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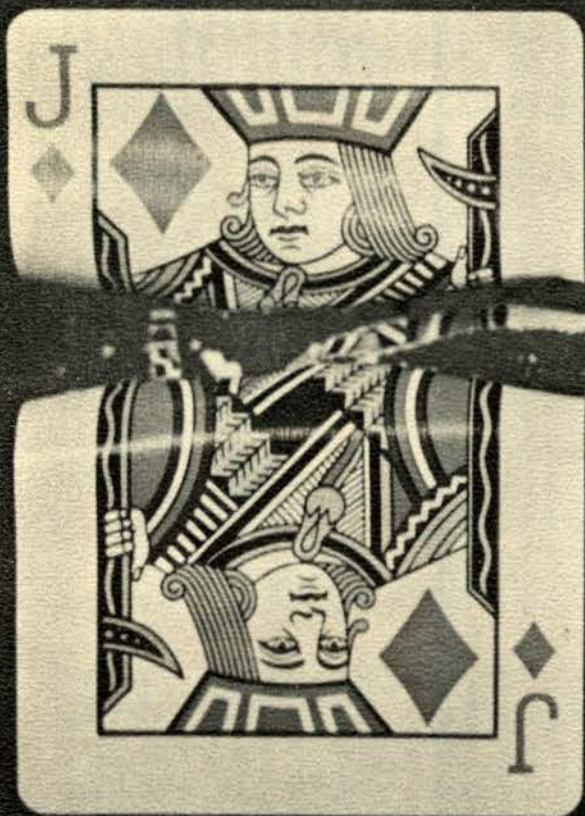
THE GAMBIT

Vol. 29, No. 6

May/June 1981

Cleveland-Marshall College of Law

ABORTION
BOBBY SANDS
BUGLIOSI
CHICAGO
REVIEWED
DIVORCE
COURT
(PART II)
DREAMS
ECONOMICS
PRIMER
EDITORIAL
FACETIAE
FARNSWORTH
GUN CONTROL
HARV. L. REV.
HOOKS
IRRELEVANT
REVERAND
KENT STATE
TO BEAT OR
NOT TO BEAT





Correspondence



Sir:

When will the students of this law school stop making utter fools of themselves by applauding every professor, no matter how mediocre, after the last class lecture? I have observed this ritual since my first year, and I am completely at a loss to understand what these students think they are accomplishing. On the contrary, there are several reasons why applause is inappropriate:

(1) In the first place, it fosters the proliferation of that lowest of all life forms — the sycophant. If the grading is truly anonymous (and may students doubt that it is) what possible benefit can it serve anyway? (Or are these students planning ahead for future classes with the same professor?)

(2) Professors aren't entertainers, they're educators (hopefully), who are paid, in part, by all of our tax dollars and the ever-increasing cost of tuition. When viewed in these terms, it's surprising to me that more courses are not concluded with boos and hisses.

(3) Many of these students are hypocrites. I have observed student complain all quarter about the incompetence of this or that professor, only to find them dutifully applauding on the last day of class.

(4) Let's face it. The majority of professorial "performances" just don't merit applause. As an undergraduate, I had the honor of studying various subjects under four professors who were internationally recognized authorities in their fields. Not only were they fascinating lectures, but their research and scholarship resulted in pioneering advancements in their disciplines. The students did not feel compelled to applaud, even though such applause would have been well-deserved. Instead they showed their appreciation in a more appropriate way — by doing an outstanding job on the final.

(5) So many law professors are already so impressed with themselves, that I can hardly justify contributing to their delusions.

(6) If these students are awed by the comparatively unimpressive performances of their professors, what chance will their clients have as they stand before the fearful specter of the black-robed judge? Virtually every attorney at one time or another is going to find herself or himself in a situation where the judge is unsympathetic or even hostile to the point he or she is advocating. I find it hard to believe that the law student who so meekly "goes with the flow" by applauding every professor indiscriminately will suddenly have the individualism in court to stand up and advocate the best interests of the client before an adverse judge, especially when to do so would be to risk contempt.

For every one hundred students who will sit and applaud a professor, there is only one who will approach that professor with a valid criticism. That's the student who has really learned something in law school, and that's the attorney who the client will know has truly earned the fee.

James J. Bartolozzi

Dear Editor:

On Sunday, May 31, 1981, Philos of Phi Kappa Tau will be sponsoring a Swimming Marathon from 9:00 a.m. to 12:00 p.m. at the Cleveland State Natatorium. All proceeds will be going to the Ronald McDonald House.

Students, faculty, staff, administrators and anyone interested are asked and encouraged to participate and/or sponsor a swimmer.

Swimmers will be swimming a number of laps they feel they can complete, with a limit of 100 laps. Sponsors will donate money per lap completed. There will be official lap counters who will sign on the swimmer's envelope the number of laps completed. Prizes will be awarded to the man, woman, and the organization who brings on the most money.

For more information please call Mary at 661-7833.
661-7833, or Lorraine at 871-0507.

Sincerely,

Mary Metlicka

Philos of Phi Kappa Tau

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EDITORIAL (1)

By Ken Callahan

The month of September is, arguably, the fairest in the Western Reserve: the glow of recent summer passed remembered, its fragrance, now, undescended to the earth, the specter of winter an as yet unformed shadow, lingering, a projected memory, in the caverns of the imagination. Captives of reverie, and waxing Appollonian, the *Gavel* editors chartered a new passage for their publication, hoping, with virginal idealism, to create a forum for positive controversy.

Inevitably, as it is wont to do, December soon followed, if not sequentially, then in the shared perception of a number of our readers.

The idea was, you see, to make our little journal a tad more thought-provoking, omitting, say, editorial comment (pro or con) on *The Problem of Bathroom Graffiti*.

In this, we succeeded. Reserve, for the moment, the sticky-wicket presented by "taste," and admit that the *Gavel* has — come on, now — at least risen above the intellectual tenor of its memorable past. If the paper can continue to address serious issues seriously, then the students of this college, and their institution's reputation, will benefit. That, in this writer's perception, is a positive legacy.

Where I must depart from my brother editor is on this point: large segments of the *Gavel* of this academic year has been tendentious cant. Where we have failed the law school community has been in the area of taste: the *de gustibus* principle is not, after all, an absolute, as observers of "The Portal" will attest. To those who have been insulted by the tone of the *Gavel*, you may be unhesitant in blaming this writer for his non-contributive negligence.

It would be tragic if the controversy generated by the *Gavel* this year were to overshadow the excellent contributions made by members of its staff: John Keyes, Karen Kilbane, John Reynolds and Jeff Fischer were among our gifted additions. And special thanks — no, unmitigated praise — must go to Marilu Myers, who, god-like, molded order out of chaos.

Old *Gavel* editors never die: they seek employment, their journalistic stints set lamely on their resumes, their September visions uninkled by their interviewer.

