Not Wythe Standing (Vol. 5, Issue 3)
REAL STUDENTS HAVE CURVES
GPA effects everything after law school; how it's calculated

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Finals. Not to put any pressure on you, but these tests very well could determine your future. This time next year, depending on your grades and your appetite for adventure, you could be selling hotdogs in a foreign country. Not that hotdog salesman is not an honorable profession, but most law students dream of something a little different. The outcome may depend on every law student's best friend/worst enemy: the mandatory grading curve.

Sometimes this curve seems to help, sometimes it hurts; whatever the case, it helps to know some of the details. William & Mary pretty clearly lays out the policy online. Essentially the mandatory grading policy is that 10% of students will get an A, 20% an A-, 35% a B+, 20% a B and 15% a B- or below. If you're in a class of 30 or more students one student may even have a chance at an A+ (4.33) at the professor's discretion. While this distribution is the school's ideal it can vary a little bit. The Law School aims for a target mean GPA of 3.3 for most classes, but depending on how advanced the material the curve can vary greatly. For example, first year doctrinal classes must "substantially follow" the grade distribution. This means the class mean GPA cannot fall below 3.25 and cannot exceed 3.35. Conversely, upper-level courses with 9 or fewer students, clinics, and some writing courses can have a mean GPA as low as 3.2 and as high as 3.7. Also, keep in mind that LL.M. students, non-J.D. students and those who earn D's and F's are not factored into this curve.

So, after ranking tests from best to worst your professor takes the top 10% and gives them A's, the next 20% get A-, and so on. But, what happens when two students tests are remarkably close, but to fit into the curve one must get an A- and one a B+? Student X and student Y have similar tests.
Influences
Our staff's current cultural fixations

Lourde, Pure Heroine

You've probably been caught at least once in the deluge of radio play of the song "Royals," the lead-off single for the New Zealand teenager Lourde's debut album. But the other hip-hop electronic fusion songs on this album are just as worthwhile. Especially good are "White Teeth Teens" and "Tennis Court."

Shark Tank, ABC

Who knew a show about venture capital would be an ABC sleeper hit? For the unfamiliar, the basic premise is that small business owners audition thier companies before a panel of multimillionare entreprenuers, who may or may not buy into the business. But what could have been just a gimmicy one-note joke is filled with drama, entertainment and educational value as real business transactions become must-see TV. Noteworthy are Kevin O'Leary's metaphors.

Editor's Letter, Happy Birthday, Marshall-Wythe!

Not Wythe Standing welcomes letters and article submissions from members of the William & Mary and Williamsburg communities. However, good editorial judgment will be exercised when deciding which articles to publish. We, of course, will edit submissions for style, grammar, content and length. That may, but often does not, involve consulting the author.

By submitting a letter, editorial, or article to Not Wythe Standing, you release all publication rights to that work. But then, you already knew that. Obviously, those rights include allowing Not Wythe Standing to publish or reproduce the submission in our humble tabloid, or other print format.

In keeping with the amateur spirit of community journalism, you will not be paid for your submissions.

Letters to the Editor and contributed articles likely do not reflect the opinion of the Not Wythe Standing Editorial Board. We're quirky like that. Join Not Wythe Standing on Facebook for more information.

Marshall Wythe Law School turned 233 this past December, and we at Not Wythe Standing wanted the Supreme Court to wish the oldest law school in the country a happy birthday. A plurality of the court granted our request.

Justice Kennedy, jointed by Justices Ginsberg, Sotomayor, and Breyer, wrote lengthy opinion supporting wishing Marshall Wythe a happy birthday. Justice Kennedy cautioned, however, that wishing Marshall Wythe a happy birthday does not extend to a right to eating birthday cake on ones birthday. Kennedy emphasized that it was up to the American Bar Association, and individual state bars to decide whether or not they want a happy birthday. He also expressed concern that the natural progression from wishing happy birthday was finding that people had a right to eat birthday cake on their birthday.

Justice Roberts, joined by Justice Alito, wrote the dissenting opinion. Roberts stated that Marshall Wythe Law School was never born, as it was not a living entity, and even if it could have been born, the day would have been 233 years ago, not today. Thus, Marshall Wythe could not have a happy birthday, since it never had a birthday to begin with, and even if it had a birthday, wishing that that day were happy, while a nice thought, would have no impact on anything in the present.

