officer (think “American Wedding” but believable) storms in and demands to search Kamisar’s bag. Before he can deny that it is his, ask to see a warrant, or refuse the search, a little person emerges from the bag wearing a T-shirt saying “Officer, I consent to this strip search.” Then the officer does her routine as the classroom is converted into a night club with “bomp-chica-bomp-bom” music (or maybe “Everybody Dance Now”), flashing lights and disco balls suddenly appearing. Perhaps Kamisar blushes. The corporate sponsor (a beer company, of course) films the whole thing for a TV ad, rolls out several kegs of its fine product, and all is well with the world. What if indeed!

What if the 3L class honored me as the student graduation speaker? (Yes, I am being shameless and I promise that this short statement is the one and only bit of public campaigning I intend to make.) It would be an honor indeed and I would treat the occasion with the respect it deserves. I would endeavor to strike the right note and the right tone, and to capture the essence of the Class of 2004. And I won’t streak, show up drunk, drop any bombshells, or do anything crazy. If you have been a faithful reader, my style and message should be familiar and they are what you can expect from me when I speak, which may be just as good a reason to not vote for me.

What if I was not selected to speak and settled on the next issue of Res Gestae as my last little bully pulpit? That would be fine by me too.

Ever wonder what if? I do. You too?
Understanding Sexual Harassment a Little Better

From Patty Skuster

Recently, a close friend told me that she was sexually harassed by her boss and when her story was over, I understood sexual harassment. I am a feminist; a devotee of Catharine MacKinnon dedicating my career to women’s rights advocacy but until now, I didn’t really get it.

My friend is a lawyer and therefore works in a system that is set up such that men are able to sexually harass women. The system is rigid and hierarchal. Unquestionable delineations dictate which people have power and make decisions in any given situation. One is certain about whom she has to impress and appease in order to advance professionally. That person – her boss – sets the mood for all of their interactions. Most of the bosses – the partners, the judges, the district attorneys – are men.

Professionally, her obligations are to do what he wants and when what he wants is a touch or a kiss, the dynamic defining their relationship has not changed if she gives it to him.

My friend is smart, strong and rational. She was not threatened or flustered. She went over to him when he asked, ignored his other requests and she left when it became unbearably uncomfortable.

She is one of the most confident and capable people I know and often receives praise from her boss. He likes her. My friend wondered aloud, what is it about me that he likes? Am I just a sexual being to him? She felt for some moments as though her professional identity had been erased in his eyes. She wants to feel (as we all want to feel) like her boss is impressed by her work. This feeling will increase the confidence that will enable her to advance. She is not as sure as she was before whether it is her work that impressed him.

My friend is an activist with an interest in promoting women’s rights. It really was a small incident and it seems that he has forgotten about it. It has not changed their work relationship. He is good at his job and does his job with integrity. Retaining his support will advance her career. A lawsuit would fail. (She went over to him and she stayed in the room. This would reflect poorly on her from any jury’s perspective.) She tells only a handful of close friends and family – and does so with difficulty.

It is in my friend’s interest to be silent. When she brings attention to the incident, she enhances her boss’s power to make her feel only like a sexual being. She does not like to talk about it and would prefer to forget it. Further, to draw attention to the incident would negatively impact her career. It is in her interest to minimize the consequences.

Now I understand that we live in a system that facilitates the occurrence of sexual harassment. My friend was sexually harassed and her choice to do nothing about it is in her best interest. I imagine there must be thousands of women who are sexually harassed and remain silent – in their best interest. Not all of them are as strong and confident as my friend and for some of them self-doubt and discomfort will lead to lost opportunities for career advancement.

In order for her to tell me the story, I agreed to remain silent and because I care about my friend I will never identify her. But I did not understand sexual harassment until she told me the story. I am certain that her boss does not understand sexual harassment and would guess that the majority of people working in the legal field do not understand it either – apart from those who have been subject to it themselves and those with a close friend or client who have been subject to it.