Reading the Gavel is like sex: when it's good, it's really good; when it's bad, it's still pretty good.

THE GAVEL

Cleveland-Marshall College of Law
Cleveland State University
Cleveland, Ohio 44115
216-687-2340

Editors

Ken Callahan
Steve Smith
Michael Varga-Sinka

Faculty Advisor

Thomas D. Buckley

Business Manager

Marilu Myers

Staff

Jeff Fisher, Chuck Fonda, Michael Karnavas
Joseph J. Jerse, John Keys, Karen Kilbane
Marilu Myers, John Reynolds

Art Director

M. Varga-Sinka
Marilu Myers

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Typesetter

Irma Schaeffer

EDITORIAL (2)

By Steven S. Smith

During the course of the past year, the *Gavel* departed from ordinary Cleveland State and Cleveland-Marshall journalistic practice by attempting to offer a forum to different viewpoints. As students who have been around this, or most any other university since the late 1960's know, college newspapers have almost universally reflected the views of a small minority of students who were members of certain organizations which advocated certain positions upon such subjects as: the desirability of Federal Government control over the economy, education, and social matters; the "Women's Movement; and the proper Western response to Soviet global adventurism.

We need not elaborate upon which position the newspapers have presented in the past: everyone who can read is aware of the bias that has existed. Let it suffice to say that this bias has been reflected not only in how articles are written, but in the very selection of which events will be covered, and whose views on those events will be printed.

The *Gavel* has, this past year, sought in its humble way, to redress this imbalance by publishing viewpoints dealing with a variety of subjects rarely if ever presented in college journals. And while presenting positions too long censored and suppressed by college papers, the *Gavel* has held its pages open to and published the other positions still held by the dominant viewpoint which remains among university organizations and "student" governments.

As a consequence of following this policy of allowing expression to a philosophy suppressed on campuses for over a decade, the *Gavel* editors were hailed before a university tribunal and treated like the desperados and rascals they are.

It must strike us as passing strange that those who howl the loudest for "toleration," and "open-mindedness," and "freedom of speech" are the first to break out the axes and head for the printing press when someone prints views which disagree with theirs. Perhaps these people believe that theirs is the only permissible view of the "Women's" Movement, and of the desirability of having Federal law and Federal courts regulating every aspect of Americans' work, property, and social activity. Around early 1970, any student who dissented from the reigning university ideology on these matters soon found "peaceful protest" (by people bearing signs and foreign flags) ready to come crashing down on his head. Today, the response is more institutionalized, and the dissenter is summoned before a disciplinary proceeding.

The *Gavel* sincerely regrets any needless offense it may have given anyone. It does not regret having administered a rude awakening to elitists who insist that university newspapers must present only the mildewed Marxian manifestoes which have been their stock-in-trade for so these many years.

First Amendment Attacked

By Lewis Perdue

A new McCarthyism is brewing in California, but this time the assault on the First Amendment is coming from the left, not the right. Consider the evidence:

- State Sen. Diane E. Watson, a Los Angeles Democrat, is sponsoring a bill that would outlaw the Ku Klux Klan or any group whose rhetoric might result in physical violence.

- In March, a coalition of Jewish and black organizations called on Gov. Edmund G. Brown Jr. to override a University of California decision that allowed an anti-Semitic group to use a state conference facility for a meeting. Under the Constitution, Brown had to decline.

- At the UCLA last winter, a group calling itself the Committee Against Racism held sit-ins demanding that groups it considered racist be banned from campus. That issue is still pending.

- And now a group of black and Chicano students at Mesa College in San Diego wants a faculty member fired because, as adviser to the campus newspaper, he refused to censor a satirical article they consider racist.

The common thread linking these examples with the witch-hunt abuses of McCarthyism in the 1950s is the desire of one group of people to silence another group with which they disagree.

"If there is any principle of the Constitution that more imperatively calls for attachment than any other," U.S. Supreme Court Justice Oliver Wendell Holmes once said, "it is the principle of free thought—not free only for those who disagree with us, but freedom for the thought we hate."

Freedom of speech—the freedom to express ideas publicly—extends to satire, regardless of how tasteless or racist. The issue at Mesa College involves a satirical article that the student newspaper published in March. It called for ethnic events, including an "All the Refried Beans You Can Eat" party, with the beans to be served from a giant sombrero, and a watermelon-and-ribs-eating contest for blacks. Black and Chicano student groups demanded that newspaper adviser Andrew Makarushka be fired for not censoring the article. They contend that it constitutes harassment, in violation of a state education law.

The incident is important in two respects. It focuses not only on the people's right to express opinions that others find offensive, but also on the right of a student newspaper to be free of prior restraint.

The Supreme Court has ruled in three separate cases that prior restraint, censorship, cannot be applied to a student newspaper that is supported by public funds unless the proposed article is obscene or libelous, or poses a substantial threat of disrupting the campus.

Since the article fell under none of those headings, Makarushka acted correctly.

"A function of free speech under our system of government is to invite dispute," said the late William O. Douglas, the court's most ardent defender of the First Amendment. "It may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts or dominant political or community groups."

Groups of people who find themselves defamed, and who historically have suffered abuse because of their race or ethnicity, are increasingly demanding not only freedom from abuse—a protection they deserve—but also protection from exposure to the opinions of those who differ. This is the same attitude that motivated southern states around the turn of the century to prohibit newspapers' publishing anti-segregation statements, on the ground that such statements would advocate defiance of state law. The courts have since distinguished between advocacy and action.

In a 1960s case, the Supreme Court advised that "under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the consciences of judges and juries but on the competition of other ideas."

This belief in the freedom of ideas, in the right of every voice to speak regardless of its viewpoint, tested the American Civil Liberties Union in the spring of 1977. The Chicago-based National Socialist Party of America, a white-supremacist, Nazi, anti-Semitic group, applied for a permit to hold a rally in the predominantly Jewish suburb of Skokie. The village obtained a court injunction preventing the event, just as Selma and Jackson and a hundred other towns in the Deep South obtained injunctions in the 1960s to prevent civil rights rallies and marches.

The ACLU, usually regarded as a defender of causes on the left, took up the fight for the Nazis and won. The cost to the ACLU was huge: Almost 20% of its 250,000 members quit.

Executive director Aryeh Neier explained the ACLU's position. "As a Jew, and a refugee from Nazi Germany, I have strong personal reasons for finding Nazis repugnant. Freedom of speech protects my right to denounce Nazis with all the vehemence I think proper. Despite my hatred of all their vicious doctrine, I realize that it is in my interest to defend their rights to preach it."

Perdue teaches journalism at the University of California Los Angeles and is faculty adviser to its student newspaper, the Daily Bruin. This was written for the Los Angeles Times.

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ECONOMICS PRIMER

By John H. Reynolds

Heretofore, the prince of darkness, ignorance, has reigned at Cleveland-Marshall and the nation at large concerning the subject of economics. There are law students who believe that government expenditures on the military will reduce inflation. Democratic U.S. Senators from California believe that wealthy people do not save their money but spend every last penny on Cadillacs and mink coats.

