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Cleveland-Marshall College of Law

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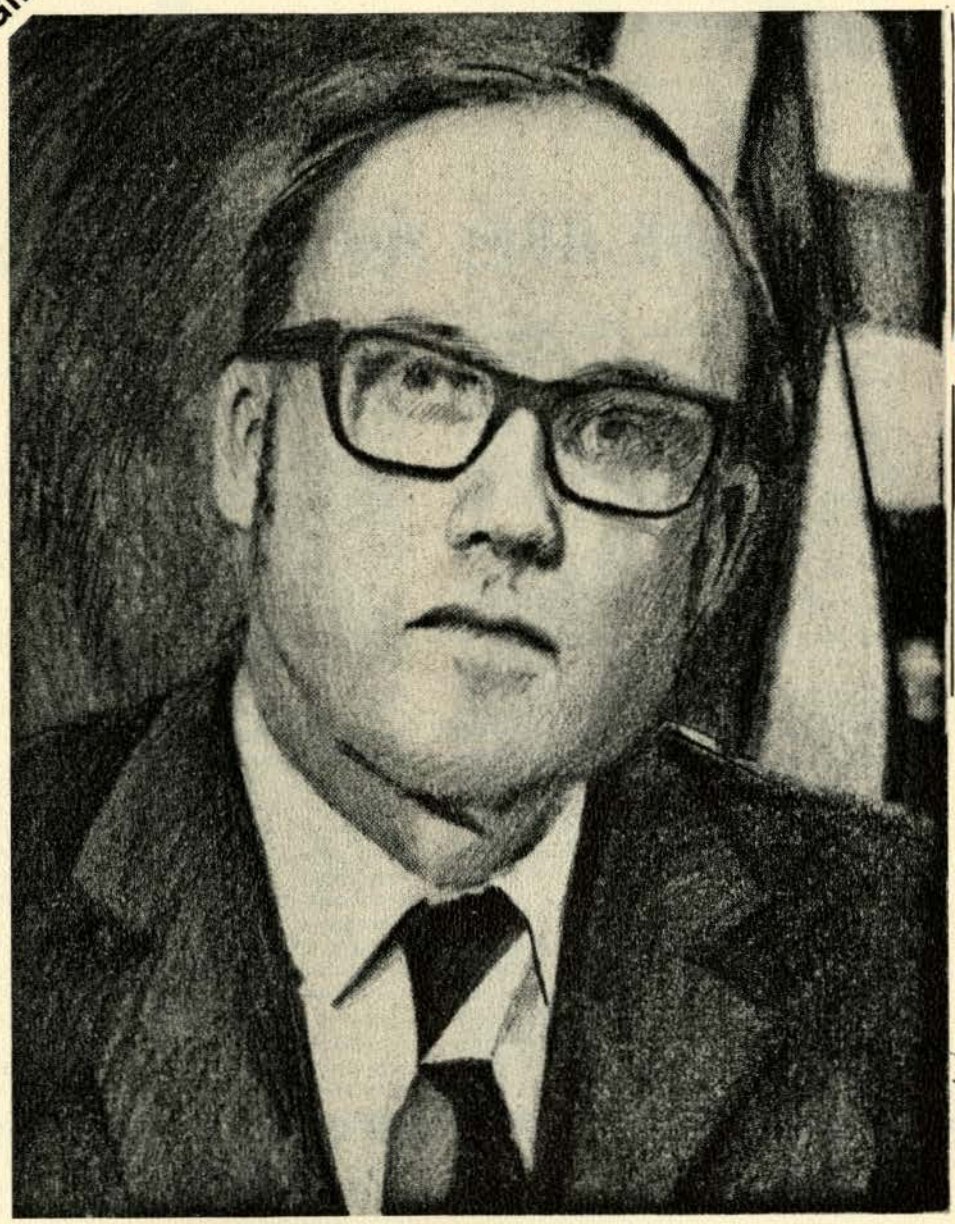
THE GAVEL

An obscure journal fast becoming the toast of the town.
Cleveland-Marshall College of Law

FROM LONELY VIGIL TO MAJORITY'S VIRGIL — SMITH ON REHNQUIST: P. 3



SPIRIT OF CHRISTMAS YET TO COME

Correspondence

Editors:

As a member of the Cleveland-Marshall Law School community, I am concerned about the overall tone of the previous two issues of the Gavel. Freedom of the Press is undoubtedly one of our country's most precious assets, and it has been proven time and again that the power of the pen is great. It is precisely that combination of freedom to express oneself and power over the printed medium which gives rise to the responsibility of a newspaper to remain unbiased.

I appreciate the difficulty a student-run newspaper often faces in attracting literary contributions from its readers. This does not present a legitimate excuse, however, for blatant political proselytizing spilling beyond the editorial page. The same creative energy which no doubt went into the essays in the Gavel's last two issues could be expended within an unbiased format. Such neutrality is the least a good editorial staff owes to its readers.

Mary C. Sullivan
3rd Year Law Student

ON GETTING WHERE WE ARE: AN EDITORIAL

Within the hearts of even the most reticent perusers of this journal (and we would, alas, be warmed to learn of others), there was surely intuited (gradually, if the articles were read; immediately, if the covers were observed) a sense that the paper's philosophical bearings have been altered, its collective voice re-tenored. This is so. What is not immediately, nor probably upon contemplation, evident, are those reasons for our change of character, reasons which we would move, presently, to assert.

Local myth (and please don't disappoint us with contrary fact) imagines the *Gavel* as the single, longest continuously-published law school newspaper in these United States. Disregarding, however, that probable falsehood, the *Gavel* has, during the course of its history, invariably undergone Protean change, year-to-year, perhaps issue-to-issue, reflecting, as such, the eliptic eccentricities of those spiritual flagglegents who undertake its publication. This is at least partly the result of the fact that we are an animal in-between: neither newspaper, nor bulletin, nor legal reporter, nor, certainly, scholarly journal, but an eclectic admixture thereof, genetically mutated, as it were, every October; so that, like Talleyrand, we are in the perpetual process of re-imagining our reason for being.

Ordinarily, the great sense of *gravitas* felt by the *Gavel* editor is one that is singularly peculiar to himself alone, while you, gentle reader, collect this journal as so much cheap kindeling, or to prevent the interior latex from splattering on your turntable, or to gleefully rap Fido's nose for his mistake on the carpet.

Still, we have, and from many quarters, been accused of having taken on a decidedly political tone this year; or, more to the point, a politically *tendentious* tone.

To answer: political, yes; tendentious, perhaps, although not entirely by design.

Look: what we most fervently sought to avoid this year was the type of paper that smacked of high school boosterism, replete with reverential interviews with your favorite professor, grand announcements of impending dinner-dances and artist's visions of future parking lots. What we had instead sought to become — and to some measurable extent have succeeded in becoming — was a focal point of controversy, an in-house forum for a wide range of subjects that are important tangents to those legal issues that we are confident our readership are fully consumed with elsewhere.

It is true that the vast plurality of our political articles have been, to date, right-leaning; and yet we are necessarily limited in what we publish by exactly the amount of input we receive. The editors of the *Gavel* have utterly refused to act as censors, either to each other, or to any counterveiling opinion submitted to LB 23.

If the *Gavel* continues, in the perception of a number of its readers, to be a single-sided paper, it will only be because no contrary responses will have had forthcome.

In deciding to become a political forum, we have tried not to ignore our traditional duties to report on important law school activities. In truth, however, we have not witnessed the type of fervor and unrest that has racked S.B.A. in the past, nor, in our view, has student dissatisfaction with any particular administration function reached fevered proportion as yet. Should these issues present themselves, they will be addressed.

Finally, to those for whom we are the object of emnity, please recall, and so temper your harsh judgement of us, the fact that we accepted our positions not, primarily, with a view of affecting the course of this Great Republic; not because our collective conscience compelled us to abandon silence and speak Publically; nor even, indeed, to participate more fully in the academic community; no; in the final analysis, it is because we get a lot of free stuff.

To those of you who have been so good as not to have complained, Merry Christmas.

— **Ken Callahan**

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Rehnquist and the Restoration of Reason

By Steven S. Smith

Glimmerings of hope stir in some quarters that the secret victor of the recent electoral festivities may turn out to have been Mr. William Rehnquist of the Supreme Court. Oft'times the keeper of a lonely vigil over the tattered remnant of the Constitution, Justice Rehnquist has made it clear that he is a man of whom it cannot be said, "He came, he saw, he concurred." To the contrary, he has become a sort of Demosthenes of Dissent, hurling the reproach of truth at majorities upon the Court that wish to refashion the Constitution to accomodate their own bizzare predilections as well as the trendy ideologies of intellectualoids and bozos. Sadly, Justice Rehnquist's scholarly counsels have for the most part fallen upon deaf ears, and his role has been as that of the Chorus in a Greek tragedy, warning of dire consequences ahead and pointing out the follies of the major actors as they careen wildly onward in their headlong race to destruction.

