Separation of Powers: Coming Soon to ASU

By Jeremy Miller

The fall 2007 semester will see a new class begin at the Sandra Day O’Connor College of Law. “Separation of Powers” will be taught by Justice Scott Bales of the Arizona Supreme Court and retired Justice Sandra Day O’Connor of the United States Supreme Court.

Because of the high-profile nature of the instructors, students have been clamoring to get into this seminar. Unfortunately, the majority of those interested will be denied admission.

When Patricia White, dean of the Sandra Day O’Connor College of Law, addressed the current 1L class a number of weeks ago, she announced that the Separation of Powers class would be open to all current first and second year students. Additionally, she announced that seats in the class would be decided by lottery, giving all students an equal chance of being selected to class.

On March 20, the administration announced via email that the class would be limited to 25 students and that students would be required to apply for admission to the class. Additionally, applicants were asked to submit a letter explaining their interest in a judicial clerkship as part of the application.

The administration chose to drop the lottery system in order to give equal opportunity to the current 1L and 2L classes. Dean White further explained that the class was designed to be a difficult course, with a small class size, and that lends itself to an application process. The applications, according to Dean White, would not be judged based on grades or class rankings. Rather, admission would be determined by the applicants’ expressed interest in seeking admission to the class. Examples of “good reasons” for admittance included a potential judicial clerkship or some other past or future interest in studying the separation of powers among the federal government.

Dean White was further questioned about whether including references to judicial clerkships would limit the admitted students to those in the top 10% or 15% of their classes. She explained that grades are not a factor, but that they were looking for a good class and a diverse group that would put forward the solid effort that will be required by Justice Bales and Justice O’Connor.

Critics of the decision to drop the lottery system were dismayed by the administration’s choice. In abdicating its traditional, lottery admission system, the College of Law has chosen to create a new status level at ASU. Students and faculty alike concede that the new process will likely ensure that only the top students will be allowed into the class.

Professor Michael Berch questioned the whole concept of selecting students for any class section. “I have misgivings about faculty and staff involvement in consultation with the Dean making these choices.” Specifically, Professor Berch thinks the selection process, when it is done at ASU, is being done to the benefit of Justice O’Connor. “I believe other distinguished persons in the past attempts to recruit students and were soundly rebuffed.”

“Why should that (Justice O’Connor teaching) make any difference whatsoever?” This is the Sandra Day O’Connor College of Law. It embraces all the students, top-ranked and otherwise. Every student in good standing should have the benefit of her expertise. Indeed, I sometimes think the top-ranked folks need much less guidance than others. It only takes a bit of imagination to implement a program that will make us all proud.”

Professor Berch also offered an alternative to a small, elite section. He proposes to open up the section to all second and third year students and enlist additional professors to help with the grading. He has enlisted Professor Kevin Gover to help design carrier proteins to deliver stem cells to affected areas, but the focus of his presentation was on his experience as a Parkinson’s patient.

The remaining two speakers, who did not give initial presentations, but did participate in the panel discussion, were Dr. Yong Shen of the Sun Health Institute and Dr. Ronald Lukas of the Barrow Neurological Institute. Mr. Leon Silver, while not a participating speaker, acted as the moderator of the panel discussion and was single-handedly responsible for procuring all of the funds and wine for the event.

Leon is a local attorney with the firm of Shughart, Thomson, & Kilroy, and he is also a founder and indispensable member of The Liberty Project.

The event as a whole was incredible and eye-opening. The event was not intended to advocate for or against embryonic stem cell research, but rather was meant to be an educational tool for those who are interested, but may feel overwhelmed by the mountain of information available. As a person who has kept up with the majority of the mainstream news on stem cells for the past several years, I was made painfully aware of how little attention the alternatives to embryonic stem cells are given.

Alternatives such as adult stem cells, cord blood stem cells, and adipose stem cells are rarely mentioned in the discussion of stem cell research and even when they are, these alternatives are generally regarded as unsuitable alternatives to their embryonic counterparts. The panelists discussed many of the alternatives in depth and elaborated on their growing potential for treatments. It was clear, however, that for the treatment of certain degenerative disease, especially those involving the degeneration of motor neurons (such as Parkinson’s), embryonic stem cells still offer the only real glimmer of hope.

The speakers all did a great job, and even though the attending audience was relatively small, all were very attentive and asked a lot of great questions during the panel discussion. And perhaps as impressive as the event itself (especially considering how few members the organization has), the acquisition of a license to serve liquor in the law school was an almost equally noteworthy achievement, since no other law student group has gained such permission in the past.