Justice Scalia wrote a vitriolic separate dissent lamenting that the constitution mentions no right to have a happy birthday, and the Court should therefore not wish any entity a happy birthday. He also expressed concern that the natural progression from wishing happy birthday was finding that people had a right to eat birthday cake on their birthday, problematic because there is a long standing American tradition of healthy, wholesome living, and birthday cake is a decidedly unnatural, unwholesome confection, diametrically opposed to the American tradition of wholesome living.

Justice Thomas, silent during our request for a happy birthday wish, wrote a separate, lengthy dissent saying that while he certainly believes that birthdays should be happy, the constitution does not mention anything about birthdays, happy or otherwise. Therefore, the Court should not expressly wish any entity a happy birthday, though states are certainly free to wish any that any entity they want a happy birthday.

Justice Kegan recused herself from the proceeding, as she was involved in a previous, unsuccessful petition by Harvard law school to get the Court to wish it a happy birthday.

Happy Birthday Marshall Wythe!
The Employment Hunt Handbook

Chapter 3, wherein our hunter recounts tales of life under the tyrannical rule of Curve

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Instead of covering interviews in Chapter 3 as promised, your author has decided that Chapter 3 may be a timely place to discuss GPAs, Exams, and The Curve, especially given that some rookies may yet be unfamiliar with these aspects of law school. GPAs, also known as Grade Point Averages, are an important component in creating an attractive resume to use as bait. Unfortunately, a hunter's GPA is calculated based almost exclusively on a hunter's success in two aspects of law school—Papers and/or Exams. Because Exams are the more common form of law school testing, your author believes that a brief overview may be useful at this time.

The following is an excerpt from a text that has come to be known as Catching GPAs. Written anonymously, this unverified account tells the story of how a few students at one law school rebelled against The Curve. This excerpt addresses preparing for Exams:

"I know they're coming. Exams. Everyone talks about them; I guess it's hard not to when they're such a big part of your life in law school. I would curse The Curve for pushing these on us, but The Curve is always watching, lurking over everything in law school, and it will stand no rebellion. Besides, what would be the point of yelling? It's not like it changes anything.

"The Curve, which rules over all of law school, imposes Exam competitions upon students in certain classes every semester. Exam competitions take place in arenas, which vary in structure by class but have a similar theory. In each Exam, students compete to capture Grades, which are scattered across the Exam arenas. The best Grades are the scarcest and often the most protected by puzzles and hidden dangers.

"Before each Exam, The Curve lets you do this kind of training period for the Exam, called Outlining. During Outlining, which can last anywhere from days to months before the Exam, we prepare our Outlines. Outlines are a cheat sheet for the Exam arenas. Sort of. See, not all teachers allow out to bring your Outline into the Exam arena. The other problem is that every teacher changes up the Exam arenas for each class every year, so your cheat sheet is based on guesses at what you'll find. And good luck guessing some of the horrors teachers will throw at you. During the Civil Procedure Exam, one of my first Exams in law school, I stumbled into an Erie trap and barely escaped with a B. The memory haunts me to this day.

"I look around at the other students in the Library, the communal Exam preparation area. I'm not good at preparing in advance for Exams. Some of the other students—some of my competition; no use thinking of it any other way—start months before the Exam itself, sketching out giant Outlines that they organize across multiple binders to give instructions on how to handle every possible situation.

"Most of those are the Gunners. Gunners are the worst students to enter the Exam with; they're ruthless, determined, and almost sure to capture the few 's. God help you if they have some experience in the subject before they came to law school. On the other side of the spectrum are the Procrastinators. I'm one of them. Some of us get A's or A-'s, but like I said, it's hard to compete with gunners.

"My situation is desperate. My first Exam is in the Business Associations arena, and I'm wildly unprepared. The arena is sure to be filled with roving Corporations and LLCs, maybe with some Inside Traders thrown in just for good measure, and I barely know what a Stock looks like. I'll be thrown in with about seventy other students—at least five of whom I suspect to be Gunners with business backgrounds—in a desperate effort to capture a decent Grade.

"I turn to the Duty of Good Faith section of my casebook and try to make sense of it. I'm sure that I'll encounter a Director Acting in Bad Faith in the arena, and I have to be able to recognize it if I'm going to be able to pass the obstacle. The words are blurring on the page; they make no sense.