For an example of the sort of judicial mysticism deplored by Justice Rehnquist one need look no further than the gorgeous sophistry of the 1968 *Green* decision from which have flowed all the happy results of "bussing." The majority in *Green* held that federal courts had the duty to enter decrees which so far as possible would eliminate the discriminatory effects of *past* history, as well as a duty to bar present and future discrimination. In the 1973 *Keyes* decision, the majority held that the existence of even one school with a disproportionate racial mix could lead to a finding that the entire school district was being operated as an illegal dual system of separate schools for separate races. Justice Rehnquist, is dissenting, noted that the *Brown* decision required that the system of separate schools created by law, in which children were assigned to particular schools by race, be abolished. Justice Rehnquist wrote that, "to require that school boards act *affirmatively* to achieve racial mixing in schools when such mixing is not achieved in sufficient degree by neutrally drawn boundary lines" is a "drastic extension" of *Brown,* the justification for which was "barely, if at all, explicated," and the effect of which is to put noncomplying schools into "federal receivership," "with no constitutional justification." Mr. Rehnquist recognized that what the majority was presenting was in fact the edifying spectacle of the use of the Equal Protection clause as a justification for *unequal* treatment. Putting aside for a moment the fact that the drafters and ratifiers of the Fourteenth Amendment made clear that local schools were beyond the scope of, and thereby exempt from, the application of that amendment, we may say that the basic thesis of that amendment was to preclude denial of the equal protection of the laws by ruling that race cannot be taken into account by government or the judiciary in drafting or applying law. Yet in an inversion of all reason the majority has ruled that local government must prove that it did *not* take race into account and that, in order to so prove, it must assign pupils *by race* in order to achieve a particular racial balance determined by the District Court judge. In the opinion of Justice Rehnquist the issue is not race, but *power.* The issue is whether the people shall be governed by their elected State and local representatives, (with the constitutional stricture that the law must be applied equally to all), or whether the people shall be governed by bureaucratic dictate and judicial edict unlimited in power and *favoring* one race today, but perhaps using that power to *enslave* some or all races tomorrow.

Illustrative of Justice Rehnquist's views also was his dissent, in company with Justice White, from the decision in *Roe vs. Wade,* the decision which prohibits States from regulating abortion. The dissent reads, "I find nothing in the language or history of the Constitution to support the Court's judgement. The Court simply fashions and announces a new constitutional right for pregnant mothers and with scarcely any reason or authority for its action, invests that right with sufficient substance to over-ride most existing State abortion statutes. The upshot is that people and legislatures of the 50 States are constitutionally disentitled to decide for themselves." Terming the majority's holding a "Raw exercise of judicial power," the dissent referred to the majority's placing of a higher value on the convenience of the woman than on the life of the infant and said, "Whether or not I might agree with that marshalling of values I can in no event join the Court's judgement because I find no constitutional warrant for imposing such an order of priorities on the people and the legislatures of the States."

Those among the readers who agree with the majority's decision in *Roe,* and in the myriad other decisions altering the Constitution to the justices' vision of what it should mean *this* morning as opposed to yesterday afternoon, would be well-advised to consider that a court with the power to create new rights today is a court with the power to abolish ALL rights tomorrow.

In the course of the creative hilarity which reigns at that Supreme tribunal, various "pretended rights" have been conjured-up over the past several decades. The term "pretended rights" is Burke's, and refers to alleged rights which, upon examination, are found to be without foundation, either because they, unlike true rights, carry no attendant *responsibilities* or because they are created in ignorance of the truth that *one person* cannot have a RIGHT to something unless *another person* has a DUTY to provide that something to him. Let us take, for example, the pretended right to welfare. What responsibilities accompany this alleged right? None, we are told. But who has the DUTY to provide this supposed right? Why, the government, comes the answer. But who is that government, and from whence does it derive the monies to fund these welfare schemes? The monies must come from working, taxpaying citizens and, while there is undoubtedly a *moral* responsibility upon us all to give freely to those truly in need, that giving is a virtue only when done voluntarily. But when A and B elect C to take the money of D and then they split it amongst themselves, we have not giving, we have not welfare: we have THEFT. And such organized thievery is the order of the day, freely engaged in by Federal charlatans to buy the votes of the recipients of this "free" Federal welfare. A companion notion to the meretricious nonsense of such pretended rights is the glorious falsehood that Federal officials and judges are somehow more able and zealous to protect the rights of common clods and gringoes like ourselves than are State and local elected officials. Generally, the whole lot of them, Federal and State, know more about looting and pillaging the public treasury than they know about sound administration, but even in that case the local pol and ward-heeler is to be preferred to the unknown and unelected Fed bureaucrat or judge. For a long time the powers-that-be had the citizenry convinced that somehow every party hack who went off to the Federal government was transformed into a Wise Leader, and bedaubed with qualities of enlightenment, and solicitude for the well-being of the average Joe, but recent events illumine the fact that Americanoes are rousing themselves from their stupor and are realizing that they have been had. They have realized that they do not want these Federal busybodies, (some of whom are enthralled with bogus revelations of socio-political tosh and the rest of whom are driven by simple greed), telling local citizens how to run their schools, their businesses, and their lives. They are realizing that the Constitution has been turned into a blank check by the Washington Wizards, and they know now that giving most Federal judges a constitutional provision to interpret is like giving a felon a loaded gun.

Justice Rehnquist was engaged in study while most Americans were yet asleep, dreaming to the lullaby of liberalism. He understands the truth that a law or a Constitution can be viewed in only one of two ways. First, the words mean what they say on their face, and when it is known that the drafters has a particular intent, it is mandatory to follow that intent; as, it is known that the First Amendment only precluded the Federal Government from establishing a national church, and that it had no application at all to the States, some of which had official churches until the 1830's. Similarly, it is indisputable that the framers of the 14th Amendment expressly disclaimed the notion that integrated schools were mandated by its ratification.

Now of course anyone who puts forth such unfashionable views today is branded a racist or a reactionary, or even a "neo-fascist." But in truth, one should oppose loose interpretation of law for the simple reason that the power which can create new "rights" by distorting the Constitution is also a power that can remove those, and *all other* rights. The Founding Fathers wisely limited the role of the National government and left all but a few powers to the States and to the people.

But, say some, times change and the Constitution must keep in line with the enthusiasms of the moment. The answer is that principles and human nature never change, and so the Founders' wisdom in dividing power between three Federal branches, and between the States and the National government, has not become outmoded. Moreover, the Constitution contains provision for its alteration by amendment as the people may see fit, and by leaving most powers in the States, it allows the people to change government as they deem necessary at that closer level.

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NUANCES OF *BROWN*

By M. Varga-Sinka

I did not spend the evening of Nov. 4 in a tuxedo with satin lapels, left arm gently draping the bare shoulders of an Estee Lauder fashion model, sipping a dacquiri, idly listening to the returns or admiring the handiwork of my personal chef who had sculpt a block of cheese in the shape of an elephant. I amused myself by switching from channel to channel, detecting the shock and chagrin of nearly every mediagogue: Bill Moyers visibly gnashed his teeth over the sour grapes he was forced to digest. It was impossible not to smile; one can only imagine what the reaction would have been if a real conservative had been elected. I would personally prefer some combination of Patton, Bismark and Anwar Sadat. Even Margaret Thatcher with her steely determination would be preferable. It does not surprise me that a woman is capable of such strength or vision — throughout history, women have, like their male counterparts, distinguished themselves where they possessed the *will* to do so. Where will exists, there are no equals.

The following morning I was informed by one of my fellow students, an exquisite blonde, that a goodly number of the left-wing, liberal racists and hate-mongers had been relieved of their duties. This was much more pleasant than the election of a moderate conservative. That evening reporters had, with predicatble disdain, begun distinguishing the Moral Majority as one of the groups responsible for the election results. For weeks prior to the election, Norman Lear and a coalition calling itself the People for the American Way had been broadcasting commercials to what must have been the Immoral Minority; "(the Moral Majority) is *not* the American Way." This coalition has already determined what is "American" and . . . un-American. A committee may even be in the offing . . . Such patriotism and concern for our American way of life is the "antidote to extremism" as Senator McGovern said on his fateful election night.

"But George," I would say, handing him a handkerchief made in Havana, "they were merely participating in the political process and you lost. And golly gee-whiz, George, when the Reverend Jesse Jackson and the Reverend William Sloane Coffin and the Reverend Julian Bond and the Reverend (and former Congressperson-being) Bob Drinan and the Reverend Martin Luther King, Jr. and the Reverend Barrigan Brothers stood at their pulpits preachin' the Good News, the Doctrines, the Gospels of Liberalism, miraculously there was no interference of Church and State! These things only happen when a Doctor Jerry Falwell (founder and president of Moral Majority, Inc.) exercises his First Amendment Rights. Then the chorus begins to wail; 'Church n' State . . . (moan, groan) . . . Church n' State.' Stop sniveling George, c'mon where's your self-discipline? Just the other day, the Reverend M. William Howard, president of the National Council of Churches and another advisor to the 'American Way' coalition, said: 'I am disturbed that people who don't agree with Moral Majority's positions are being judged as un-Christian. There is an unnerving similarity between Jerry Falwell and the Ayatollah Khomeini.' Whaddya think, George, Reagan the Shah deposed by Ayatollah Falwell?!"

"Oh my God! We have to form a committee!!" George turned and bounced away before I had a chance to get my handkerchief back and to console him with the news that America's answer to the Ayatollah was one of 100 Americans to receive the prestigious Jabotinsky Centennial Medal from Israel's Prime Minister Menachem Begin on November 11 at the Waldorf-Astoria. George formed a committee anyway . . . sigh.