Economics, known as the dismal science, is not as exact as a physical science, yet there are some relationships and phenomena which are known as a certainty. Herewith is a brief primer on the subject.

Until the early 20th century, economics was concerned with theory, not practice. Economists played with curves, equations, and laws. Rarely were these social scientists consciously called upon by government to apply their theories on the populace.

Adam Smith's "Wealth of Nations" was simultaneous to, not a basis for, the Declaration of Independence. Likewise, the French rabble did not carry copies of the Smith tome over the walls at the Bastille in 1789. Political philosophers such as Paine, Rousseau, Voltaire, Locke and Hobbes were the operant forces of the day.

Originally, government revenue was only raised for the defense of the nation and to support the political leadership. Technology and the industrial age gave the state the capability to actively manipulate large sectors of the economy and even the economy as a whole. It is no accident of history in this country that the Federal Reserve (1913), the permanent income tax (1913), and corporate controlling administrative agencies (ICC 1887 and FDA 1906) appeared at about the same time.

With the policy levers in place, the stage was set for economists to move from bit players to the lead. The depression of the 1930's was a major catalyst in this change as John Maynard Keynes' "The General Theory of Employment, Interest and Money" in 1936 was used as belated justification for the activist attempt to revive the nation. The main thrust was, and still is, to spend the nation's way out of recession or depression, or that demand is the key parameter to be manipulated.

Keynesians believe that inflation arises when there is too much demand for goods and this excess of demand bids up prices. Their remedy is to lessen demand by having the government take more money out of the economy via taxes than it puts back by expenditures; that is, run a surplus, something which has not been done since 1969.

Their belief is that recession arises when there is not enough demand for goods. The solution is to increase demand by having government spend more than it takes in, or run a deficit.

Keynesian thought, the economic manna of liberals, is riddled with flaws. The current high inflation and low growth or recession has paralyzed its supporters. It is impossible to simultaneously run a surplus to fight inflation and run a deficit to fight a sluggish or declining economy.



The intellectual paralysis stems from poor logic. This school of thought believes that money spent by the government on goods via deficits is somehow different or better than money spent by consumers on goods or savings. Government spending of a dollar is not different than consumer spending of a dollar for purposes of directly affecting the economy. Therefore, government deficits by themselves do not affect the economy.

Similarly, a government surplus or deficit does not by itself affect inflation. The money gap created by government via deficits is filled by borrowing from the nation's capital markets. The federal government's 1981 demand for funds, including "off budget" items and guaranteed or subsidized loans, is around \$150 billion. The national supply of funds in 1981 is approximately \$450 billion. If the federal government runs a larger deficit, they will need more than \$150 billion. Therefore, there will be less money left for private borrowers when the supply of funds is static.

Ignoring peripheral issues such as the relative uses of federal and private borrowing, larger or smaller federal deficits by themselves do not affect inflation. The source of inflation comes from the Federal Reserve's reaction to the government's deficit-created demands on the capital markets. The Federal Reserve does not like to see the price of money go up when increased demand from government meets a fixed supply. Higher prices for money mean that prices of other items like land or commodities will fall. Cherished ideals, such as single family homes, tend to collapse.

Also the Federal Reserve does not like to see private investors get crowded out of borrowing by the federal government. Therefore, the Federal Reserve will increase the supply of money. Interest rates fall in the short run only and private borrowers can now borrow.



This increase in the supply of money is the major cause of inflation. Economists agree that $Prices \times Quantity$ of goods produced equals Total money available in the economy. If the supply of money increases faster than the quantity of goods produced, then prices must increase.

The next question then is how does the increase in the quantity of goods produced, economic growth, occur? Growth in a nation occurs either by increasing the number of people who can produce goods in the economy or by increasing the number of goods produced per person, i.e. higher productivity.

Higher productivity can occur either by making people work harder, which is the opposite of most trends and desires, or by getting people to work smarter or more efficiently. The latter can be done by using fewer or cheaper materials per unit, producing a better product using the same inputs, or, more importantly, by using more capital per unit in the form of better tools or labor saving devices.

The supply-side economic theory, about which much has been heard of late, focuses on improving productivity from several angles. These angles include the current tax structure, size of the government relative to the private economy, and the pervasiveness of federal government in private decisionmaking, i.e. regulations.

The progressive tax structure, when coupled with inflation, can devastate the goods producing potential of a people. Currently the average wage earner who obtains a 10% salary increase in attempting to keep up with inflation incurs a 16% increase in taxes because he is pushed into a higher tax bracket.

The obvious result of obtaining a higher wage but keeping progressively less of each increase is a disincentive to working harder or longer hours. More importantly, this same disincentive occurs when people consider earning additional income by collecting a return on any money saved during the year. The enormity of this disincentive is evidenced by the current savings level of 4.7% of income, the lowest level in over 30 years.

It is interesting, as the U.S. Treasury points out, that the only significant savings are generated by people who earn over \$25,000 per year. This makes for a volatile political question as to where to cut taxes. Should it be where it does the most good or buys the most votes or a little of both as in the Kemp-Roth proposal of cutting everyone's taxes by 30% over three years.

A low savings level, induced by government-deficit created inflation, means less capital available in the capital markets. In turn, less capital overall is available for private use on modernizing equipment or creating new and better products.

Greater capital can also be obtained for modernization and technical advancement by shrinking government's demand on the total capital markets. Cutting the government deficit by reducing the size of government will promote growth and, as stated earlier, cut inflation. The opposite tack of reducing the deficit by raising taxes would only aggravate the disincentives to produce and save.



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MOOT COURT INTERVIEW

(It has been a hectic year for Charlie Glasrud, Chairman of the Moot Court Board of Governors. When he took office, a change in the Moot Court format had occurred, which allowed only second-year students to sign up for the program. This meant that the New Moot Court officers would take over with less experience in the program. His problems were compounded by the departure of long-time Moot Court advisor Professor Ann Aldrich, who left Cleveland-Marshall to become a Federal District Judge. The lack of a capable replacement caused a disagreement with the administration and the faculty over grades, and created dissension in the ranks. Then there were the innumerable budget battles to obtain funding to send Moot Court teams to various interscholastic competitions. The last of these teams, the Giles Sutherland Rich Patent Law Team had just returned from the National finals when this interview was conducted.)

Gavel: What exactly is Moot Court, and why should it be of interest to our readers?

CG: Professor Kingsfield in "The Paper Chase" calls Moot Court one of the most important activities in a student's law school career. That's an indirect quote. Our program is the extension of the first-year advocacy and writing component. It involves writing briefs and presenting appellate oral arguments in interscholastic competitions. I think Moot Court is the best opportunity available for a law student to hone the writing and advocacy skills, he or she will necessarily use as a lawyer. It provides an opportunity for students to distinguish themselves outside of classroom.