Convocation Speech

By Kolby Granville

Although I was not elected to be the student convocation speaker, (others, frankly, far more qualified, rightly were elected, and I’m sure they’ll do a great job) I felt the need to write out the speech I would have given. And for what it’s worth, here it is… It’s been an honor and a pleasure writing for the paper these last three years. See you in court.

Wow, what a view. Seriously, later, when you walk across the stage to get your blank piece of paper, stop and look out into the audience. 2000 mothers, fathers, sisters, brothers, husbands, wives, and friends all here, all looking at the stage. All here for your graduation. All thinking the same thing. Now, find us, will they start earning their own freaking money??

In all seriousness, I’ve been granted a very odd task, the task, as the student convocation speaker, of somehow saying something on behalf of all of the class; on behalf of nearly 200 diverse students. Well, I know what year’s Over said. I’ve heard enough of these things to know. It’s a scientific fact that every convocation speaker is supposed to say those things.

First, I’m supposed to shamelessly plug the name of the law firm that’s hired me. Mariscal, Weeks, McIntyre & Friedlander. I don’t know why I’m supposed to plug Mariscal, Weeks, McIntyre & Friedlander, it’s not like Mariscal, Weeks, McIntyre & Friedlander is hurting for clients. And frankly, I don’t know why you all would care that I’m working at Mariscal, Weeks, McIntyre & Friedlander, but I’ve been told enough of these to know I’m supposed to say Mariscal, Weeks, McIntyre & Friedlander.

Perhaps I was deceived into thinking the process of sucking up to the law firm that hired me would come to an end after I was hired, but according to at least tradition, the end of the sucking up process (Mariscal, Weeks, McIntyre & Friedlander) has yet come to pass.

Second, and this is absolutely required, a good convocation speaker absolutely must quote someone famous that is (1) dead (2) liked by everyone, (3) not the least bit controversial, and (4) had their image properly pushed through the cultural sterilization process more commonly known as a Ken Burns documentary. Lincoln, Gandhi, MLK, Helen Keller these are all acceptable people to quote according to this rigid culture standard.

But, frankly, this tradition of quoting...Continued on page 4
I am guilty. I listen to my iPod. Not in the way you’re thinking, though. I mean, it speaks to me, and I listen to it. It has a mind of its own. And if you’ve ever marveled at the for it… There’s a legal issue in here somewhere.

You see, iPods have this “shuffle” mode. For the un-followed by “Nobody’s Fault But My Own” by Beck. That was “Crazy” by Gnarls Barkley? I never downloaded that. into Law and Reg – International Legal System, having ne-

class a half-hour late. And our memo was due at the beginning argue. But I maintain it is not a random order. (Isn’t that an oxymoron anyway?) Call me paranoid, Communist, whatever, but I listen to mine even morning in “shuffle” mode and I tell you, the thing has predictive powers.

For starters, one day last semester I was walking to class and it played “Accidents Will Happen” by Elvis Costello followed by “Nobody’s Fault But My Own” by Beck. That was the morning I absent-mindedly wandered into legal writing class a half-hour late. And our memo was due at the beginning of class. Funny, as I walked out two hours later and jammed my ear buds in to escape the gloom, “Born to Lose” by Ray Charles popped up. I could almost see my iPod looking at me. Here’s another one. A few weeks ago I was heading into Law and Reg – International Legal System, having ne-

in to serve this important public purpose, thus we have used our power of eminent domain to claim it and the land beneath it.”

The citizens of Tempe seem happy with this decision. “Dave’s couch was like a safe haven after a night at Mill,” said Phillip, Dave’s college pal. “But once he said his couch was off limits, it hurt a lot of people. I’m glad Tempe is finally doing something about it.”

Others aren’t so thrilled with the news “I finally convinced Dave to stop letting his lost friends pass out on our couch,” said Cindy, Dave’s girlfriend of three months. “And now the city says that they own the couch and are designating it as a ‘cool-off zone’.”

Controversy is still threatening the decision. “A lot of people don’t think the government should have the ability to use 3L Reflection: Moot Court

By Kolby Granville

I’m interviewing a nervous female undergrad pretending to be a client as three lawyer/judges watch on and take notes.

“So, let me repeat this back to you so I’m sure I understand what you want,” I say, leaning forward so as to give my best ‘your problem is my problem’ body attitude. “You want her to pay for the couch she ruined or pay to have cleaned, but either one is okay, is that correct?”