Such consolation would fall on deaf ears because George and his ilk are Puritans. Their idea of the First Amendment Right was summed up succinctly by one of our more fair-minded professors: "I have the right to my opinion and you have the right to my opinion." What more could one ask for? Well, how about freedom from involuntary, coercive federal fiats such as busing? The self-appointed black misleaders have been in a state of paranoid hysteria (with a little hype from the media) at the idea that "all their work" will go down the tubes, so to speak. This demagoguery is pathetic.

Thurgood Marshall, acting as counsel in the *Brown* cases, asked historians to search the record for evidence on the intent of the framers of the Fourteenth Amendment with respect to school segregation. The attorney warned that "what looked like a 'golden gate' might turn out to be a booby trap with a bomb in it." Justice Marshall's statement displayed an insight which is lacking in most of is opinions. He has been framed by those historians and his own beliefs in the unbreaking elasticity of Consitutional interpretation.

Among the reasons advanced for busing were the following assumptions: that integration is an individual *right* presumably protected by the Constitution, but in any case protected by political morality; that integration is the appropriate *remedy* for past injustice; and that integration is a commanding social goal and the government has the affirmative responsibility to reach integration on that ground.

To the first assumption, statistical correlations cannot be used to adjudicate rights. Those members of the minority or the majority who will have a worse education in an "integrated" school can demand their rights quite rigorously: "For me, an integrated education does not provide the level of educational opportunity to which I am entitled. Therefore, I am entitled to a segregated education." So, do people have by virtue of a general right to an equal educational opportunity a special right to a particular facility that will provide that education only for some of them?

To the second assumption, consider the children whose education will suffer (and *is* suffering) *not* because of integration but because of dislocations and ineffiencies and antagonisms that busing produces. We cannot say busing is restoring him to the position he would have occupied had there been no prior injustice. His new position is worse. It cannot be said that he has in some way benefited by past injustice and therefore he should now suffer. He is not guilty of any wrong. (Benjamin Hooks, Chairman of the NAACP, lamented recently the fact that whites in America no longer feel guilty about past treatment of blacks. It is this guilt which had led so many whites to support programs and many forms of behavior that they would not tolerate if displayed by whites: this is one of the most insidious forms of racism.)

To the third assumption, does the government have the right to discriminate in the general interest? A school district cannot provide a school of one's choice; it provides a school. Court busing orders do not rest on causal hypotheses but on interpretive theory: i.e., there is no alternative. Nonsense. The voucher system provides low-income, inner-city minority group members with the financial help they desperately need to choose alternative education which they obviously want. Freedom of Choice does not exist here; busing-czars make the choice. This tuition tax credit would subsidize the rights of parents to choose their childrens' education. According to a poll taken by the New York Times and CBS News, blacks favor a tuition tax credit by a 60-32 margin. Black "leaders" almost uniformly oppose it. Why? Black leaders do not represent the directions sought by most blacks because black leaders share a social vision common among the white liberal elite with whom their lives are intertwined and from whom they receive the favorable publicity and financial support essential to their roles as black leaders. Much of the black leadership is not in the business of leading blacks but of extracting what they can from whites, and their strategies and rhetoric reflect that orientation.

The great liberal dream of ending racism through forcibly imposed interaction has instead made races more ill-disposed towards each other. Riots, fights, racial taunts and overt hatred are rare. Genuine good feeling is equally rare. Blacks too friendly with whites are ostracized by fellow blacks. When whites are displaced from extracurricular activities they dominated, they withdraw to other organizations from which blacks are subtly excluded and disparage their former activities. Blacks in their communities from which students are bused lament the loss of their school, a source of community pride and cohesion. The implications ought to be clear to the sane and responsible.

Anyone looking for bias, bigotry, discrimination will find it. It can be shown that bigotry of the traditional kinds no longer plays a significant role in the market for jobs. Much of the differences that do exist between black and white incomes have nothing to do with race. It has to do with the median age of the various ethnic groups. Median income will vary as long as median ages vary. Half of the Negroes live in the South, the nation's poorest region. Blacks in New York earn two and one-half times the incomes of blacks in Mississippi, and a third more than blacks in Atlanta. When age and location are held constant, the differences between young black men and white men substantially closes, and blacks are found to earn about 80 percent as much as whites of the same age and location. The gap relates not to discrimination against blacks but to earlier discrimination against their parents and to government-induced dependency and female-headed families. *These* phenomena largely reflect discrimination in favor of blacks by the welfare and poverty program.

All analyses that find high levels of discrimination neglect the fact that creation of female-headed families not only contributes to family poverty, it also tends to explain male poverty. Divorced, separated, and single men

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NEW LEGAL WRITING COURSE

By Karen Kilbane

What is the question being debated in law schools all over the country? It is how to integrate legal research in the curriculum. C-M is once again trying to answer that question. With the help of the Curriculum Committee, Jean Lifter, Assistant Dean for Program Development, is coordinating a six credit legal research and writing course for first year students.

In the past, the Curriculum Committee has tried to come up with a good system for teaching this important course. Many students were dissatisfied last year because they did no research until their Moot Court briefs were due. The research course was part of a substantive course with no standardized method for teaching it.

Anita Morse, Director of the Law Library, was a member of the Curriculum Committee for two years and originally one of the people behind the new legal research course. She admitted there were many changes in the legal research course in the past but feels this "integrated" approach of teaching students legal research as they need it is the answer. "Legal research was a bomb as it existed," she said. "We needed a course with continuity, to be sure all students received the same knowledge. If you don't know how to communicate the law, you'll never be a lawyer." Morse plans to produce legal bibliography video cassettes and hopes to bring a computer-assisted legal bibliography program to C-M within the next year.

Lifter hired instructors specifically to teach the small sections of the writing course to allow one on one critique. Associate Law Librarian, Nick Pope, teaches the legal bibliography section. Pope says, "Some books are remarkably inefficient. I'm trying to teach the least inefficient way of using them."

The writing instructors, Professor Landever, Deborah Klein, Marcia Meckler, Pope and Lifter meet weekly to discuss the program and adjust the sequence of assignments. There are three adjunct instructors, Janet Kronenberg, Leslie Brooks and Bruce Rinker to teach the evening writing sections. Each instructor is developing the same skills at the same pace, although their assignments may differ.

The first quarter was mainly a concentration on writing and legal analysis with no research assignments, although students received basic bibliography materials. Second quarter, students will combine their research skills with writing assignments and third quarter will be the standard Moot Court oral advocacy experience and writing an appellate brief.

Lifter takes the credit (or the blame) for the subject matter of the first quarter assignments. As she explains, "Zoning lends itself to the kind of analysis you'll have to do in law school. There is value in seeing how a point of law develops." She feels the assignments have already shown much improvement and hopes to expand legal writing offerings in upper level courses.

Advice to the Law-Lorn by Senator Teddy

Dear Senator Teddy,

I was shocked and concerned by your reply, in the last number of the Gavel, to the Cleveland-Marshall student concerning the desirability of multi-pocketed suits in which to conceal small liquor bottles on your person. Tell me, is drinking in Congress really *that* much of a problem?

Billy Carter

Dear Gas-jockey,

In actual fact, drinking in Congress is really a small problem. The only difficulty seems to be in getting the stuff onto the Floor (which is why I recommend many-pocketed garments). Other than that, I have never known a single Senator or Congress-person who had a problem with drinking; most of them do it with the greatest of ease, and often unquenchably.

Incidentally, now that you'll be going back into the gasoline-station business, how about taking a look under the hood. I think I'm a fifth low . . . I mean a QUART . . . of oil, that is.

Dear Senator Teddy,

This recent Republican landslide has me all in a tizzy. I mean, my committee chairmanship is lost, and who will be watch-dog of the public treasury now? I have diligently worked to expose hundreds, and sometimes even thousands of dollars of government waste of the tax-payers' money by those who sup at the public trough. You may recall, for example, my exposing of the excessive use of limousines by Federal officials a few years back. Who will carry on this crucial work now?

Senator William Proxmire.

Dear Senator Quagmire (hee-hee),

The trouble with you is, you've never understood "reform politics," the very essence of which IS SUPPING at the public trough, and supping well. The secret of "reform politics" is to tax as much of the working people's money as possible, and then to create reform programs in welfare, public housing, propping-up useless companies and creating vast new bureaucracies so that you thereby "buy" enough votes to win re-election. An added feature is that government "administrators" and "experts" skim the cream of the top of these programs in generous salaries and fringe benefits, while there are plenty of valuable contracts and consulting-firm fees for the "reform" politician to distribute to his cronies and law partners.

Further, if you throw in enough behavioral "science" gibberish about "downtrodden minorities," and liberal theology about rendering EVERYTHING to Ceasar, as well as voodoo economics about deficit-spending as the way to prosperity, why then you can even transform the parsimonious taxpayer himself in an eager chump, ready to let the Feds strip him clean in the name of "progress," "equality" and "social conscience." All of which is not to say that PRIVATE acts of charity and compassion are not commendable, but the problem with that is, WE don't get the largest cut! (Although there are disquieting evidences that the taxpayer is wakening from the sleep we had lulled him to.)