Gavel: What is the current structure of the program?

CG: Sure. Until now, any second-year student could sign up for the Advanced Brief Writing and Oral Advocacy Course that lasted through the Fall and Winter quarters. Upon successful completion of this course, a student could then sign up for Moot Court. He or she had to prepare a brief and an oral argument on a pre-assigned problem to present during our Spring Competition. Those that successfully completed the Spring Competition were eligible to become members of the Moot Court Board of Governors. In their third year, members of the Board of Governors were eligible to compete in the various interscholastic competitions.

Gavel: Why the use of the past tense?

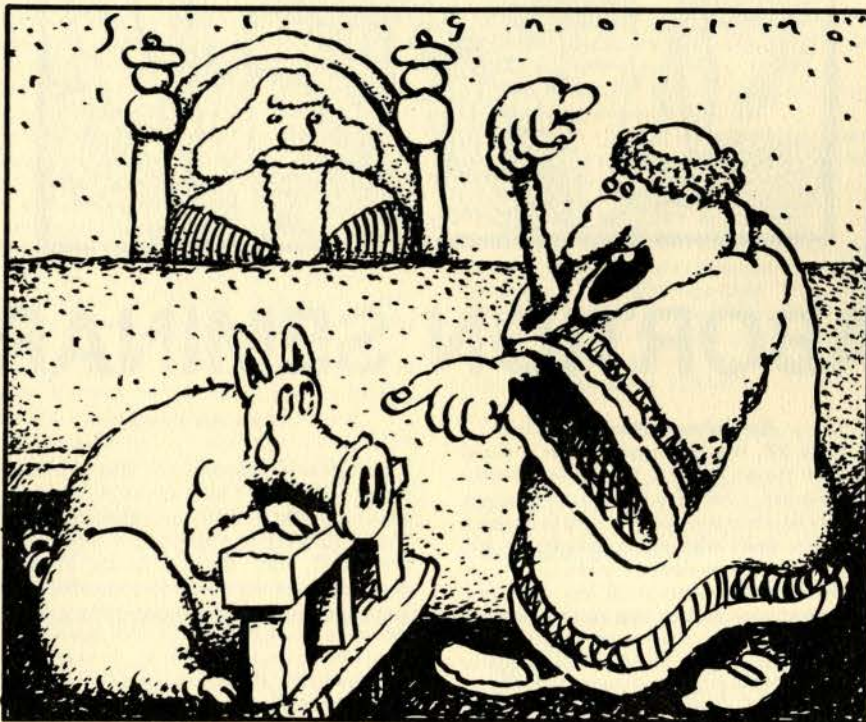
CG: The program is still in a state of flux right now. An ad hoc committee has been established by the Dean, consisting of faculty members, Moot Court members and Cleveland-Marshall alumni to review the program and suggest possible changes. These changes include adding a Fall intramural competition for second-year students, which would make it possible for them to become members of the Board of Governors immediately, thus allowing them to participate in competitions in their second year, and placing a limit on the number of people accepted as members of the Board of Governors.

Gavel: Do you think these changes can help?

CG: The addition of second-year students to the program would be very beneficial to the program. I have been very impressed by the quality of the second-year advocates I have seen. Some of these people could have been on teams that were sent to competitions. Additionally, having second-year people that are familiar with the program will make any transition much easier, because all of us in this year's program came in cold turkey, the transition was much more chaotic than it should have been. For example, just finding all the material in our files has been a challenge.

However, I think the most important thing to strive for no matter what proposals we adopt, is a consistent program where people can learn from their mistakes. I should note that despite all the recent experimentation, membership of Moot Court has expanded each of the last four years, and this year 45 people are completing our Spring Competition.

Gavel: Turning to another era, how severe was the loss of Professor Aldrich as advisor to the program?



CG: I do not think anyone realized how much Professor Aldrich had done with Moot Court until we tried to replace her. It made things much more difficult than we expected they would be, and caused a disagreement with the Administration and the faculty over grades.

Gavel: Why were things so difficult after Professor Aldrich left?

CG: You have to understand that there has never been that much help from the faculty. When Professor Aldrich was here, the faculty would ask what was going on with Moot Court, and she would handle it. Now that she's gone, the faculty is still asking the same questions without helping out.

When I would go to a competition, it would make me jealous to see how well advisors from other schools meshed with their teams. As it turned out, we were fortunate enough to have excellent advisors for most of our competitions. I'm not sure we can count on such good fortune in the future without some incentives being given the faculty, because

advising a team is a big job. For one, Patent Law advisor Richard Egan was great — I think he was one of the major reasons our Patent Law team made it to the quarterfinals of the National Patent Law Competition. However, we usually hear "Sorry, I can't help" from the same faculty members who want to know what is going on with the organization.

Gavel: Should these faculty members be allowed to question, if they are unwilling to help out?

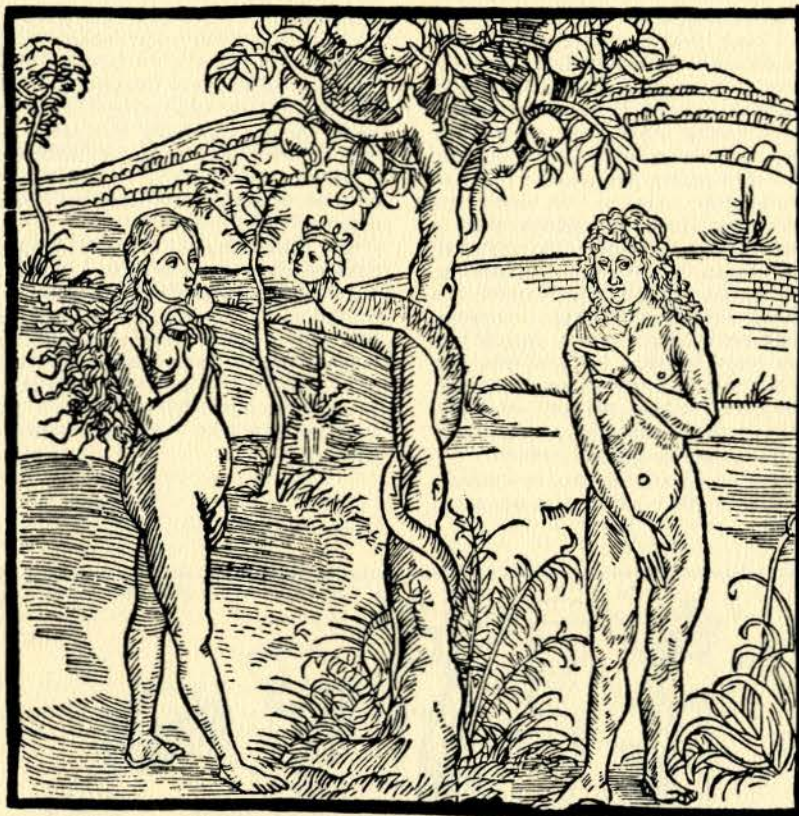
CG: Well, they are entitled to question all student programs by academic regulators, but separate they have a responsibility. Do we get recognition by succeeding, or do we get help and then succeed? This is not a chicken-and-egg problem. Look at baseball — you build a good team by good trades and cash investment, and that's the only way you succeed. That's the way you succeed in Moot Court, too.