“The room. “Cool,” I think “on to the next round.” But I’m not sent to the next round. I’m bumped.

judge score sheets andConviction. “Yes, that’s what I want. That.”

A few minutes later the mock interview is over and the judges shower me with “you’re a superstar” style comments. I leave with the room, “Cool,” I think “on to the next round.” But I’m not sent to the next round. I’m bumped.

Judge score sheets and

“Continued on page 6

get the picture? So I started thinking, if South Park’s version of Johnnie Cochran could coin the “Chewbacca De-

the land. “ I’m sorry your honor, but ‘Better Be Home Soon’ by XTC, then “(Writ of) Habeas Corpus” by 48 Rooms. Wouldn’t

I finally convinced Dave to stop letting his lost friends pass out on our couch,” said Cindy, Dave’s girlfriend of three months. “And now the city says that they own the couch and are designating it as a ‘cool-off zone’.”

Controversy is still threatening the decision. “A lot of people don’t think the government should have the ability to use

eminent domain to take Dave’s couch and the land underneath it,” said Buncce. “But, like the route of a freeway or railroad tracks, the land and couch in Dave’s house is a special place that needs to be pre-

served for the public good.

Dave, however, remains philosophical. “Hey, man. Tempe can do whatever, alright?” Dave just has to try to be quiet, cause my girlfriend is a light sleeper.”

By Kyle Shetton

The city of Tempe used eminent domain to acquire Dave Ginsburg’s couch on Tuesday. Dave, a Tempe resident, was told of the news by the Tempe City Manager last week. “For years Dave has allowed friends and friends of friends to use his couch as a place to sleep off a night of drinking,” said Tempe city manager John Barrett. “But now that Dave has a steady girlfriend this practice has come to an end. The city of Tempe feels it is in the public interest that Dave’s couch continue to serve this important public purpose, thus we have used our power of eminent domain to claim it and the land beneath it.”

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Mayor McCheese claims diplomatic immunity

By Kyle Shelton

After a drunken car crash that claimed the lives of two people, Mayor McCheese and his attorneys have claimed that McCheese should be dismissed of all charges because of his diplomatic immunity.

McCheese, mayor of McDonaldland, was involved in a fatal wreck outside the McDonaldland embassy last year in Washington, D.C., where he was trying to work on building goodwill between McDonaldland and the U.S. McCheese’s blood alcohol content was 16%, twice the legal limit. Two congressional aides were killed in the crash.

In court on Friday, McCheese claimed that being a diplomat of McDonaldland, he has diplomatic immunity to U.S. prosecution.

“Mr. McCheese is a good cheeseburger. An honest, responsible cheeseburger,” said his lawyer, Jackson Kouk. “Either way they shoulders and fearing a knock at the door.

“Police are particularly suspicious because the three victims were brothers.

Hubert Pigg is the eldest of the three brothers and was the last of the three to have his house attacked. “I was just sitting there in my house one evening when there was a knock at the door. When I opened it, there was just a great burst of air and my house collapsed around me.”

The destruction of Harry’s house hurt him deeply, as he had assembled the prefabricated straw house himself only a year ago. “I don’t know what caused that kind of effort into my house again. It’s just too painful.”

Harry opened in with his brother Harvey, but Harvey’s house met a similar end just three days later.
Two Ends of the Billing Spectrum

By Travis Meserve

As a 1L searching for a summer job, I often found myself trying to figure out how to start billing at all. On the one hand, the specter of the high hourly rate of a prestigious firm served as a constant reminder of the importance of sticking to the client’s budget. On the other hand, the prospect of not making any money at all was equally daunting. I knew that I had to do something right and it seemed like I was in a case against Motorola, Inc.

Mr. Gary certainly aims to put the

In 2002 a high school student in Juneau, Alaska named Joseph Fredericks, cleared a banner that read “Bong Hits 4 Jesus” during a school “trip” to watch the passing of the Olympic torch. The principal of the school displayed the banner as a joke to get on TV. However, following the suspension, Mr. Gary and his parents took the school to court.

Mr. Gary has spent hours working on
his being represented by none other than Mr. Kenneth Mertz. The Supreme Court awarded Mr. Mertz $11,000 per hour bill arises by none other than Mr. Kenneth Mertz.

Bong Hits 4 Free Speech

By Ravi Arora

It was a cold school day in Juneau. Mr. Gary, a super lawyer alongside his wife posing in front of this screen, is able to spring for a few more of if the day to all is working a contingency basis for the school’s anti-drug policy and the “disruption” that read “Legalize Marijuana” the school may have viewed the message as political and treated the case differently.