Limos are just one part of this progressive package. Besides, the harried civil servant such as yourself and me, is too burdened with cosmic concerns to have the time to trouble over traffic lights and school zones. In fact, chauffered limos may even be a necessity to the public safety! I have heard more than one individual say that, were I personally to get behind the wheel each morning and attempt to navigate the highways, they would remove their children from the public schools rather than let them venture forth on sidewalks or in schoolhouses anywhere in the vicinage of the route that I would be taking.

I suspect, however, that you are not entirely free of the "reformist" zeal yourself, Senator Proxmire. You may point-out waste in the hundreds of dollars, but never pause over the BILLIONS that are the REAL source of our livlihood. In fact, I haven't noticed you voting (at those few Senate votes at which I have been present over the years) AGAINST Federal dams, "jobs" programs, bureaucracies or other lucrative boondoggles destined for YOUR home territory. You, Senator Proxmire, are a pious fraud. Isn't it time you came out in the open like the rest of us? Hop on the band-wagon, (as we dodge the paddy-wagon!).

HOUSE DIVIDED

By John R. Keys

The Ohio Legislature will meet in Columbus on January 5 to open a new law-making session that will run to the end of 1982. At this point there are more unknown than clearly established factors regarding leadership, committee chairmanships, policies and substance of new laws to be enacted. Some items have already been decided but the majority of unknowns are just that.

However, we won't have to wait too long to determine the course of the state legislature, both generally and specifically. Much will be decided as early as January, and quite a bit by July of 1981.

Before getting into some of the specifics established and some of the conjectures to be made, some history is in order.

Since Ohio achieved statehood and set up its government back in 1804, this state has largely been run by representatives of the Republican Party. Most of our governors and other state-elected officials have sprung from the GOP, as have the majority of local officials and our representatives elected to serve in the federal government. Similarly, the Ohio Legislature has been run, with few exceptions, by Republicans. The Democrats were always a part of the Legislature but the burning question of times past usually centered around how many seats the Minority Party would retain in the House and Senate. The Democrats have rarely been in a position of power in Columbus.

Things changed somewhat during the Great Depression. F.D.R. ran things in Washington for 12 consecutive years. Democrats made gains not only in the U.S. Congress but in the state and local governments as well. It is not necessary to discuss here the important factors behind this trend; the reasons will long be debated.

Despite Democratic gains in the Ohio Legislature, the Republicans continued to control, for the most part, until 1972. In November of that year, the Democrats made election gains which put them in the Majority in the House the following January.

The primary, though certainly not the only, reason power changed hands reverts back to 1970. In that year Ohioans elected Democrats John Gilligan and Joe Ferguson as Governor and Auditor, respectively. That was significant to the Legislature because under the Ohio Constitution the state legislative districts are redrawn, according to population changes, following each Census. The Apportionment Board, which decides how the boundaries are redrawn, consists of five members. They are the Governor, Auditor and Secretary of State and two members of the Legislature, one Republican and one Democrat.

The election of Gilligan and Ferguson assured the Democrats of a majority on the Apportionment Board. The districts were drawn up largely to suit the Democrats, and their actions were successful. Democrats controlled the House from 1973-1980 and the Senate from 1975 until the end of this year.

In 1972, Democrats won 54 of the 99 House seats and in January of 1973 they voted A.G. Lancione in as Speaker. The following election the Majority was increased to 59 seats and Vern Riffe subsequently wrestled the Speaker's chair from Lancione. Democrats gained again in 1976, winning 62 seats and leaving the GOP with only 37. The Democrats retained their 62 seats in 1978.

The Democratic Party made a similar turnaround in the Senate, taking control following the 1974 election when they won 19 seats to 14 for the Republicans. It was the first time in decades that the Democrats controlled both houses of the state legislature. 1974 also gave rise to the emergence of Oliver Ocasek (D-Northfield), previously the Assistant Minority Leader, who emerged victorious in the party caucus over the then Minority Leader Anthony Calabrese of Lyndhurst. So Ocasek became the chief spokesman for the Dems starting in 1975, and more importantly, controlled all Senate operations, both large and small.

Democrat Majority seats swelled to 21 in the Senate following the 1976 election, with Ocasek still in control. With a 21-12 majority in the Senate and a 62-37 majority in the House, the Democrats were in their heyday. Only the vetoes of Governor James Rhodes and the occasional disenchantment of Democratic Senators inhibited the Democrats from pushing legislation through at will. Riffe kept a fairly firm grip on his caucus in the House but Ocasek did not have as much success with the Senate Democratic caucus, and thus, despite the clear majorities, one could never be sure which bills would be enacted and forwarded to Gov. Rhodes.

In 1978 the D's retained their 62 seats in the House, as mentioned, but in the Senate the Democrats did not fare as well, losing three seats, and their Majority dwindled to 18-15. Ocasek was again elected leader by the Democratic Caucus, but the Republican leadership changed hands. Minority Leader Mike Maloney vacated his seat to run for (and win) election as a Hamilton County Commissioner. GOP senators then chose Paul Gillmor (Port Clinton) as Minority Leader.

Which brings us to 1980.

A significant year for the Republicans, they won the U.S. Presidency, several governorships and captured majorities in the numerous state legislatures, including Ohio. In Columbus the Democrats will remain in the Majority in the House, despite losing six seats, and our new House of Representatives will include 56 Democrats and 43 Republicans.

The GOP fared even better in the State Senate, going into the election down 18-15 and emerging with a 18-15 Majority by adding three new members in the process of unseating four Democratic incumbents. Losers included dean of Senate Democrats Calabrese and also John Mahoney (Springfield), Kinsey Milleson (Freeport) and Jerry Stano (Parma). The long GOP incumbent to go down was Dick Ditto of Lima, replaced by Mike DeWine (D-Cedarville).

Changes in the leadership of both parties have occurred, and more are expected.

Riffe (D-New Boston) will continue as Speaker of the House and Speaker Pro Tem Barney Quilter (Toledo), Majority Leader Bill Mallory (Cincinnati) and Asst. Majority Floor Leader Vern Cook (Cuyahoga Falls) are expected to be re-elected by the Democratic caucus. By a 26-24 vote Majority Whip Francine Panehal (Cleveland) was ousted by veteran Art Wilkowski of Toledo. There may be some switching around but by virtue of their majority the Democrats will retain all committee chairmanships in the House.

On the other side of the aisle, Republicans gave a vote of confidence to moderate Minority Leader Corwin Nixon (Lebanon), but partisan conservatives Bill Batchelder (Medina), the Asst. Minority Leader, and Donna Pope (Parma), the Minority Whip, were dethroned by the Republican caucus and replaced by moderates Ben Rose (Lima) and Helen Fix (Cincinnati), respectively. Rose, who was defeated by Batchelder for the same position in January of 1979, is probably the key GOP member of the House, having served as Ranking Minority Member of the important Finance-Appropriations Committee.

Over in the Senate the Republican leadership will carry over into the new session, but this time in the Majority. Gillmor will serve as President of the Senate and Stanley Aronoff as Asst. President Pro Tempore. Possibly the key GOP member is Tom Van Meter of Ashland. He will serve as President Pro Tempore under Gillmor and is likely to chair either the Senate Rules or the Finance Committee. Highly partisan and conservative, Van Meter was the top GOP campaigner and fundraiser. Not up for election until 1982, Van Meter spent much of 1980 travelling the state criticizing Democrat incumbents and trumping up Republican candidates successfully.

It is still undetermined but it appears that Ocasek will not continue as Minority Leader. The Democrats held an informal caucus in November to determine the new Senate Minority leadership. Ocasek and six supporters did not attend but eight Democrats did, declaring intentions to replace Ocasek with Harry Meshel (Youngstown), who currently serves as Chairman of the Senate Finance Committee and is Asst. President Pro Tempore under Ocasek.

According to Senate rules Ocasek is to call to order the formal Democratic caucus to re-organize for the new session. If he does not do so in December, the Democrats must caucus when the Senate convenes January 5, and the issue will then be decided. If Ocasek goes down so does Pro Tempore Morris Jackson of Cleveland. Meshel's minority leadership slate, if successful, will include Neal Zimmers (Dayton) and Charles Butts (Cleveland).

Regardless of the maneuvers for leadership in the Senate Minority, one thing is certain. All Senate committees will be chaired by Republicans in the new session and it will be the GOP which will set Senate policy and decide which bills will be sent over to the House. The Senate Majority will also be in a position to either move or kill Democrat bills sent over from the House. In the House the recent status quo is maintained, though marginally, but in the Senate it's a whole new ballgame.

It is also possible that the GOP rule in the Senate may be short-lived. The Apportionment Board, again controlled by Democrats, will convene in August of 1981 to begin re-districting, and the result could be a new Democratic majority in the state senate in 1983 or 1985, especially if Ohio finances are not straightened out or if Ronald Reagan proves a disappointment as President, or both.

In the interim, House Democrats and Senate Republicans must come up with solutions to keeping the state afloat during a recession, in addition the the never-ending problem of fair and adequate state funding for local schools. The GOP has already pledged to move quickly on legislation renewing the state's death penalty and revising Ohio's products liability laws, issues which have been stalled in the Senate by Ocasek, who opposes both.