Gavel: Turning to another matter, you've been criticized for being an absentee Chairman several quarters during last summer when you worked in your home state of Minnesota. Looking back, do you think the criticism was justified?

CG: Actually, because of the other two officers, the program was well taken care of last summer. I think this school has to recognize that students will want to work in their hometowns during the summer, if it ever is to become more than a local law school. However, I did regret entering the National Moot Court Competition and not being here during the summer, and I would advise anyone planning to enter this competition to stay around during the summer.

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ABORTION SEMINAR

By Roberta Reed

On April 28, the National Lawyer's Guild Invited Ms. Eileen Roberts, Executive Director of the American Civil Liberties Union, to speak about abortion and a woman's right to choose. Ms. Roberts dealt with this highly emotional subject on a very intellectual level.

The discussion began with the case law development that led to the recognition of women's rights under the Fourth Amendment to control their own bodies. Ms. Roberts explained that the ACLU believes these rights are threatened by the "Right to Life Movement." One of the most interesting aspects of this movement is the call for a Constitutional Convention. Ms. Roberts presented many interesting and cogent reasons as to why the ACLU is opposed to a Constitutional Convention and the so-called "Human Life Amendment." To allow a Constitutional Convention to add any amendment would circumvent the established process of amending the Constitution. The amendment proposed by the anti-abortionist would allow the government to intrude on private lives and family relationships. It would undermine fundamental constitutional rights and create a law enforcement nightmare. It would also have a chaotic effect on existing criminal, property and tax law.

Ms. Roberts ended the discussion by accepting questions from the thirty-five to forty people who attended. She accepted arguments from the opposing point of view and handled all questions from all sides with complete and intelligent answers.

I hope that the different student groups continue to bring people as interesting and informed as Ms. Roberts.

By Pat Perotti

Being very involved in the abortion issue, on the pro-life side, I was naturally interested in attending the lecture on abortion given by Eileen Roberts of the A.C.L.U. Sponsored by the N.L.G., Ms. Roberts spoke in favor of abortion; all in all, it was an enjoyable session, wine and cheese for everyone and a small but attentive audience. With the quality of the presentation, however, I was sorely disappointed. Expecting to hear some new approaches to the "pro-choice" argument, I heard none. Where I presumed there would be accuracy and informedness on the issue of abortion in general, there were mistakes on some of the most *basic* aspects of the issue, and a sad lack of legal knowledge and understanding on the most recent court decisions in this area.

Ms. Roberts had indicated that the "right to an abortion" existed during the 1st 3 months of pregnancy, and, in rare instances, up to the 6th month, where 'extreme and exceptional' circumstances were present. Setting the record straight, however, the U.S. Supreme Court, in *Roe vs. Wade*, 410 U.S. 113 (1973) did not legalize abortion only to the first trimester, (the first three months). The Courts holding struck down the existing laws in over 35 states and legalized abortion-on-demand up to *birth*; to and through the 9th month of pregnancy: "(c) For the stage subsequent to viability, (24 weeks or so), the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary . . . for the preservation of the life or health of the mother." *Roe*, supra at 164-165.

Thus the *only* point at which the State *may* intervene to prohibit abortion is after "viability" and this decision by no means mandates such a prohibition once "viability" is reached, but merely *permits* each state to set such limits, "if it chooses." Of note is that many states have not placed any such limit on abortion and, interestingly, those who have attempted to do so, in exercise of their state right to protect the unborn child, were frustrated by the same Court, which held such prohibitions unenforceable on "vagueness" grounds. It was made clear to Ms. Roberts that the statistics bear this fact out in hard day-to-day figures; approximately 12% of all reported abortions occur during the third trimester, 6-9 months, accounting for 144,000 of the over 1.2 million abortions performed in the U.S. annually, and amounting to, since 1974, some 1,008,000 third trimester abortions in our nation, to date; that is, *over one million* during the 7th, 8th, or 9th month. U.S. Center for Disease Control, *Abortion Surveillance, 1974-1977*.

The next troubling inaccuracy, was the contention that any attempt at recognition of the unborn child as a legal entity, or person, would be contrary to and unprecedented in our legal history. In reality, nothing could be further from the truth. Indeed, two of the oldest branches of Anglo-American jurisprudence, tort and property, expressly recognize the legal status of the unborn child for the purpose of pre-natal tortious injury actions and inheritance rights; *en ventre sa mere*. (See, generally: Gard and Curry!) Thus, the prenatal protection of life by law is no stranger to our legal system; especially where such protection existed, in one form or another, in over 35 states prior to the 1973 *Roe* decision. *Roe vs. Wade*, supra at 175 nn. 1 and 2, Rehnquist, J., dissenting.

Finally, Ms. Roberts was horrified at the prospect that amendments are proposed to the U.S. Constitution which would vest the full protection of law in all life, from conception until natural death. She asserted that any such amendment, whether by amendment of Congress or through a 34-State Constitutional Convention call, would be a travesty and wholly inconsistent with the U.S. Constitution; an unconstitutional "tampering" with the document. Interestingly, constitutional amendments, by either process, are in no way contrary to our Constitution; indeed, the Framers expressly provided for such amendments in the document itself: Article Five, U.S. Constitution.

The abortion issue is a very complicated matter, yet one which must be fully aired and considered by everyone, especially the future U.S. policy and law makers, the law students. Since only one side of this important issue was addressed at the lecture, I now extend an invitation to the A.C.L.U., N.L.G., or any other "pro-choice" group to line-up a good, knowledgeable speaker, preferably an attorney, for a structured debate on the abortion issue at C-M with one of our Right to Life representatives. Looking forward to a response. Thank you.

**A THIRD OPINION
BY CHUCK FONDA
WILL BE FOUND
ON PAGE 20.**

HARV. L. REV. REVIEWED

By Michael G. Karnavas

Amid a controversy that has extended to all walks of life, affirmative action has struck another lethal blow; this time to the Harvard Law Review. In a highly controversial move, the Harvard Law Review considered the leading law journal in the country, adopted on February 13, by a staff vote of 44 to 36 to consider a student's race, ethnic background and sex in filling some editorial positions.

Presently, the Review includes only 11 women, one Asian-American, and no blacks out of a staff of 89. Membership on the Review is currently based solely on grades and writing ability. Students at Harvard are arbitrarily divided in to four divisions, and the top five students in each division are extended invitations to join the review after their first year. Twenty more students gain membership through a writing competition in the fall of the second year, and eight more are chosen on the basis of grades at the end of the year. There have been no allegations of discrimination in the selection of membership.