And this chronic lack of understanding due to silence makes up a system in which sexual harassment can flourish.
The Irony Of Being Moral

From Omario S. Kanji II

On Monday, March 22nd, Professor Elliott Chodoff, a sociologist at the University of Haifa, Israel, came to Michigan Law to speak about the uniqueness of the Israeli Army. Professor Chodoff stated that the Israeli Army follows strict adherence to the highest standards of morality. The Israeli Army (IA) certainly adheres to its policies, but its policies bring its morality into question. Professor Chodoff claimed that the IA asks itself questions that “no other army might ask itself” - one of which is “How can I contain this [situation] without killing people?” Professor Chodoff also stated at the beginning of his lecture that to speak of military violence is to speak about the business of killing. His position is simply hypocritical.

The fact is actually that morals have simply eroded in the Middle East conflict, on many fronts. It is simply untenable to state that a military body follows the highest of morals when countless civilians, many of them children, are continuously killed by IA incursions into Palestine. One of Professor Chodoff’s defenses to this point is that the benefit of killing the terrorist cell might be worth the cost of the civilians. While military leaders around the world might indeed have to make such calculations, and thus make lethal decisions based on those calculations, to subsequently state that such calculations are based on the highest standards of morality is simply wrong. Don’t get me wrong – you can kill people all you want; you can claim you have legitimacy and a right to do so; you can claim there might even be a necessity; you can even claim you are fighting against infidels and zionists – but to subsequently plant your flag on the highest of moral grounds and philosophies is simply sickening. I’m not so sure the mother who has just been orphaned in Gaza would emphatically agree with Professor Chodoff.

Professor’s Chodoff’s next defense is that Palestinian refugees don’t follow certain standards of procedure for civilians caught in combat. I do not recall the last time refugees in any occupied territories of the world were given a handbook or a manual as to how a refugee is supposed to act after they experience invasion, theft of property rights without due process, heinous living standards, lack of reproach and legal remedy, and in many cases their loved ones obliterated. Perhaps the IA should compile one. According to Professor Chodoff, civilians in combat areas usually flee the area or seek cover. Apparently since refugees in Palestine do not do either, Professor Chodoff once again takes the high moral ground of thus involving them into the conflict. This is not to say that a refugee who chooses to arm him/herself does not assume the risk; he or she certainly does. But one fails to see how children throwing rocks at a tank assume the risk of being obliterated. Not to mention an unarmed American peace protestor who gets bulldozed. His analogy of armed farmers approaching American troops in 1945 Sicily is frivolous and insulting – those farmers had everything the Palestinians do not have; food, shelter, autonomy, due process, and much, much more. There were two clear sides to that conflict, and their protest soon concluded when the Americans arrived. In most of those cases the farmers were the partigiani, non-participants in the war who were actually running from everyone, especially their own Italian government. Once they realized that the Americans’ arrival was a good sign, they laid down their arms. They had never been attacked by the Americans before, their children had never been killed, their families had never lost basic necessities, and their land had never been encroached upon by settlements.

This comment however does not give moral authority to perhaps the other viewpoints in the Middle East conflict. As stated above, morality has eroded everywhere. This is perhaps convenient for Professor Chodoff, because who cares anyway, right? The terrorist organizations and their suicide bombings certainly don’t convey any moral authority - contrasted against that, the IA might look wonderful. But I don’t exactly see Hamas having a lunch meeting sponsored by a student organization wherein that they claim to operate on the highest of moral standards. Continuous military violence simply erodes legitimacy and moral authority in the eyes of the observers. This goes for the Israeli Army as much as it certainly goes for Hamas, and perhaps other military bodies who claim legitimacy and moral right in their actions.