(continued on p. 9)

Moot Court Night

By Fran Allegra

Two teams from Cleveland-Marshall fared well in the recent Detroit regional of the National Moot Court Competition held during the week of November 9th. In all, twenty-six moot court teams from thirteen Ohio and Michigan law schools particpated. Each of these teams argued both sides of an issue dealing with securities law.

The Cleveland State team of Tom Peterson, Carol Dillon Horvath and Mary Lee Pilla reached the quarterfinals of the regional. Their final ranking placed them in the top eight teams in the region. The other Cleveland State team consisted of Dave Grunenwald, Barbara Lach, and Charles Glasrud.

Preparation for the competition began back in the summer and culminated at the Fall Moot Court night where the two Cleveland State teams argued against each other before a bench that included Judge Anthony Celebrezze of the Federal Sixth Circuit Court of Appeals, Judge John Manos of the U.S. District Court for the Northern District of Ohio and Judge Burt Griffen of the Ohio Common Pleas Court.

Moot Court advisor Professor Bob Catz felt that this year's showing was one of the school's best efforts at the Nationals.

Cleveland-Marshall teams have already begun preparation for the upcoming Niagara International Cup Competition, the Trial Competition, and the Patent Law Competition.

THE HONEYMOONERS

. . . The Continuing Crisis .

. . . The Winds of Reaction are gusting strongly across the land, as the American People select the Feared Reagan as their new Exalted Leader . . . Bill Moyers, Harriet Van Horne and others of the cultural illuminati descry the new Radicalism sweeping the Great Republic: not the Sweet and Innocent Radicalism of the '60's New Left, but the Rightist sort that eats little children . . . the Night-Riders of the Right captured the Senate as well, endangering the passage of the Salt II treaty with our Soviet friends . . . moreover, ultra-Conservatives gained sufficient additional State legislatures to seal the fate of the Equal Rights Amendment . . . truly, a new Dark Age is upon us . . . Americans who longed for Federal schools, Federal energy "production." Federal "work" programs and more Federal court regulation of our every-day lives will have to content themselves for a time with admiring the mystifying and celebrated efficiency of the Federal Post-Office department, one of the few government agencies Concerned Citizens expect to survive the Rightist attack . . . then too, Concerned Citizens can always moon over the past glories of Total Government Control found in Herr Hitler's Germany, Mussolini's Italy and other such Socialist fairylands of joy . . . meanwhile, the Soviet pacification of Afghanistan marches on, as Russian scientists launch poison gas and disease-germ weapons, undoubtedly in self-defense against the dreaded horse-riding Afghan rebels, who tote dangerous 1914-vintage British rifles in many instances . . . in the Socialist homeland itself, the Russian people recently celebrated the 62nd anniversary of the Revolution. And although most of them would *like* to celebrate by restoring the Tsar to his rightful throne, they instead took in the usual spectacle of Warden Brezhnev smiling down from atop the Kremlin while below, in the street, missiles, tanks and other consumer goods produced by the bounteous Soviet economy rumbled by . . . back in the decadent West, twin disasters united as the new automobile models and the new television season were simultaneously unveiled to a bedazzled and beknighted citizenry. The "new" automobiles resemble those of the immediately past year in every category except price, this latter having been catapulted to dizzying new heights by labor costs, government-created inflation, and the other ills which beset this Supermarket Republic . . . as for the new extravaganza of cheap promiscuity, cheap set design, and even cheaper cut-rate script writing cavalcading across the television screen this season, leading students of sociology begin to wonder whether moral bankruptcy is created by, or merely fostered and pandered to by the Heathens of Hollywood. What is beyond peradventure, however, is that Americans basking in the gentle glow of their television sets are being treated to an increasingly stimulating spectacle. Chastity has become as rare on television as sobriety in Washington D.C. . . . and the parameters of the First Amendment, as well as the boundaries of bad taste, continue to balloon to new dimensions as advertisers eager to palm off as High Fashion those denim garments (which self-respecting farmers considered undignified for any activity other than slopping hogs), focus their cameras in upon interesting, but hitherto only furtively examined aspects of the feminine form . . . legal scholars ponder whether or not good effect might result from enforcement of ancient peeping-Tom statutes . . . and all the Land is in a pother about an assault upon a fictitious oil-baron, indeed the tumult has exceeded by leaps and bounds any expression of public interest with regard to our fellow-creatures in Afghanistan as they are bombarded and bazooka-ed into oblivion by the Soviet peace forces . . . but then, this is only meet and fitting, as five years ago the American populace was too occupied with the now-fading Fonzie to fret much for the two million Cambodians then being summarily dispatched to their ultimate reward by Communist reformers . . . and in the Capital City, el Supremo Court proscribes the posting of the Ten Commandments in the schoolroom, as the crisis continues . . .

The Grand Rhenquisitioner?

By Cal Eyman

As Ronald Reagan begins his Presidency, another conservative will be beginning his tenth year on the United States Supreme Court. Associate Justice William Hubbs Rehnquist has been characterized as a "judicial mastadon" — a character that supposedly started to die in the 1930's and became extinct by the mid-1960's. With five members of the Supreme Court in their 70's and three in their 60's, Rehnquist, the youngest justice at 56, may find himself joined in the next few years by conservative appointees of Mr. Reagan. When the editors of *The Gavel* asked me to research some of the non-judicial aspects of Mr. Rehnquist's life, I was surprised to find out that Mr. Rehnquist was not a mastadon which fell over and died during the coming of the ice age. Outside the courtroom Justice Rehnquist is, by most sources, portrayed as a rather informal, friendly individual. The following will serve to illustrate Mr. Rehnquist's personality.

Justice Rehnquist tries to answer as much of his mail as he personally can. Most of the members of the Court have personal assistants who answer the mail for them. The letters that I have read from Mr. Rehnquist are warm and very cordial. I just wish his signature was more legible!

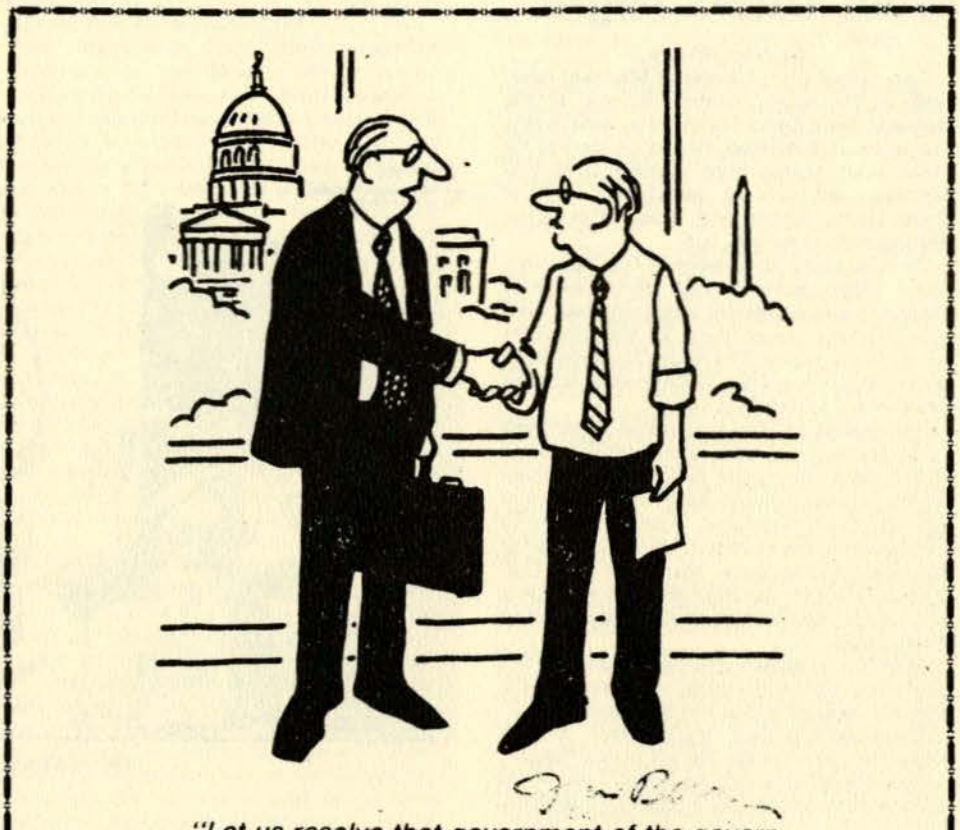
He has tried to make the people who work at the Court more relaxed when dealing with him. He reportedly knows every employee's name and is considered by most of the employees to be a person they can talk to. Once the Chief Justice removed the folding chairs from the guards' stations because a visitor was caught roaming the Justice's hallway. The guards appealed to Rehnquist and he got the chief to have the folding chairs returned to the guard stations.

Since he has been on the Court, Rehnquist has suggested that the Justices and their law clerks be allowed to share a lounge and that the clerks be allowed to eat with the Justices in the Justices' Dining Room instead of in the Court's cafeteria. Both suggestions were rejected. He has also proposed that the clerks and Justices get together, informally, once a week over coffee and tea. That proposal was also turned down. Perhaps the other members of the Court thought that they would not get enough work done if they did stop and kibbitz once a week over tea and coffee. Justice Rehnquist was successful with one proposal — he did get a ping-pong table for the Court!