Under the proposed plan, up to eight positions would be filled by students evaluated on the basis of their grades, writing ability, minority representation on the journal that year, race, and sex. On April 29, the faculty members of the Review, voted a compromise to support in principle the plan, but asked the editors of the publication to delay putting it into effect for one year. Mark B. Helm, president of the Review said following the faculty resolution that he could not predict if the Review, an autonomous publication, would find the faculty's compromise language acceptable. The Review is to consider the issue soon.

From the proposed plan, it is obvious that women and minorities will be stigmatized. Even if they would have met the old criteria,

people will assume that they earned their membership because of their status.

Those staff members who voted for the plan suffer from myopia. Having their own positions secured, they have voted for a plan without giving any consideration to those students who would have earned a position under the old criteria, but will now be bumped-off by the less competent women and minority students. The old system of earning membership is honest as well as equitable. Women and minorities have not had success in earning membership on the Review simply because they have not been able to meet the criteria. No one is accusing women or minorities of being incompetent, however, the fact remains that membership must be earned. The Review has traditionally extended membership based on competition. Under the old system the good test-takers, as well as the not-so-good test-takers but good writers, earned membership. Under the proposed plan, eight editorial positions will be *given away* to undeserving women or minorities in order to meet the quota that the "plan" established. This affirmative action is not only destroying the competitive spirit which made the Harvard Law Review the leading law journal in the country, but it is robbing the legitimacy of those women and blacks that would have *earned* membership based on their own ability and efforts.

Thomas Sowell, the top-ranking black in Reagan's economic braintrust, in commenting about the quota system has said it best:

"Blacks achieved the economic advances of the 1960's once the worst forms of discrimination were outlawed... and the only additional effects of quotas was to undermine the legitimacy of blacks achievements by making them look like gifts from the government."

An Irish witness, having been "sworn to the truth" of a statement he had made regarding an attempted murder, afterwards confessed that the major part of it was false.

"Did you not swear to the truth of it?" he was asked.

"Yes, begorra!" answered the witness; "but I didn't swear to the loyin part, I'll take me oath on that, sorr!" (1890)

A sarcastic lawyer, during the trial of a case, remarked: "Cast not your pearls before swine." Subsequently, as he rose to make the argument, the judge said facetiously —

"Be careful, Mr. S---, not to cast your pearls before swine."

"Don't be alarmed, your Honor! I am about to address the jury, not the court." — *Irish Law Times*. (1890)

A judge and a lawyer were conversing about the doctrine of transmigration of souls of men into animals.

"Now," said the judge, "suppose you and I could be turned into a horse or an ass, which would you prefer to be?"

"The ass, to be sure," replied the lawyer.

"Why?" rejoined the judge.

"Because," was the reply, "I have heard of an ass being a judge, but of a horse — never!" (1891)

She has sued for breach of promise, and the verdict of the jury was against her. "Want to pole the jury?" she repeated. "Yes, I do; jes gimme the pole for two minutes;" and she threw back her bonnet and bared her arms before the legal phrase could be explained to her by her counsel. (1889)

A writ of attachment — a love letter. (1889)

A very concise verdict was that of a coroner's jury in Idaho: "We find that the deceased came to his death by calling Tom Watlings a liar." (1889)

THE FIRST CHURCH
OF THE
TAX DODGE

The Gavel hereby awards
Stephanie "Studio 54"
Meckler with its Third Place
Oralist and Most Compelling
Voice Award for her superb
performance on Moot Court
Night whereat she left the
audience yearning for more.



B 6 iij

DIVORCE COURT

(Second of a two-part series)

By John Keys

Those who practice in the Juvenile and Domestic Relations courts, those who plan to and persons not practicing law but with a special interest in custody, should take note of legislation being considered by the Ohio General Assembly this session.

Two pending bills are discussed here. One is the Joint Custody Bill (HB 71) sponsored by Rep. Mary Boyle of Cleveland Heights. The other, not as widely reported, is the proposed Ohio adoption of the Uniform Parentage Act, introduced by Rep. Helen Fix of Cincinnati.

Representative Boyle had introduced a similar shared custody bill in the previous session which ended with the expiration of 1980. The bill was given a few hearings and never was reported out of the House Judiciary Committee.

In late 1980, Boyle revised the bill and it was re-introduced in January of this year. Action by the House Civil and Commercial Law Committee followed quickly and the bill was reported favorably. In late February, the House approved and sent it over to the Senate. Recommendation for passage followed after hearings in the Senate Judiciary, and on May 4, the full Senate passed the bill. Concurrence by the House of the many Senate amendments and approval by the Governor should happen in May, unless the House and Senate differ as to the final version. The new law should become effective in August or September following the 90-day waiting period.

Under current Ohio law there is no statutory authority for an award of custody to parents jointly. Such custody awards are made occasionally, depending on which judge is hearing the case and whether the joint custody plan submitted to the court is fair, practical and in the best interests of the child or children. Many judges refuse to consider a plan in the absence of statutory authority. In populous counties with more than one Domestic Relations judge, it is possible some jurists will award shared custody and some will not.

Representative Boyle's legislation gives statutory authority for a joint custody decree provided certain requirements are met and approved by the court.

First, joint custody must be requested by both parents to receive consideration. The parents must submit a plan to the court, and the plan must be seen as being in the best interest of the child. The court may object to certain provisions in the plan and may deny

the request unless the parents modify the plan to meet the court's objections. For the request to be considered, both parents must sign an affidavit stating they have lived separate and apart for the six months prior to filing the plan, and by mutual consent they have exercised some type of joint custody. The court will require the parents to have followed the provisions of the plan being presented for at least four months prior to the filing of the request for joint custody. The plan and affidavit may be filed with a petition for dissolution, or at least 30 days prior to a hearing for custody or modification of prior decree.

Following an award of joint custody the court will be permitted to modify or terminate the decree under certain circumstances.

A decree may be modified later if 1) changes in circumstances are brought to the court's attention and are seen as not in the best interest of the child, or 2) one or both parents agree to a change in the plan or as to custody, or 3) the child, with the consent of both parents, is integrated into the family of the parent seeking custody, or 4) the parents file a modification of the plan with the court, which can be accepted or rejected, or 5) one of the parents requests a modification, the other agrees to the modification, and the court views it as being in the best interest of the child.

The court which granted the joint custody decree may later terminate the decree upon the request of either parent, if termination of joint custody is seen as favorable to the child. If one parent requests termination and the other contests the change, the court is empowered to propose a modification of the plan. If both parents do not agree to the proposed modification the court may terminate joint custody and make an award of sole custody.

Parties to a custody decree issued prior to the effective date of the act may apply for a joint custody award after the law is in operation. In such cases the court is permitted to waive the requirement for a six-month trial period and affidavit to be submitted with the plan. The new law will have no effect on custody decrees issued prior to its effective date, other than to permit the parents to submit a joint custody plan for consideration.