The court focused the end of its inquiry on whether or not the message should be considered from the perspective of the school “assembly,” his speech was still protected. Fredericks claimed that he had not intent of attending school and showed up on a public street to express his views in a classically protected manner. On the other hand, Mertz argued that if Fredericks was not considered to be part of the school “spectrum,“ his speech was still protected under Tinker since it was not disruptive. Many of the justices seemed hesitant to completely exonerate Fredericks conduct as entirely separate from the school event, with Justice Scalia stating that “as far as I am concerned, he was just late.”

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It’s often been said that the hazing process, designed to “weed out” the nonbeliever that was the rambling of having learned it is not completely un-bits of advice I’ve been given over the ond semester, are the inspiration for Also what about the language limiting this program to fall under the definition of “most dan-gerous” or “sexually violent”? What is the definition of “most dangerous” and “sexually violent” anyway? However, I think that this bill is intended for a more obvious reason: to stigmatize a sexual offender who aborted or miscarried… of family members. Let’s save the taxpayer money of Wisconsin some money and focus on those offenders locked or send them away to that magical cheese making plant in the sky. Next, we travel to that hard to find a Medicaid Dentist is rarely felt anywhere else. Everyone is figuring out who everyone else is, and then we’re going to bond together in anticipation of the unknown events that will take over our lives for the next few months. People are reluctant to talk in class unless called on, except for those who are comfortable enough in themselves that they don’t care if they embarrass themselves or not. After the first month, people realize that they are going to have to realize what they have to do to get those coveted “participation points.” The apparently arbitrary one or two points that professors may give to students they feel are outstanding – of course, on the opposite side, they can take away the same amount of points for disruptive students. People begin trying to talk in every single class, whether they have something to say or not. Some people go on so long that they lose the point they were trying to make. Don’t get me wrong, I don’t mean to say that only those who rape or sexually assault somebody get the privilege of driving around with the pretty green plates while driving Tom’s and average, everyday flashers be exempt from this program? A lot of people are able to do things that they had absolutely nothing to do with. Gettysburg, i.e., Embassy… It’s my new favorite word. If I mock this process, it is, frankly, because it deserves mocking. How am I, or anyone else on this stage, qualified to tell you the greatness of things you’ve done? Of the troubles you’ve overcome? Of the hard-ship you’ve endured. You all know it is the way it is. In the end, something, perhaps for the first time in your life, stumbled over people like you aren’t the smart-est person in the room anymore. You all know how many long hours you’ve spend studying, you know this, and somehow I’m sup-posed to tell you the information you’re given. You that? That any of us are qualified to tell you the greatness of things you’ve achieved? That it requires any of us on this stage, or in this audience, to tell you that? That any of us are qualified to George Washington? That it is the hard work that lays the foundation for a better life for you and puts you in a position to help others have a better life. It’s not that you haven’t had help from teachers, from friends, from family… but in all hard things, the last step is taken alone. Private property. You know the financial risk you’ve taken, heck, you’re probably going to bet $100,000 on that risk. And for most of you, you’d be willing to make the same bet again and to accept the same hardships again because… because you know, it’s the smart bet. It’s the hard work that lays the foundation for a better life for you and puts you in a position to help others have a better life. Depending on regulations...
written comments are in the folders downstairs, "she email, "Thank you for being a participant." A participant? Was I just called a participant? 

The person that wins is a sharp

The argument in front of the Arizona Su-

grand jury. But alas, all things change with

Time passes and the Spring se-

smiles. "See, it's not what you say, it's the

But pride is a bastard. Regardless

Pace University Environmental Law Moot

While I'm not a fan of practicing

Texas accent I say, "Now, you know, I met

The games effects aren't ob-

At the end of the day, Lindsi and Ryan come over to our table in the corner.

I'm half napping in the hallway outside. Professeor Noselli puts his arm around my shoulder. Eyes still glossed, I can hardly think to talk.

What I'm saying is "A confused

I could think to do was take a deep breath.

The true nature of the class. Once they begin to figure that out (or just give up), the true nature of the class begins. People try to pick out those they think are smart, or those they think they will do the best by studying. Consiporacies form in these groups against other people who they can't talk to because they're different, or who they want to talk to because they seem like they're brilliant but who they won't hang out with as friends.