Mr. Rehnquist is fond of apple juice and is known to keep a whiskey glass of the amber liquid on his desk from time to time. The Justice rarely enlightens astonished visitors as he drinks the whole contents of the glass. I guess some people in Washington believe that Mr. Rehnquist *likes* his bourbon!

Justice Rehnquist's informality has even been known to extend to the Justices' weekly conference where they decide the cases before them. He has been known to wear a softball team T-shirt to conferences as well as peruse the *National Lampoon*.

So, despite the chill a Rehnquist decision may have for some, no one has complained about the friendly, personal side of this man — a man who will probably be on the Court for some time to come.



"Let us resolve that government of the government, by the government and for the government shall not perish from the earth."

By Karen Kilbane

The SBA-sponsored Book Exchange grossed over $1000, according to its coordinator, Dave Kemme.

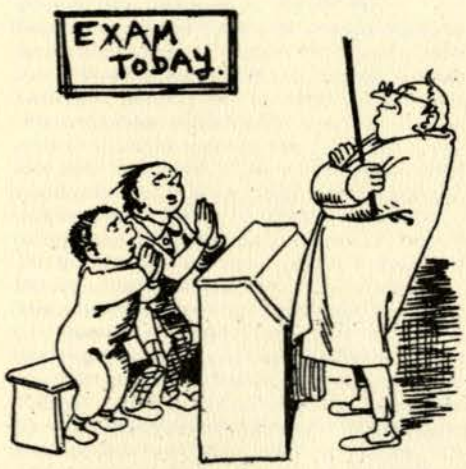
The Exchange, intiated in 1979 as a service to students, provides competitive prices with the bookstore. "The more books we have, the more competitive our prices are. We needed more books this year. We sold everything we had," said Kemme.

First year books were sold out during Orientation. Kemme collected more from other students. The only problem he encountered was a lack of room to store books. Rick Marco, of Law Review, Charlie Glasrud and Mr. Greenwood of Moot Court, cooperated by letting Kemme use their conference room.

SBA retains 10 percent of the market price of each book. In the past, the money was divided among student organizations who helped at the Exchange. The money will be used this year to buy bookshelves and improve the Winter Quarter Exchange.

Henry Hilow, SBA president, says that participating in the Exchange must become a matter of habit. "The key is to make it convenient for the students. Near the end of every quarter, students should check the SBA board for Book Exchange information."

Students whose books were not used this quarter can pick them up by checking the board for the place and time.



Why is there always a secret singing
When a lawyer cashes in?
Why does a hearse horse snicker
Hauling a lawyer away?

Carl Sandburg

Continued from page 4

of all races work 20 percent fewer hours than married men, and even with the same age and credentials bachelors earn less than 60 percent as much money as husbands and about the same amounts as single women. There are proportionately twice as many black as white single men. If differences are corrected for marital status, the gap between earnings of black and white males of truly comparable family background and credentials completely disappears. In addition, there is very little evidence that black women suffer any discrimination at all, let alone in double doses. College-educated and professional black women earn 125 percent as much as their white counterparts and this is *without* correcting for quality differences in years of education. Across the entire economy, black female workers tend to earn about as much as whites and are more likely to have jobs and work hard in them.

Black misleaders are oriented toward the Federal Government as the source of all progress, toward racism (except their own) as the root of all evil, and toward secure government-funded make-work projects and away from the risk-taking and enterprise that is the source of most wealth. This fits in fine with the secret fear lurking in every confident liberal heart: blacks cannot prevail in a truly free competition. They are enslaved to the federal bureaucracy and they are enslaved to the intellectual crutches of busing, affirmative action, expanded welfare, Equal Employment Opportunity suits, and all the other well-intentioned fascist schemes that plague this republic. The secret fear is insidious; it betrays the true feelings of the liberal mandarins who know what you and I have to do to make this a better world for them to live in. better world for them to live in.

Criticism — in particular criticism which can be substantiated (the worst and most irritating!) — of these sacred, established tenets of Liberalism is the exposure of oneself to attacks of being insensitive, an Uncle Tom if one is black, reactionary, and racist. The only way to deal with such comments and such individuals is to keep in mind who has sold out and at what cost — at the cost of their very souls.

Continued from page 6

But the immediate problem is money. Under the Ohio Constitution the state is not permitted to end the biennium in June of 1981 with a deficit. Revenues are currently running a $403 million deficit, despite spending cuts already instituted. More cuts are expected, in addition to higher taxes, probably in the form of an increased sales tax.

In addition to solving immediate shortages, legislators will be faced with holding hearings on and passing a new budget bill by July 1 for the next biennium. The bill will start in the House and probably be sent over to the Senate early in May. If the House budget bill goes beyond predicted revenues, the Senate Finance Committee, to be controlled by the Republicans, will have the unenviable task of cutting back.

Higher education is shouldering much of the burden of the recently installed spending cuts. Unless the state's economy, especially the auto, steel and construction industries, make a sharp upward turn in the near future, which is not anticipated, financial woes will continue.

Among other things, tuition charges at all Ohio state-supported colleges and universities are expected to increase, despite continued efforts by the various Boards of Trustees to hold the line. The immediate outlook is bleak indeed, and it will be interesting to see how our elected state legislators, both Democratic and Republican, meet the challenge in the new legislative session.

Continued from page 3

The fact is, however, that some folks just don't like democracy, and given half a chance, will reinterpret the Constitution judicially and do it in such a manner as to give ALL power to the Federal government, with themselves manning the controls in Washington. THESE people are the REAL "neo-fascists." They're not content to leave the people to decide their own affairs through State government, local council, and private or church groups. Indeed not. For the real money and power of government begin to flow when authority is *centralized*. And since the Constitution forbids such centralization, and since the people would never vote for it as an amendment, why then the simplest way to accomplish it is through "re-interpretation" of the Constitution.

Justice Rehnquist opposes such consolidation of power into the greedy hands of the Peerless Leaders of the Potomac. The American people would seem to agree with him, as they have voted in the past four presidential elections for candidates pledged to reduce Federal power, spending, and taxes. So far, none of the candidates has quite been candid. For in that time, Federal spending has skyrocketed from 100 billions to over 650 billions of dollars per year, all of which comes from our collective pockets. And although the latest president-elect gives every indication of the intention to betray the platform, principles and promises upon which he was elected, still the prospect of forthcoming appointments to the Supreme Court allows one to indulge at least the sanguine hope that ere too long, Justice Rehnquist will be the author of *majority* opinions, rather than the scholarly preparer of unheeded dissents.

THE FEMININE MYSTIQUE

By Lise Hickey

Locals take note: in honor of Ronald Reagan's victory Nov. 4, an unemployed June grad of Cleveland-Marshall has announced he will operate a Lake Erie evacuation ferry to Canada for those of us who barely survived the reign of that sweetheart-of-a-felon Tricky Dick and cannot face four years of Death Valley Days, iron wills notwithstanding.

O.K., O.K., Reagan even appears to be a fairly "nice" man (whatever that means) despite persistent proofs that he has suffered extensive brain damage due to excessive use of Grecian Formula. But it should be obvious to even the most dimwitted of the electorate which voted for him that Ron is not in truth "the big gun" — no, Nancy is the power behind the throne-to-be and beneath that demure smile lie the fangs of a barricuda.

It's not that Nancy Reagan is a person of small and uncharitable spirit; it's just that she has a difficult, if not impossible time understanding anyone who isn't the pampered, debutante daughter of a successful neurosurgeon as she was. Except for this somewhat minor limitation in her human beingness, Nancy has the "sensitivity of a g.d. toilet seat," with apologies to Golden Cowfield, access to which she denied two unfortunate politicians' wives at a Reagan shindig.

Picture the scene: Governor Ron is hosting a get-together at the sprawling Reagan ranch. "Mommy" has dressed him in his party clothes and warned him not to get dirty. Soon the guests began arriving. Now they were decidedly not off-the-street rif-raf'— Oh, my dear, no, they were the creme de creme of conservative Californian politics, undoubtedly solid right-wingers with a sprinkling of neo-Fascists for good measure.

As the soiree progressed, a couple of wives were wandering around the grounds and stumbled upon the main house. After oohing and aahing over Nancy's tastefully decorated home, they attempted to use one of Nancy's tastefully decorated bathrooms. What temerity you say. So did Nancy. She discovered the interlopers in the nick of time, before their brazen attempt to use her facilities was successful. Nancy rightfully banished them from the house and into the portable outhouses on the grounds.

How's that for a revealing glimpse of Nancy and her priorities? Can you imagine throwing a party and having an apoplexy when the guests try to use the bathroom? Really Nancy, loosen up a little — those women had solid credentials — conservative Republican husbands. I'm certain they wouldn't have pinched the hand soap.

Then there is Nancy's sense of humor, proof of which has yet to be discovered. Woe be to the person or even celebrity (as Johnny Carson discovered) who takes a humorous swipe at old Ron. Nancy finds nothing at all funny about her hubby though I'm sure he'll be a million and one laughs. One may believe that since Ron is going to be the Main Man for at least the next four years, he is eminently fair game for all types of criticism, serious and humorous. But Mommy will broach no raised eyebrows in Ronny's direction. So we'd all better be pretty careful of what we say lest Nancy reinstitute a favorite Nixonism method for dealing with critics — the White House hit hist.