Because the new law will require both parents to approach the court and in most cases with proof of a joint custody arrangement for the preceding six months, it is doubtful the law will at the outset bring many changes.

It is general knowledge that parties to a divorce are often unreasonable and uncompromising toward each other. Where the care, custody and control of children are at issue, animosity may continue between the parents for years, long after the original divorce decree. Only mature, reasonable parents, who put the best interest of their children before their own feelings, will likely be able to put their own workable joint custody plan into operation for six months and later convince a court the plan has been successful and should be continued with official approval.

Although the new language will be in force later this year, it may be many years hence before joint custody is granted with more regularity than sole custody. But at least the statutory authority will be in force for those parents who elect to seek shared parenting.

The other bill mentioned previously, Rep. Fix's HB 245, will modernize Ohio law as to the establishment of a parent-child relationship, whether the parent is the mother or father. The bill also provides for the determination of non-existence of the parent-child relationship, especially regarding the alleged father.

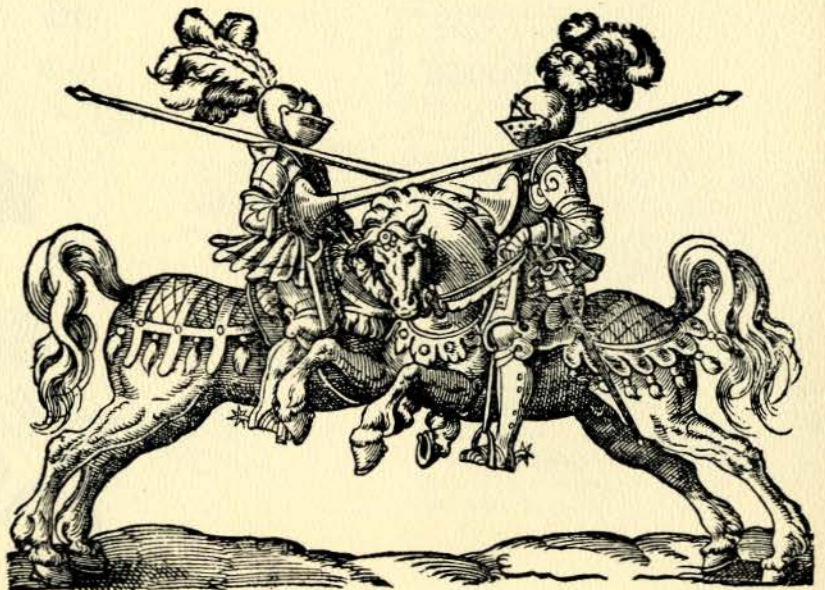
House Bill 245 was recently approved by the House Civil and Commercial Law Committee, as amended, and a vote by the full House is likely in May. If approved, Senate action might be completed as early as July. It is more likely, though, the Senate will consider the bill beyond its summer recess, should the House pass it.

Under current Ohio law, only an unmarried woman who has given birth to a child or is pregnant can file a complaint charging a person with being the father of the child, or if she dies or is disabled, certain persons or agencies as stipulated in the code.

The bill would permit persons other than the mother of an illegitimate child to petition the court so a parent-child relationship could be established. Those persons include the presumed father, a man alleged or alleging to be the father, the child, the child's mother or personal representative, the mother's parent or personal representative, the alleged father's parent or personal representative, the Department of Public Welfare, or in some cases, an interested party.

Under certain circumstances, as defined in the bill, a man will be presumed to be the natural father, and the presumptions can only be rebutted by clear and convincing evidence to the contrary.

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KENT STATE REMEMBERED

By Steven S. Smith

The screaming, slogan-chanting, and heroic mob-action of an hundred or so brave leftist storm-troopers at the dedication of the CSU Library Tower to Governor James A. Rhodes recently reminded us all of an important consideration which we may have forgotten. And that is the long and continuing commitment of the Left to "open-mindedness," "toleration" and, above all, "freedom of speech."

The shouts of "Rhodes is a fascist," "Why don't you shoot us?" and other profundities which delicacy forbids mention in a family law journal at times drowned-out the words which Ohio's quadrennially-favorite Chief Executive was trying to speak. Turning to a young lady who was repeatedly chanting "Rhodes off campus, Rhodes off campus," I inquired "I see you believe in freedom of speech?" Grasping the point of the constitutional argument instantly, she replied, "Sure. That's what we're exercising!" With flawless Leftist logic, she cut through the matter: absolute "free speech" for the Left, and enforced "toleration" of their opinions. You don't agree? Obviously, you are "closed-minded." What of Governor Rhodes' freedom of speech, you ask? How should I know, I'm only a fourth year law-student. But I'm sure leftist scholars could distinguish his speech from theirs, just as the Supreme Court cleverly distinguishes "fundamental rights" (as the "right" to travel to a different State and collect welfare without being a resident) from such "unimportant" matters as people's Property rights, which deserve far less attention. (How fortunate we are that the Court drew this distinction between "fundamental" and "non-fundamental" rights for us, which the careless Founding Fathers neglected to do!)

When this scribbler expressed the hope that the Governor did not believe that the storm-troopers represented *all* of CSU, Governor Rhodes replied, "No need to feel sorry for me, I've gotten used to it." And, with good reason, he may have indeed. A reminder of this came at the sight of teeny-boppers at the rally, carrying placards with the words, "Remember Kent State;" and how could they tell others not to forget something which they surely could not remember themselves?

... Ten springs have come and passed since this law student, then a CSU freshman, cruised the spring afternoons in a just-bought G.T.O. ... Over the car radio those warm hazy afternoons came "Hold on, just a little bit tighter now, baby, I love you so much that I can't let go, no, no, no;" and "I'm your vehicle, baby, I'll take you anywhere you want to go;" the just released and destined to be last record from the Beatles, "but they still lead me back to the long, winding road/you left me standing here, a long, long time ago." And, of course, "Gimme Dat Ding," a classic whose lyrics are matched only by the golden tones of Joe Cocker, of "Get me a ticket for an airplane, I ain't got time to catch a fast train." There are also the haunting harmonies of C.S.N. & Y.: "Where are you going now, my love, where will you be tomorrow/will you bring me happiness, will you bring me sorrow/... carry on, love is coming; love is coming to us all."

But there is another sort of music, too. If you are young and in college in 1970, there is excitement in the air, and it seems anything can or will happen next. "By the time we got to Woodstock, they were half a million strong, and everywhere was a song and a celebration." (C.S.N. & Y.)

There is the Guess Who and their song of scorn to the Statue of Liberty, "American Woman, stay away from me, American Woman, let me be/I don't need your war machines, I don't need your ghetto scenes."