"I look up to take a break and briefly make eye contact with one of the Gunners from my class. She smiles predatorily and goes back to her gargantuan outline.

'May The Curve be ever in my favor,' I whisper and try not to shiver."

To be continued...

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email: fcfarreau@email.wm.edu
THE COLUMNIST MANIFESTO

Legal education cries of for an infusion sanity, even if government has to provide it.

I’ve always known that the arguments against any kinds of regulation are out there, but when confronted with them in the full array of their splendor, I remain amazed. I feel that I must be missing something when I read them. Am I just too cynical about human nature? Incapable of pretending that all actors are fully informed utility-maximizing ubermenschen? Has Big Brother won my undying allegiance?

No, I don’t think so. My colleague Paul’s arguments against the regulation of the legal industry ignore everything we know about humans; namely, that we are imperfect beings prone to being duped. He proposes that we have no bar exam, no professional responsibility exam, no requirement for arguing before a court of law. Want to be a lawyer? All you have to do is SAY you are a lawyer, and magically you ARE one! Have a suit and tie and a winning smile? Well, good, because in Paul’s world, you are qualified to hold the fate of a human life in your hand!

Having watched as my grandfather—who was far from senile—gave thousands of dollars to fraudulent charities and fake publisher’s clearinghouse scams, I can’t help but find the idea repulsive. I shudder to think what would have happened if a no-bar “attorney” had called him up and volunteered to handle his estate. The cottage industry for duping the elderly already runs into the tenths or hundreds of millions of dollars with shockingly few of the perpetrators ever caught. Of course, it’s not just the elderly who are misled, but the examples are significant enough on their own.

So, the question must be: If someone is sold a bill of worthless services by a charlatan whose legal education consists of reading Adam Liptak’s columns in the New York Times, what is the recourse? After all, there would be no legal licenses to revoke, no board which could censor the wrongdoer, no inference of scienter to be held against the illiterate counsel. Combining the state of nature with the practice of law is a recipe for unmitigated disaster.

Worse still, Paul’s “reputation-based” marketplace would crumble in an instant. After a few months of news stories detailing various stories of incompetence and fraud, prospective clients might begin demanding certifications or some kind of “market signal” that a lawyer had skill. And private organizations, both good and foul, would jump in to save the day. The “American Lawyer’s Association” might only certify practitioners with strong records and years of experience, but the “American Law Association” and “Lawyer’s Association of America” might grant a fancy certificate in exchange for a payment of $49.95.

This is no mere slippery slope; this exact problem plagues the medical industry, with “board-certified” surgeons often receiving their certifications in exchange for a weekend of classes or a payment. It’s no surprise that libertarian poster-child Rand Paul was caught having made up his own certification board, the “National Ophthalmology Board” because of a dispute with the large and rigorous “National Board of Ophthalmology.” The ruse went on for ten years without scrutiny, precisely because patients had no idea which board represented value and which did not. This sort of “fraud but not fraud” would increase by orders of magnitude if there were no MCAT and no medical schools and no state licenses to practice!

Even in the law, there are very few tools that plaintiffs, defendants, and criminals can use to determine who is a good lawyer and who is not. Billboard lawyers of the “Better Call Saul!” variety are laughed at by many of us, but they work. Google searches of any lawyer you find in the phonebook might reveal one or two reviews at most; far too few to make a statistically meaningful inference about the lawyer’s merits. Having a bottleneck in the form of a state bar exam at least blocks most of the wildly incompetent or ignorant from the halls of the law. Having a license which can be suspended or revoked creates a real deterrent against egregious malpractice. The spontaneous coordination of disparate clients would be vastly less effective.

I do not need to devote as much space to the question of law schools, because there are over 200 ABA-accredited law schools and the ABA is itself a quasi-private organization to begin with. There is a ton

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“The big problem with law school is that the “free market” of information has been a dire failure. If anything, we need vastly more government control – tuition caps, elimination of dozens of schools, the forcible implementation of a more balanced grading system & rigorous accounting of student salary data.

of competition for students; I know because nearly a dozen of the law schools I was accepted to paid me to visit, one even giving scholarship recipients a yacht cruise on the Pacific Ocean as bait. If schools could attract prospective students by promising “student-centric” grading, they would en masse. In fact, that’s pretty much what some of the elite schools have done by eliminating grades or creating “narrative grades” in place of letter grades. However, the reality is that law school is a trade school, and employer-centric grading is precisely what the market demands.