Oh, well. I hear Toronto is lovely this time of year.

IN DEFENSE OF THE 'LITMUS TEST'

(Prof. Irving Younger was the first guest lecturer for The Cleveland-Marshall Fund Enrichment Program this year. This article is reprinted with permission from National Review, 150 E. 35th Street, N.Y., N.Y. 10016. Subscription rate: $24.00 a year for 26 issues.)

By Irving Younger

The judicial plank of this year's Republican Platform, commiting the GOP to work the appointment of judges "who respect traditional family values and the sanctity of innocent human life," has met with expressions of horror. It unbottles an ideological sorting demon, the denunciation goes, separating those worthy of judicial office in a Reagan Administration from those unworthy, not on the ground of merit but of belief. Since the plank was approved by a large majority of the Convention, there must be people willing to defend it. So far, though, they've been tongue-tied. Unless they snap out of it, the attack will succeed by default, leaving the Republican Party embarrassed by its apparent affront to the independence of the federal judiciary.

That would be regrettable. The judicial plank of the Republican Platform is too important to pass over in silence. If Republicans won't speak up for it, let a Democrat — a Democrat, morever, who thinks the Supreme Court decided the abortion cases correctly.

Questions of governmental power, economic entitlement, and social prerogative are the stuff of politics. In some countries, those questions are settled by parliamentary debate, in others by the bayonet. In the United States, uniquely, they are turned into legal questions which lawyers argue and judges answer. Alexis de Tocqueville, the most prescient of all students of America, first pointed this out 145 years ago: in the United States "judicial authority (is) invoked in almost every political context."

Mere technical ability is therefore only a part of the intellectual equipment an American lawyer or judge needs. Certainly he must know how to analyze a problem and look up precedents. But when a case involves a constitutional point — whether this satisfies due process or that violates equal protection — something more is necessary. To quote Learned Hand, "it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon, and Carlyle, with Homer, Dante, Shakespeare, and Milton, with Machiavelli, Montaigne, and Rabelais, with Plato, Bacon, Hume, and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly anything he will."

Where a judge is powerless to declare a statute unconstitutional, where the meaning of the constitution is determined by the legislature rather than the judiciary, where "public interest" litigation is unknown, as in England, there judges will be selected strictly on the basis of technical ability, usually measured by success in practice. In the United States, however, given the political nature of the decisions a federal judge is called upon to make, it is entirely proper that professional competence should never be the sole criterion for appointment to the federal judiciary. For a President not to insist upon some assurance of ideological congeniality in a prospective federal judge would be inconsistent with the true nature of federal judical power.

Hence, candidates for appointment to the federal bench must and ought to be politically acceptable to the President who nominates and Senate which confirms them. At a minimum, Presidents look to a candidates party affiliation. With minor exceptions (also attributable to political considerations), Democrats put Democrats on the bench and Republicans Republicans. *Marbury v. Madison* itself was the consequence of President Adams' determination to fill all judicial vacancies before President Jefferson took office. President Theodore Roosevelt appointed Oliver Wendell Holmes Jr. to the Supreme Court because, he mistakenly thought, Holmes believed in busting trusts.

President Carter's policy on the federal judiciary, publicly stated by Attorneys General Bell and Civiletti, is to appoint "qualified" women, blacks, Hispanics, etc. The policy is not to appoint simply those persons who are best qualified (however their qualifications are weighed). It is to appoint women, blacks, Hispanics, etc., because they are women, blacks, Hispanics, etc., so long as they possess the ability to do the job. This policy of "democratizing" the federal judiciary, of making it more representative of the people, finds its explanation in the close and direct relationship between the work of a federal judge and the great questions of politics. The Carter Administration has appointed to federal judicial office many more women, blacks, Hispanics, etc., than its predecessors, and there has been no outcry, no excoriation, no claim of unseemly politicization of the bench. Rightly so. What the Carter Administration has done is dictated by the special role of the federal judiciary in American democracy.

It is precisely the special role of the federal judiciary in American democracy which justifies the Republican Platform's judicial plank. If the Republican Party believes the Constitution should be interpreted to allow a state legislature to proscribe abortion, of course the Republican Party should pledge itself to try to get people onto the Supreme Court who believe the same thing. As *Brown v. Board of Education* overruled *Plessy v. Ferguson*, so *Roe v. Wade* can someday be overruled. All it takes is five votes out of nine. Nothing about it is illegal, unpatriotic, ignorant, or insulting. Quite the contrary. It is in line with the way American government has worked from the start.

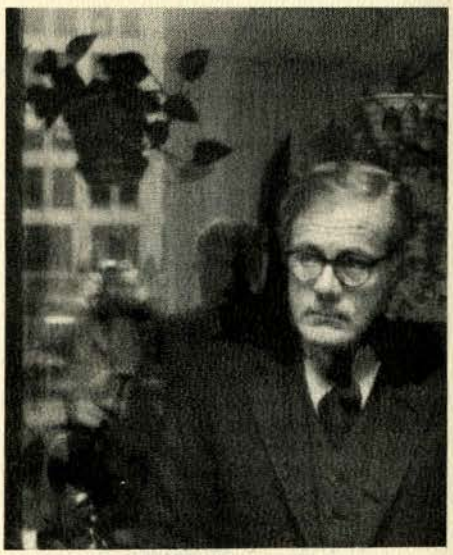
Any open-eyed observer will see that federal judicial authority and American politics deal with much the same thing. What is noteworthy about the Republican plank is the explicitness with which it recognizes the overlap. In its honesty the plank may have a significance beyond the 1980 election. It may portend a solution to perhaps the most troublesome riddle of our public life.

Federal judges administer prisons and run school systems. They tell state welfare commissioners what they must do and federal officials what they may not. Federal judges are arguably the most powerful group of men and women in America. The problem has been to explain the legitimacy of this enormous development of federal judicial authority in a Republic which lodges sovereignty in "we the people" and vindicates its policies on election day. The people do not directly participate in the appointment of federal judges. Federal judges hold their commissions for life. They are answerable only to judges of a higher court. If they are judges of the highest court, they are answerable only to themselves. These are the hallmarks of tyranny, not democracy. How can the federal judiciary be made to fit any coherent philosophy of American government?

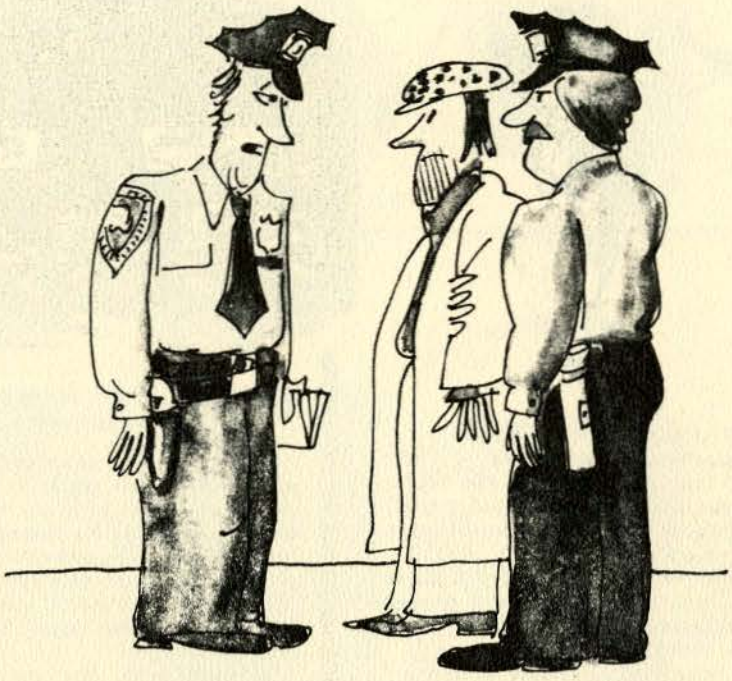
The answer may be the answer suggested by the Republican Platform's judicial plank. Since the decisions the country asks federal judges to make are at bottom political decisions, the people's representatives ought to examine the beliefs, political and otherwise, of those under consideration. When a candidate's appointment and confirmation are informed by the disclosure of his views on the great questions of politics likely to come before him, his later decisions giving effect to those views will be quickened by the people's consent — which is what we mean when we say that we govern ourselves.

In principle, then, the Republican judical plank is altogether defensible. Whether the particular issues the plank mentions were wisely chosen and whether the position espoused is the prudent one are another story. It is on the particulars, not the principle, that this Democrat would vote against the plank. Asked what he prefers in its place, he offers the following:

We pledge ourselves to work for the appointment to the federal judiciary of men and women who are able lawyers and who possess breadth of learning, the habit of candor, and a sense of the tears and laughter of things, not excluding themselves.



(An article on Prof. Younger by Ken Callahan will be found on page 12.)



P. Steiner

"First I'm going to read you your rights, then I'm going to read you a brief passage from 'The Merchant of Venice.'"