The games are over. The finals come and go with stressed out 1Ls running around like chickens with their heads cut off, finding out test grades. They get picked off, begging for notes or help on topics they just didn't get. For those two weeks, it seems like people truly trying to help each other out, each as stressed as the next. The individ-

class. Once they begin to figure that out (or just give up), the true nature of the class begins. People try to pick out those they think are smart, or those they think they will do the best by studying. Consiporacies form in these groups against other people who they can't talk to because they're different, or who they want to talk to because they seem like they're brilliant but who they won't hang out with as friends.

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Time passes and the Spring semester comes to an end. Lindsi has graduated. Lindsi and I are third year law students, although Lindsi tends to put it in a nicer tone. Slowly I close my manila folder. I imagine video clips I've seen of Muhammad Ali. Most of the time I say the argument out loud. Standing in the bathroom I stare in the mirror doing my best Ali impersonation.

"I know you know, but you're not doing it.

I'd heard the Lion King is good..."

"I know you know, but you're not doing it.

Put your hands up and order show tickets for Saturday night; the same time as the competition finals. All through the practice rounds Lindsi and I would eat the free food, smile, and say thank you. It's become a running joke between us. 'Smile and wave... smile and wave.'"

"It's not what I'm good at!

"Yeah, well, it's what you are

It's not about the law, it's about the

And the person that wins is a

"I know you know, but you're not doing it.

"I heard the Lion King is good...

"It's not about the law, it's about

The games effects aren't obvious, at first. The first couple of months people are so overloaded by work they can't do much other than to try to get out of the library and eat at the same time as the competition finals. All through the practice rounds Lindsi and I would eat the free food, smile, and say thank you. It's become a running joke between us. 'Smile and wave... smile and wave.'"

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The person that wins is a sharp

The person that wins is a sharp

The person that wins is a sharp
2L Reflection

By Ravi Arora

When I first arrived at law school over two years ago, I had a rather poorly formed understanding of the experience that lay ahead of me. Even though I had roomed with a law student while I was in undergrad, I only saw a few sides of what has turned out to be a very multi-faceted experience. In fact, I can say with some confidence that nearly all of the expectations that I had when this began have failed to materialize. I thought that I wanted to do international law when I entered and now I am fast tracking my way to a career in the criminal field. I also thought that I would do moot court and write on for journal, but have instead wound up editing the student newspaper and organizing panel discussions. The only exception seems to be the copious amounts of reading required, and it appears that my academic lethargy this semester will soon challenge that notion as well.

I distinguish my lethargy as being academic because any slacking off that occurred in my study regimen was simply a product of the diversion of my energies elsewhere. I spent more of my time this semester on extracurricular activities from contributing to student organization projects to completing my first painting and learning to play the drums. Variety may be the spice of life for some, for others it is the most basic staple of existence, without which life becomes tedious and burdensome. Of course that is an overstatement in my case, in fact I have been known to throw a fit for want of my usual cup of coffee first thing in the morning. But at the same time I strive all the time to mix things up and keep it interesting….and I guess where I am going with all of this, now that I have paused to reflect upon my tangential ramblings, is that if I had but one piece of advice to give to a person entering law school, I would tell them that there is a difference between maintaining focus, which is essential to the successful pursuit of any endeavor, and being consumed by the object of that focus, which almost certainly leads to frustration and misery.

Indeed, I think the merit of this advice extends well beyond the confines of legal education. I have known quite a few intelligent and talented people who are crippled by their inability to escape from the microcosmic world that they have caged themselves within. And while there are certainly worse fates than being consumed and digested by one’s legal career, the spirit of our work demands that we avoid this fate lest the halls of justice topple for lack of support. After all, we are enablers, catalysts, vehicles, tools by which the raw materials of society are tuned into a smoothly operating machine. Without every other aspect of life beyond the law, lawyering is simply an exercise in futile bureaucratic sadism.

Thoreau makes a very elegant argument in Walden that is intended to challenge the supremacy of philanthropy as a virtuous endeavor, and being consumed by the object of that focus, which almost certainly leads to frustration and misery.

Thoreau makes a very elegant argument in Walden that is intended to challenge the supremacy of philanthropy as a virtuous endeavor. If I might be so bold as to apply his words to philanthropy’s very antithesis (i.e. lawyering), then I can spare myself the ordeal of trying to appear half as well spoken and educated as he. “I would not subtract anything from the praise that is due to philanthropy, but merely demand justice for all who by their lives and works are a blessing to mankind.”