No, the big problem with law school and the choices of law students is that the “free market” of information has been a dire failure. Schools have gamed the USNews rankings for years by under-soliciting salary
Ending law school’s monopoly power

Like everything else, legal education needs market savvy, not regulation, to attract students

By Paul Wolfgramm
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Clifford Winston of the Brookings Institution advocates the abolition of all artificial barriers to enter the law profession, including legal requirements mandating that lawyers must graduate from law school and pass a bar exam:

“For decades the legal industry has operated as a monopoly, which has been made possible by its self-imposed rules and state licensing restrictions — namely, the requirements that lawyers must graduate from an American Bar Association-accredited law school and pass a state bar examination. The industry claims these requirements are essential quality-control measures because consumers do not have sufficient information to judge in advance whether a lawyer is competent and honest. In reality, though, occupational licensure has been costly and ineffective; it misleads consumers about the quality of licensed lawyers and the potential for non-lawyers to provide able assistance.

“Rather than improving quality, the barriers to entry exist simply to protect lawyers from competition with non-lawyers and firms that are not lawyer-owned — competition that could reduce legal costs and give the public greater access to legal assistance.

“If the bar exam was abolished, both bar associations and other private groups would still be free to certify lawyers using either tests or other standards they deem appropriate. If lawyers certified by the bar association are generally more competent than others . . . [then] lawyers certified by the bar association will command higher salaries and enjoy more prestige than those who are not.”

“First, abolishing state-mandated bar exams allows different certification systems to compete against each other. This stimulates improvement in standards over time and also increases consumer choice. Second, since no certifying body will have a monopoly, these groups will have strong incentives to improve the quality of their certification systems. . . . A bar association that [does not] have a legal monopoly on certification is likely to produce a better test than one that does.”

Daniel Solove, a professor at George Washington University Law School, believes “the Bar is little more than a hazing ritual, one with about as much social value as guzzling beer while blindfolded and upside down.” The bar exam, and law school exams modeled after the bar exam, do not test all of the skills necessary to being a good lawyer. According to Solove, “the bar exam is largely a memory test [involving obsolete rules], and memorizing legal rules is not something that most lawyers really need to do. . . . There is no need for lawyers to know much about a lot of bar exam subjects. Does a criminal lawyer need to know the rule against perpetuities?”

Solove argues that the bar exam discriminates against people who do not have the money to take an expensive review course, like BarBri. Further, those who graduate from law school and pass the bar are still forced “to waste their time and money on expensive continuing legal education (CLE) courses.” The bar exam also unjustly burdens competent attorneys capable of providing services in multiple states, because “the investment in time to retake the bar exam can be too much for many if they are going to a state without reciprocity.” He argues that, in place of a bar exam, “states should permit all students who graduate from an accredited law school to become members of the Bar after working a certain number of supervised pro bono hours . . . which would provide a benefit to the community and practical training for future lawyers.”

“Under a market regime, law schools would have to earn new students as customers, rather than receive students as a kind of state subsidy.”

Market mechanisms, including individual and institutional reputation, and consumer lawsuits for negligent practice of law, rather than a state certification monopoly, should sort out who is qualified to practice law. Under a market regime, law schools would have to earn new students as custom-ers, rather than receive students as a kind of state subsidy. Law schools would then have a greater incentive to provide weekly feedback on student performance, rather than grade based on a single end-of-term exam, which would benefit students and employers. The current system prepares students to take exams, where it should prepare students for the holistic experience of being a professional.
Exterships enliven legal education

Why you should consider adding real-world experience to your resume

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A common complaint in law school is that classes are too theoretical. That makes many a law student think: sure, the theory is great, but will that help you in the real world? Many 1Ls think their professors have answered that question when they say “what you learn in law school is not what you will do as a practicing attorney.”

As a matter of fact, it may be that students have these complaints because they do not fully use the resources available to them in law school or fully realize the interplay between classroom work and externships. Classes are useful to give the foundational background for understanding how the law works. A trusts and estates class, for example, teaches that wills are invalid if there is lack of testamentary intent, if there was undue influence, or if the testator signed under duress. A trusts and estates class, however, does not teach the practical aspect of how to challenge the will; filing a will caveat with the court.