STILLER MORGAN

By Laubenthal

"Guten Morgan," was the muffled greeting uttered awkwardly by each German I student as he slipped into the classroom at 8 a.m. each morning. Standing at the doorway, Dr. Koch would not, smile and reply: "Guten Morgan, Herr Frank; Guten Morgan, Frau Dyke." Occasionally, Dr. Koch would ask in German: "How are you today" or "How do you like this weather?" But the response was usually a form of blank look or embarrassed shrug of the shoulders.

Most of the students were music majors; others, like myself, needed German for graduate school. I didn't know anyone who registered in the course for the sole purpose of learning German.

We all had one characteristic in common: we found German I difficult — especially me. Dr. Koch, however, was very kind. He said my problems stemmed from the fact that I was ten years older than the other college students.

"A second language is best learned when one is very young. Every year older than twelve adds difficulty to the process."

"Why didn't someone tell me that when I was ten," I wondered," instead of thirty."

Dr. Koch was a highly revered linguist; a robust man with meticulously trimmed white hair. He was always so finely groomed, well-dressed, punctual and prepared that he unwittingly made us feel uneasy. That is, he obviously went to a great deal of trouble for us, respected us; whereas we only came to class so that someday we could become a choral director, opera singer or philosophy professor with, probably, no recollection of the German he took so much care in imparting.

Fall quarter was almost over and, by now the class had grown quite close — the way small groups do, when they share a difficult situation together. My best "class friend" was a big red-headed boy whose ambition was to revive the oratorio to popularity, and then, produce his own compositions of that genre.

"You may pass your homework assignments to the front of the room. We won't review them today, to allow time for something special."

Over the rustle of papers, he asked: "Fraulein Crocker, would you be so kind as to accompany us on the piano?"

Though not sure what Dr. Koch had in mind, some boys pulled the piano out of the corner. We pushed our desks together to make room. Celeste sat at the piano, and when the noisy re-arranging was accomplished, Dr. Koch handed out booklets of Christmas carols translated into German. With many reservations, we proceeded to sing.

I looked about the room. The desks looked like dishevelled bricks held together with a mortar made of bulky coats, woolen scarves, mittens, knit caps, bulging knapsacks, paperbacks, notebooks, loose papers and shiny wet boots. The little pools of water surrounding each student's feet were beginning to expand, to join other pools. Except for these constantly modulating rivulets, our composition looked permanently fixed.

As I watched Dr. Koch lead his pleased, though inarticulate chorus, I thought of his great experience. He had led a diversified action-packed life; he had lived all over the world and, now, here he was with us, at Baldwin-Wallace College in Ohio — leading Christmas carols. One time a student asked him what he had done during the war. He had interrogated Nazi prisoners. A cold quiet fell upon us and no one asked him to elaborate. We knew the real world was out there, but we didn't want it to intrude upon us.

The first morning light was beginning to give definition to the blackness outside the windows. The sidewalks were wet and flat black; the ground was gloss black because it was covered with wet dead leaves, each one bigger than your hand. The black of the tree trunks looked best: a thousand little bumps and crevices, alternating flat and gloss black changed appearance with every new angle of perspective.

The weather had turned so suddenly cold that our classroom seemed especially warm and cozy. I thought of my former co-workers. They would be getting to work about now. If I hadn't made this decision, I'd be editing technical manuals for airless spray pumps right now. But I'm not. I'm wearing wool slacks and a ski sweater, sitting here with my friends and Dr. Koch, singing Christmas carols in German!

We were singing "Stille Nacht" when I, again, looked out the windows. Big, puffy snowflakes were falling in slow motion. There was no wind at all. It was just a silent moving picture in black and white.

"Right now," I thought, "All is right in the world. I am always going to remember this as one of my happiest days ever."

The next morning we all assembled, surprised at being left to wait for Dr. Koch to arrive. Professor Sposato, who taught Spanish, came in and walked to the front of the room. She announced that Dr. Koch had died of heart failure during the night, that we'd have no more classes but would take the final exam (which Dr. Koch had already prepared) on the scheduled day next week.

IMPORTANT

UP YOUR INTEREST RATE

The Educational Amendments of 1980, amending Title IV, Part B of the Higher Education Act of 1965, became law October 3, 1980. Highlights of the provisions affecting law students are listed below.

I. GUARANTEED STUDENT LOANS (those initiated by you through your bank, savings and loan association or credit union — up to $5,000 per year)

Interest Rates The interest rate remains at 7 percent for all renewal loans. First-time borrowers (those who do not have an outstanding balance on the day the promissory note is signed) borrowing for a period of instruction beginning after January 1, 1981 shall have an interest rate of 9 percent. The grace period for 9 percent loans will be six months. Borrowers with 7 percent loans will continue to have the nine month grace period. Advance loan premiums to the Ohio Student Loan Commission are reduced to 1/2 percent per annum after January 1, 1981.

Aggregate Loan Limits Maximum lifetime limits (including those loans obtained at the undergraduate level) are increased to $25,000.

II. NATIONAL DIRECT STUDENT LOANS (those borrowed from CSU through a GAPSFAS application — up to $2,500 per year)

Interest Rates Effective October 1, 1980, the interest rate is 4 percent. All students who signed open-ended promissory notes prior to October 1, 1980 have 3 percent interest on the 1980-81 loans. All loans for subsequent years will be 4 percent simple interest regardless of prior rates. The grace period for all 4 percent loans will be six months.

Aggregate Loan Limits Maximum lifetime limits (including those loans obtained at the undergraduate level) are increased to $12,500.

Marlene Shettel

WOULD YOU LIKE TO MAKE AN IMPRESSION?

Some folks toot a kazoo or hum to a disco beat in public places to make an impression. Other folks slip their Phi Beta Kappa key onto their lapels at a law firm interview. No need for puckish you to carry on with such antics and make a public nuisance of yourself. Just carry your copy of *The Gavel* with you wherever you go.

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Younger & Brighter

by Ken Callahan

Even in the waning twilight of the law student's academic career, there remain those moments of dark despair existential panic, which interludes, superficially imposed, distinguish him from the rest of humanity by their frequency and depth. Similarly, however, there are moments of dazzling luminance when synthesis occurs, meaning returns and God is restored to His Heaven. Prof. Irving Younger provided such a reaffirming moment on a visit here recently.

Prof. Younger exudes an ineffable ideal of lawyerdom; certainly his record is in accord: Magna Cum Laude, Editor of Law Review, Order of the Coif, Harvard Law School; Asst. Attorney General, S. District of New York; Judge, Civil Court, N.Y.C.; Adjunct Professor at N.Y.U. and Columbia Law; Chair at Cornell Law; author of innumerable casebooks. Prof. Younger is a man Calvinistically determined to pursue in nothing other than the Law.

A somewhat naive law student here asked if his ability to influence was diminished or enhanced by moving from an important bench to casebook author. "You are kidding yourself," responded Prof. Younger, "if you believe that a casebook author has any appreciable influence on the law. Only authors' mothers read those things," perhaps forgetting (or perhaps not) those whose formal introduction to Evidence was not by independent study. Describing, convincingly, his marriage as an "equal partnership," Prof. Younger cited his wife's position at Syracuse Law School as the reason he chose to step down.

Prof. Younger, as those who witnessed his lecture would concur, is a consumate master of polemic, the rare possessor of the ability to persuade; did he agree with Justice Burger's judgment on the declining quality of trial advocacy?

"The quality of advocacy, based on my experience, is not what it should be. Indeed, it is an art that ought to be taught more fully in law school. Both the technology of litigation and the technique of negotiation should by taught in the classroom. Internship is, by and large, inefficient."

What, then, about the English Barrister-Solicitor system?

"Such a system could only work in a society such as Britain, where there exists a homogeneous culture with a history of class distinctions. The idea of a formally divided Bar, while it works in England, would encounter enormous difficulties here."

Let's face it: C-M is not the Harvard of the Midwest, so that when Distinguished Persons from the East depart their citadels to venture into the Provincial Hinterlands, they are received with a sense of awe and postured awe not afforded them at home; and such persons are, for the length of their grainbelt sojourn, centers of attention at which hopeful beams of identification are radiated.

It is therefore to the infinite credit of such persons who, like Mr. Younger, gracefully deflect such local adulation to thus enhance their particular subject matter.

Mr. Younger was the first speaker of four planned by the C-M Visiting Scholars Program, and was the personal guest of Professor David Goshien. Those that heard Younger speak would agree that he combines two often inconsistent qualities: brilliant jurist *and* engaging human being.

Indeed, it was just about enough, as Exams impend, to make law school seem worthwhile.

The St. Margaret Hungarian School has a joint presentation with the Ethnic Cultural Program of Cleveland State University on December 12th, 1980, at 7 P.M. in the U.C., Room 109. (Euclid Ave. & East 22nd St.) The title of the lecture is "Christmas in Hungary and Around the World." The lecturer is Dr. Katharine Gatto, Assoc. Prof., Department of Classical and Modern Languages, John Carroll University.

FREE ADMISSION! ***FREE PARKING!***

The lecture will deal with the history of Christmas in Hungary and other nations; crib history; Christmas carols; and a sampling of slides on the media used in the various works of art inspired by Christmas: oils, tapestry, wood sculpture and so on.

The Saint Margaret School and C.S.U. cordially invite everyone who seeks a deeper understanding of Hungarian culture.

For further information, contact Dr. Ilona Sandor, tel: 371-3328.