Professor Chodoff may indeed believe his army’s morality to be noteworthy, but this is only one viewpoint of many. To miss this is to deny the plight of refugees worldwide who have no impartial and legitimate authority to turn to, no rights of due process, nor any supranational organization willing to further any substantive arbitration process. Professor Chodoff would have us believe that the Israeli Army goes about its business benignly, but its very business is what directly questions its highest standards of morality. Professor Chodoff perhaps eloquently stated in the beginning that the business of military is the business of killing people. Then just do your job Professor - go kill people. Leave the moral excuses to the politicians; that’s their job.
Judge Simma acknowledged the need to handle one to two cases at a time and proceed with respect to any dispute, other than the one it decides, nor as between States other than the parties to the case. As concerning the parties in the case, the Court’s judgment is not only binding, but is final and without appeal. There is no international police force to enforce these decisions, although the Court may bring the case to the United Nations Security Council if a State does not comply with the decision. The fate of a judgment is best established, if when jurisdiction is established in the Court, the parties agree to consent and conform to the judgment.

The United States typically avoids being “caught with its pants down” and has refused to be a party in ICJ proceedings unless they have something to gain from it. Originally, the U.S. signed an opt-in clause back in 1946 which enjoined the U.S. to take part in ICJ proceedings. This clause was dropped by the U.S. in 1984 when Nicaragua filed an application instituting proceedings against the U.S., arguing for the right to sovereignty and to political independence, that should be fully respected and should not be jeopardized by military activities. Recently, the United States has been involved in a case with Mexico, involving fifty-two Mexican nationals accused of murder. The dispute in this matter was that the Mexican consulate was not informed of the legal troubles that these nationalists were involved in and so their representation was poor. It was argued that if they were represented by “good” or better lawyers, that none of them would be sentenced to death row.

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Murphy, from Page 10

suspects him to be the murderer. Presto! The plot is as thick as molasses.

Oh, and he totally gets it on with Natalie in Chapter 17. And Janice shows up to fight him at the end, but she’s a robot or a demon or a demon robot.

Finally, Roger receives a cryptic e-mail that solves everything. It’s from the Senior Partner. “Your Work” is the title of it, and it has a .zip file as an attachment. Roger opens it, and it’s a computer virus! The virus sends out the firm’s entire billing system to the world, exposing the overbilling secrets to the angry clients and the bad guys are on their heels.

But wait! There’s something else. Goodguy doesn’t know. The evil, shadowy master villain whose identity has been secret this whole time has to be revealed in some sort of cliffhanger. Since there’s only four characters, you can guess who it’s got to be:

“It was me all along!” Morgan Freeman yelled, and slapped Goodguy in the face again.

“But didn’t you die?!” Goodguy gasped. “Ow!” He added.

“I did!” Freeman added.

Somehow, Goodguy escapes and gets the cops. The bad guys all get arrested or sued (or whatever law stuff happens after that). But then they make a break for it! It just so happens that the court date for the bad guys happens during a riot during the St. Patrick’s Day parade, so there’s green banners, band members and crazy green-clas drunken Irish rioters everywhere! (think Michigan State after a Final Four game - only bigger!)

Walken breaks free from the bailiff guy and goes running into the parade! But Goodguy catches him and smacks Walken on the head with a shileighleigh! Or an oboe! Or something! And right at the end:

“You’ll never get me, Goodguy,” Christopher Walken says. “I have no Mens Rea.”

“Whatever, I wouldn’t know,” Roger said. “I bombed that Crim Law exam.” And then Roger dropped some serious Actus Reus on him.

The end, and I’ll take my royalty checks MADE OUT TO CASH

P.S. Dear Rachel Turow: Please, please don’t show your dad this. Thank you.

Criminal, from Page 7

and ten-minute oral argument on the constitutionality of the death penalty. Once the team returned in January, Koch and Burns got to work writing the 30-page brief, supported by alternate Trisha Rich, 1L, student coaches Erica Soderdahl, 3L, and Lousene Hoppe, 1L, and Professor Sam Gross, a death penalty expert.