Herein lies the value of externships. Exterships give students the opportunity to learn how to practically apply the theory they learned in class. Knowing how to challenge a will is useless without knowing when it needs to be done. “I obtained valuable educational experiences in my externship that I could not have gotten in the classroom,” stated Kevin Schneider class of 2014. Kevin interned this past summer at the Federal Reserve Bank where he worked with government attorneys on issues related to banking. Hearing about secured transactions, filing UCC1 documents, and mortgage regulations is extremely interesting, but the practical experience at the Federal Reserve Bank affords the opportunity to work with the actual paperwork. The hands-on experience of working with the papers is rather different from learning about it in class. Schneider’s internship, while interesting, helped him realize that he was not interested in banking law.

Scheider’s experience illustrates another value of externships. It helps students sort out the difference between the theory and the practical. The theoretical aspects of a field of law might be interesting, but in practice, much of the theory is irrelevant. First year criminal law teaches the theory behind the different types of jurisdictions: model penal code, majority jurisdictions, minority jurisdictions, with some others in other contexts. However, no matter how interesting the theory, jurisdictions have one and only one set of elements for one crime, as Brian Carrico, class of 2014, could attest to.

Carrico is currently interning at a prosecutor’s office in Virginia, where, according to him, he has mostly been working on plea deals. Carrico states: “The experience in a prosecutor’s office helped me realize that I did not want to be a litigator. However, this did not discourage me from doing the externship. It helped me narrow my focus.”

Some students may think about it in class. Schneider’s internships, while in banking, helped him realize that he was not interested in banking law. Schneider’s experience illustrates another value of externships. It helps students sort out the difference between the theory and the practical. The theoretical aspects of a field of law might be interesting, but in practice, much of the theory is irrelevant. First year criminal law teaches the theory behind the different types of jurisdictions: model penal code, majority jurisdictions, minority jurisdictions, with some others in other contexts. However, no matter how interesting the theory, jurisdictions have one and only one set of elements for one crime, as Brian Carrico, class of 2014, could attest to.

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William & Mary’s controversial mandatory curve v. Ivy League alternatives

From CURVE, Cover

but one must get an A- and one must get a B+. Student X gets an A- and is in the top third of the class, but what about student Y? While their tests were very close, student Y receives the same grade as students in the 65th percentile while student X receives the same grade as students in the 11th percentile, despite the fact that they have similar test scores. It can be painful to think about.

However, the curve serves an important purpose. According to an article on prawfsblog.blogs.com by Colin Miller, a Professor at the University of South Carolina School of Law, the curve is implemented to distinguish the top, middle, and bottom students (duh) in order to decide who will be on a journal or who will get a job, etc. Further, and perhaps more importantly, Miller asserts that the curve is also meant to insure that students in different sections will be graded on the same scale. That way professor A cannot give all his or her students A’s while professor B gives all his or her students C’s. In this way, the curve can be kind.

Not all law schools are the same though. Some schools make their grade distribution conform to a certain median, some use a particular mean; some schools distribute their grades around a high number and some use a low number. This is where it gets more interesting, and not just because it requires less math. In an article on Volokh.com by Professor Orin Kerr of George Washington University School of Law, Kerr observes that lower ranked schools have curves distributed around a lower average and higher ranked schools tend to allow their professors to go above their mandatory curve and generally have curves distributed around a higher average. This becomes very important when looking for a job, as Kerr points out, “Employers are reasonably good at identifying the quality of a law school. But because there is no standardized curve, employers are usually pretty bad at knowing where in the class a particular student might be based on that student’s performance.” So, they look to your GPA. If your school had a higher curve your GPA is higher, which may mean a job.

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People v. Goetz

From CRIMINAL LAW, page 8

Two stops later, four young black men boarded Goetz’s car. They were Barry Allen, James Ramseur, Darell Cabey, and Troy Canty, the most elite of the CIA’s “Midnight Riders” cabal. In eye-blink morse code, they conveyed shock that the dumb little man before them was supposedly the famed “Red Raconteur,” scourge of capitalism. After a few minutes, all four moved towards Bernard Khurschhev Goetz. “Give me five dollars,” said Canty, signaling the attack. Bernie’s eyes bugged in horror, and he drew the Smith & Wesson. It was all he could do to keep from shouting “God save Mother Russia!” He stood and fired frantically, hitting all four serially before firing a second round into the now-paralyzed Cabey. The other passengers scattered and Goetz fled at the next stop before police could arrive.