These words caught my attention and inspired me because they expressed an idea that I tried, rather unsuccessfully, to convey to a friend of mine during a conversation we had about a year ago. The friend was praising me for pursuing a career in the law, citing the possibilities to make a meaningful positive difference in the lives of many people, and lamenting that his pursuit of a musical career would not satisfy his altruistic desires. I pointed out to him that if every artisan abandoned their creative endeavors to feed the starving, clothe the poor, and the like, the end product would be a higher rate of survival without anything to live for. What is life worth beyond the rich and diverse beauty which it breeds? Is survival a worthy end in itself or is it simply a necessary but insufficient vehicle to a greater end?

I am firmly convinced that it is the latter, and so too are those endeavors, such as lawyering, that serve simply to facilitate survival and quell the chaos which threatens it. In fact I think that lawyering might be compared to the work of janitors and other sanitation laborers, necessary and even respectable, but humble. Surely more than one chuckle was elicited by the idea of lawyers being familiar with, let alone possessed by, humility, but I am not referring to the over-inflated egos for which the profession is known best. Rather I speak of the relative worth of the profession when compared to the work of great authors, painters, composers, architects, scientists, inventors and the like. The glory of our trade is hollow and ephemeral, and it is only through our other pursuits and those of our clients that we achieve meaning and transcendence. To lose sight of this fact is to undermine the ultimate purpose of our legal system - to make the
Sex and the Ordinary Prudent Person

Doe v. Moe, a May 2005 Massachusetts appellate case, gives a whole new meaning to the idea of safe sex. A guy sued his long-time girlfriend (ex-girlfriend?) for negligence when an ill-advised change in position during consensual intercourse resulted in him suffering a fractured penis. (You’ll have to go read the opinion to get the details about how the accident occurred.)

In a case of first impression, the court struggled to arrive at an appropriate and workable standard of care to apply to private consensual sexual conduct. The court noted:

There are no comprehensive legal rules to regulate consensual sexual behavior, and there are not commonly accepted customs or values that determine parameters for the intensely private and widely diverse forms of such behavior.

Accordingly, the court concluded that the general negligence standard of reasonable care under the circumstances was inappropriate for consensual sex-physical injury cases. Instead, the court said the plaintiff needed to show conduct rising to the level of “wanton or reckless.” The court opined that while the trial record might support a finding that the defendant’s conduct exposed plaintiff to a risk of harm, it did not support a finding of wanton or reckless conduct.


“Emergency Doctrine” According to Shakespeare

Definitely ranking in the top 10 classic judicial opinions in all of tort law is Cordas v. Peerless Transportation Co., penned in 1941 by Judge Carlin (no relation to George) of the New York City Court.

The defendant was a chauffeur and the victim of an armed car-jacking by a fleeing robber who threatened to blow the chauffeur’s brains out. In fright, the chauffeur slammed on the brakes and jumped out of the vehicle, which kept moving and hit the plaintiff pedestrian and her children (fortunately, injuries were slight).

The case stands for the unremarkable principle that under the basic negligence standard of reasonable care “under the circumstances,” people aren’t expected to exercise as much care in emergency situations as in non-emergencies where they have time to weigh and deliberate. It also stands as a literary masterpiece of judicial opinion writing. You have to read the whole opinion to get a full appreciation for it, but here’s how it starts:

“This case presents the ordinary man-that problem child of the law-in a most bizarre setting. As a lowly chauffeur in defendant’s employ he became in a trice the protagonist in a breath-bating drama with a denouement almost tragic. It appears that a man, whose identity it would be indelicate to divulge, was feloniously relieved of his portable goods by two nondescript highwaymen in an alley near 26th Street and Third Avenue, Manhattan; they induced him to relinquish his possessions by a strong argument ad hominem couched in the convincing cant of the criminal and pressed at the point of a most persuasive pistol.”

Carlin was a learned Shakespeare fan. In excusing the chauffeur from liability for jumping out of the moving vehicle, Carlin said:

“If the philosophic Horatio and the martial companions of his watch were ‘distilled almost to jelly with the act of fear’ when they beheld ‘in the dead vast and middle of night’ the disembodied spirit of Hamlet’s father stalk majestically by ‘with a countenance more in sorrow than in anger,’ was not the chauffeur, though unacquainted with the example of these eminent men-at-arms more amply justified in his fearsome reactions when he was more palpably confronted by a thing of flesh and blood bearing in its hand an engine of destruction which depended for its lethal purpose upon the quiver of a hair.”

Translation: It’s not negligent to react in fright when a carjackers has a gun pointed at your head.

— Cordas v. Peerless Transportation Co., 27 N.Y.2d 198 (City Court of N.Y. 1941)