Since returning from winter break, the team met twice a week to run through oral arguments. Scores on the brief, along with two preliminary rounds of oral arguments at the competition (one on-brief, one off-brief), determined whether the team advanced to the single-elimination quarterfinals.

“We feel really good about our efforts,” Burns said. “We worked hard.”

Koch reflected on the experience and said, “it’s been exciting to dissect the legal arguments of such controversial, pressing constitutional and criminal justice issues.”

The U.S. Supreme Court recently granted certiorari to Roper v Simmons, so the team will be able to see how their arguments play out in the country’s highest court.
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Go Blue!
Who Knew that Crime Wore a Shirt, Let Alone a White Collar?

By Jana Kraschnewski

Before Tuesday, March 23, 2004, when I thought of U.S. Attorney’s Offices and public defender’s offices, I thought of places where they would let 1Ls work for free. (Free! They wouldn’t charge me a thing, really.) But going to the Criminal Law Society’s White Collar Crime Panel in Room 138 that day expanded my views. Sheldon Light of Detroit’s U.S. Attorney’s Office and Richard Helfrick of the Federal Public Defender’s Office in Detroit were invited to talk about white collar crime, but the discussion oozed like spilled Jell-O mold into a whole host of interesting areas. And like the tasty dessert, each new topic was equally delightful.

Light shared his experiences with corporate fraud cases. He explained how, since Enron, fraud seems to be running rampant as the most common white collar crime. He noted that other popular trends included “boiler room scams” where telemarketers obtain investments from unsuspecting victims in hopes of a big pay-off that will never come.

Helfrick pretty much knew that he wanted to do criminal defense and focused his studies accordingly, but Light did not know all through law school (and for several years after) what he wanted to do with his life. He dabbled in a judicial clerkship for a while, and then decided that the prosecution he watched in court was something he’d like to do. So he tried it. “I sort of wandered into this job and ended up loving it,” he said of his current job, where he typically has 20-30 cases active at any one time.

The panel ran the gamut of emotions, from laughter to tears to a wonderful sense of fulfillment. Helfrick spoke of a case where an 80-year-old man had cashed social security checks intended for his mother, who, by virtue of the fact that she was dead, no longer needed the support. The man served six months in jail.

Perhaps the crowning moment of the discussion came when Light shared an anecdote from his judicial clerkship days. He told the story of a young man named Timothy Dick who pled guilty to a big cocaine bust. His defender begged the judge to be lenient on the young man because he was a “good guy, blah, blah, and a really funny comedian with a bright future in that field” (some liberties taken in the last quote). The judge did go easy on him. Dick served two years, got out, and changed his last name to Allen and now you’ve probably seen him on TV with his crazy Toolman antics.

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It was fascinating to watch the audience when Katzen described her struggles for balance. Despite all the interesting anecdotes about the difference between men and women in the legal world, Katzen’s stories of her discussions with her son and her own self doubt made the audience react. Shoulders shot up, and tapping pencils were dropped. Young female professionals have heard all the war stories before, but what is truly scaring most of them are these admissions from the first women to try to do it all that perfection is impossible.

“How did you know what to do?” one student asked. “How did you know when the right time was to have children?” another woman asked.

Like a typical lawyer, Katzen refused to give a set formula, insisting that choice is something that has to be done on a case by case basis. She emphasized that her own experience cannot be the blueprint for most women’s decisions because she had real choices. She had a great education and promising career, family support, and enough money for a great nanny. She also put off childbearing until age 39 and had only one child. She did, however, explain the changes she made to try to incorporate her son into her working life. When she was working fourteen hour days at the White House, where she held management positions at the Office of Management and Budget, she made an effort to bring her son to work functions when possible. She also became notorious for taking her son’s calls anytime and anywhere.

Katzen has a great resume. But it is not her accomplishments alone that make her inspiring to young attorneys. She may not have the answers for everyone, but she did have the courage to create her own definition of success.