Goetz escaped to New Hampshire, where he made the transfer with Vodka’s right-hand man, Boris Kournikova. That evening, on the news, Bernie began hearing reports about a bold vigilante who had stood up to “obvious hoodlums”. Conservative organizations like the NRA praised this mysterious stranger for his brave self-defense. It dawned on Bernie that this was all about him! He was a hero to the bourgeois pig-dogs, after all. After a few more days covering his tracks, he returned to New York and turned himself in.

The Midnight Riders were distraught, even though all had survived, Cabey much worse for the wear. There was no way that they could reveal their secret mission or identity, especially not in the face of the national groundswell now supporting Goetz! As the trial began, the RA praised this mysterious stranger for his bold vigilante who had stood up to the bourgeois pig-dogs, after all. After a few more days covering his tracks, he returned to New York and turned himself in.

Job seekers gain from learning law by doing

From EXTERN, page 7

that his externship affords him the valuable opportunity to make connections with practicing attorneys. “[I] developed valuable contacts [through my externship],” he says. Developing professional relationships with practicing lawyers has the potential for helping new law school graduates in the job market. Dean Kaplan adds “Externs develop contacts and references for their job search.”

Ultimately any employer (whether or not a big firm or a new startup) is looking for someone who will be a great lawyer. Although nobody is going to be a great lawyer right out of law school, seasoned attorneys know what to look for. Interning with a seasoned attorney, especially one well-known in the community gives law students the opportunity to shine and an opportunity to get somebody to vouch for them, and their potential to become a great lawyer.

One characteristic of great lawyers is being able to interact well with clients. Externships afford law students the opportunity to interact with clients first hand. This is especially true during 3L year, when William and Mary students get their practice certificates. The practice certificate allows law students to handle their own clients under the supervision of a practicing attorney. Law students get a practice certificate in their 3L year provided they pass all their first year courses and have taken evidence and professional responsibility. An externship, coupled with the practice certificate, allows students to represent clients at trial, which is an excellent opportunity to learn practical skills and apply theory. Bear in mind, though, some offices are more amenable to students trying cases than others. For example, the New Kent Commonwealth’s Attorney’s office is much more willing to give their interns trial experience than some other Commonwealth’s Attorney’s offices.

Interacting with clients also gives law students a sense of how the law interacts with the real world. Theoretical classes teach law student not just what the must do, but what they can do. Trusts and estates classes discuss whether or not an attorney may, ethically, execute a will when the testator is near death. Being in the actual situation, however, a lawyer feels emotions, emotions which may or may not be present during a theoretical discussion. But looking at an elderly client who can barely scrawl a signature on a will, an attorney wonders “Does this person have capacity? Should I witness this will?” Maybe human compassion comes in and clouds judgment, or maybe the attorney decides to stand firm. Either way, an externship allows a law student to face these challenges before their actions have even more serious consequences.

Perhaps the greatest benefit of externships, however, is that they teach law students that they can do it. Some students start law school with apprehension about whether or not they have the qualities of a lawyer. With externships, under their belt, the know that they have the qualities to make a great lawyer. And that reason alone is enough to justify Dean Kaplan’s assertion: externships are among the best educational experiences in law school.

Too easy to game market

From USNEWS, page 5

data or by employing graduating students in fellowships or touting past successes as representative of their place in a changed market. Even good schools like Duke and W&M have done this to some degree. Again, the market demands that all schools game the system in equal quantity and as a result provide incoming students with faulty data for making their decisions. One notoriously bad law school - Thomas Cooley in Michigan - created their own ranking system which placed them on equal footing with Cornell, Virginia, and Stanford. I can say that I have actually met people who fell for that particularly noxious scam. If anything, the field of legal education needs vastly more government control - tuition caps, the elimination of dozens of law schools, the forcible implementation of a more balanced grading system, and rigorous accounting of student salary data. Our legal education system has failed students because of the market, not in spite of it.

I do not run from the idea that I promote a “nanny state” where people are sometimes protected from their own follies, and where the state performs actions on behalf of the people when those people would be wholly incapable of coordinating on their own. The reality is that even the most brilliant, well-rounded, and overeducated among us are not experts in every field we encounter. We make bad purchases, sign contracts of adhesion by the bucket load, and are blinded by cognitive biases every step of the way. We need to be protected, not because we must be “infantilized” but because we must be “humanized”.

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People v. Goetz

Holding: The reasonableness of a self-defense claim must be justified by Defendant's actual circumstances.

Bernhard Goetz was being watched. They were everywhere. Everywhere. And a man in his position couldn't risk it. At city hall, they had told him he didn't have enough "need" to carry a firearm. But he couldn't explain to them the REAL reason he needed a gun - that would jeopardize the whole operation. So he bought one in Florida on a trip and brought it back home. Then again, if they came for him, even if he shot them all... he couldn't escape, could he? No, of course not. It was probably a suicide mission.

Vladimir "Vodka" Popinski was his contact. Sure, people thought it was strange that Bernie (as his mother called him) always had so much cash on him without a regular job. But he always told them it was his home electronics and computer business that made all the money. Hearing the word "electronics" would make people nod their heads. "Yes, he must be a genius!" "Anyone who can work with computers must be rich!"

Indeed, it was a brave new world in 1984. Ray Parker Junior and Wham! were both burning up the charts. Police Academy and "Hot Dog: The Movie" were revolutionizing cinema forever. And most of all, the Commodore 64 computer was selling like hotcakes. People marveled: it could make sounds in stereo! It had 16 color graphics! It ran at nearly 2 MEGA-hertz and had an incredible 38,911 bytes free at startup. THOUSANDS OF BYTES. Bernie always seemed to be carrying around a backpack with two or three C64s and a screwdriver. So of course he got away with the ruse.

But it wasn't the Commodore 64 technology the Roosties wanted. It was the new Commodore Amiga that was secretly being developed. Vlad Popinski had heard - from a reliable hobo - that this Amiga was the key to Ronald Reagan's Star Wars program. Stealing the secret of the Amiga was the only way to preserve the glorious Soviet experiment. Supposedly, the Amiga could display thousands of colors - more than the largest box of crayons on earth - and calculate complex vectors of the kind needed to track and shoot down an ICBM missile. Without the threat of mutually assured destruction, the Soviets knew their time was nigh. Bernie knew it too.

So Bernhard walked to Grand Central, hopped on board the Amtrak to Philadelphia, and from 30th Street Station in Philly transferred onto the light rail for West Chester. A short taxi ride later, Bernie was standing in front of Commodore headquarters, a giant concrete slab of a building. "Wouldn't look out of place in Leningrad", he muttered approvingly.

Donning the Commodore Research Team uniform that Vodka Popinski had prepared for him, Bernie calmly strolled inside. There, his nerves began to break. Where was the Amiga area? Where IS IT? Oh... it was right over there with the giant glowing neon sign that said "Top Secret Amiga". He sighed relief and walked in. His knowledge of the Commodore 64 allowed him to fit in, using the right jargon about RAM and soldering and address space and whatnot. Dave Haynie, a strange humpy ape of a man, took Bernie under his sweaty arm and said "welcome!" He continued, "there's been a lot of turnover in the research department, so I'm guessing you must be new!" Goetz nodded. "Here's the complete schematic manual for the Amiga. You should read it before you get started." Bernie was slack-jawed. Could it be this easy?

Yes. Yes, it could. After eight hours of reading and pretending to do work, Bernie left the Commodore facility, and hailed another Taxi, then jumped back on the light rail, then back on the Amtrak, and he was home in New York City by 10 p.m.

Bernie quickly looked both ways as he boarded the subway from Grand Central. It was only 12 stops on the green line until the manual reached Vladimir's giant hands. The USSR would be safe after all! Still, all he could think about were "Vodka" Popinski's warnings regarding the CIA's secret signal. "Give me five dollars", they would say, and the manual would fall back into American hands in no time. Bernie nervously stroked the five-shot .38 special hidden under his coat.

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[Editor's Note: Case Histories is our monthly romp through the facts of iconic cases. These columns present the fictional backstory behind cases you might have studied; we tell you what could have happened, but necessarily what did.]