How many friends have we seen go off to college to become "hippies?" "Seasons change and so did I, you need not wonder why, you need not wonder why, there's no time left for you, no time left for you." And why? "Cause it's the New Mother Nature taking over, it's the new Splendid Lady come to call. It's the New Mother nature taking over; and she's getting us all, she's getting us all." She wasn't "getting us all" of course. But some, anyway.

On April 30, President Nixon sends troops into Cambodia to take sanctuaries used by North Vietnamese armies for cover in that "neutral" country. "Free speech" against the invasion takes the form of riot, and several of my high-school friends are tear-gassed at OU in Athens.

CSU has remained fairly quiet, but in these times, that still means that any given class on any given day may be broken up by marchers entering to shout-down the professor and stage a sit-in for "peace." The catchwords of the day are "peace," "relevance" and "change." Entire days each month have been lost to "peace" rallies and picketing. CSU is lucky: other campuses are rocked by building take-overs and bombings.

As anyone must have expected, the entire Good-Morning-Starshine-Age-of-Aquarius-Woodstock Generation has to have a point of culmination, a height of protest, counter-culture and confrontation, and that zenith is fast approaching. It arrives on the weekend of May 1-3, in an orgy of burning, looting and destruction in the once-peaceful town of Kent, Ohio, a mere hour's drive southeast from CSU. Responding to the rampaging pseudo-Revolution, Governor Rhodes dispatches the Guard.

Monday, May 4, 1970 begins quietly enough at Cleveland State. Just some talk among Radical leaders about going to Kent in the afternoon. Late on that warm afternoon, as the sun is settling through the hazy sky outside my 14th floor Fenn Tower dorm window,

Chicago's "Make Me Smile" is interrupted on CKLW by a bulletin: "The Ohio Militia stationed at Kent State has opened fire on thousands of anti-war demonstrators. An undetermined number have been killed. More news will be reported as it happens at Kent State."

Tuesday, May 5, 1970. A cloudy morning seems to begin normally, but tension fills the air. Pickets spring up in front of buildings and classrooms. Advocates of "peaceful" protest announce that they will prevent students and professors from holding classes. A mass rally is called for early afternoon.

Even as that rally begins under the spring sunshine of 1970, and as reports of violence start to sweep across campus. A Student Strike is called. The President announces the calling-off of all classes for the day.

Following the President, a succession of liberated ladies and gentlemen take the podium to demand that CSU be burned to the ground ("peacefully," presumably).

To balance the speakers' program, I of all people am asked to say a few words, on behalf of the CSU *Conservative Union*, (20 Radicals and one non-radical apparently being considered a "nice balance.")

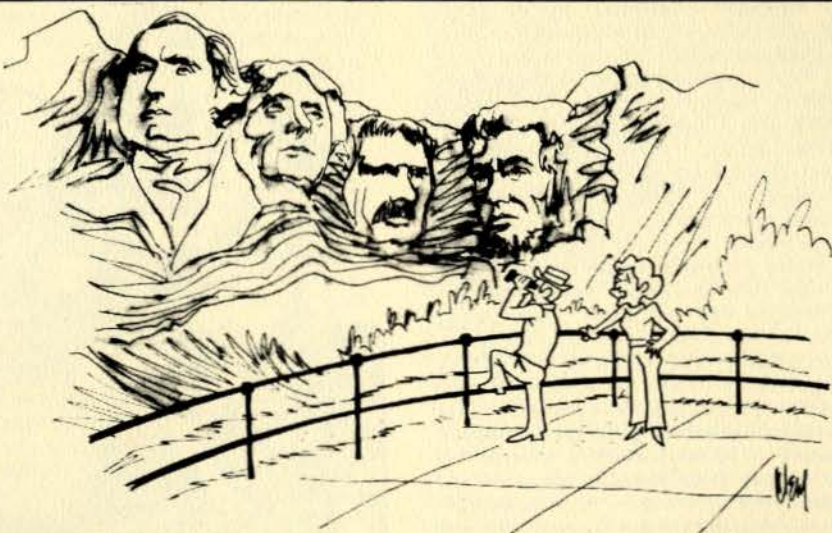
Mounting the platform on the elevated plaza in front of the Science Building, I can only think to myself that CSU has come to look like a war-zone, 5000 screaming students cover the lawn and 24th Street.

Mounted policemen gallop up the road. Sirens wail in the background, above the din of screamed slogans: "Out! Now! Out! Now! Ho-Ho-Ho Chi Minh!" Army trucks roar down Euclid Avenue. You really have to see this, I think to myself, to believe or even conceive of the chaos, anarchy, and complete college the chaos, anarchy, and complete collapse of any sense of order or normalcy. Friends run through the mob with the latest news of violence here, at John Carroll and at Kent. There is excitement of being young and having a world to change. They are wrong. It is the excitement of the battlefield, of the siege.

It is as though the Radicals' "game" of playing "Revolution" has suddenly turned real, with consequences unexpected by almost all the participants.

CSU will attempt to reopen two days after. But Thursday, May 7, peaceful morning coffee in Stilwell Cafeteria is shattered by the smashing of the huge plate-glass windows, through which leap "revolutionary guerillas" to "Liberate Stilwell."

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"I've always thought they should have done a little something for Calvin Coolidge."

IRRELEVANT REVEREND

By M. Varga-Sinka

A little church-state interference never hurt anybody as long as the "church" is represented by a politically Liberal exemplar such as the Rev. Robert Drinan whom Cleveland-Marshall was blessed to receive on April 13th.

In Congress, Drinan was a walking banality and did nothing here to tarnish his reputation by giving one of the most pointless and disorganized speeches I had heard in at least twenty-four hours. The topic was criminal law and it was delivered with a host of self-righteous clichés treated as self-evident truisms such as: "Poverty, slums and discrimination are serious causes of crime."

In the U.S., poverty and discrimination have been greatly reduced. The crime rate has greatly increased. In actual purchasing power, half of all families were below the poverty line in 1920. In 1979, 12 per cent were. Discrimination was far greater in 1920. But crime rates were higher in 1979. They were low during the Great Depression.

Better housing or less poverty would have great merits but these facile and superficial attributions of high crime rates to the lack of these factors merely serves to distract attention from the evidence that crime rates have risen as poverty has declined and housing has improved.

Another beauty was with reference to "gun control" and how the U.S. had 10,000 gun-related murders last year while England had virtually none and Japan 117. I did not expect, nor did I receive, any profound analysis for this statement because that would have required the capacity to deal with reality which those who are divorced from same are quite unable to do. To quote Donald B. Kates, Jr. from a recent article in *National Review* (May 15, 1981, p. 540-542) titled *Gun Control: Can it Work?*:

"I am a liberal criminologist with a background in civil-rights law, and a teacher of constitutional and criminal law and criminal procedure . . . The six states which forbid owning or buying a handgun without a permit (Haw, Mich, Missri, NJ, NY, NCar) consistently have higher homicide rates than demographically comparable states that allow any sane adult without criminal record to buy them . . . Only one out of every 5,400 handguns is used to murder, and a ban can reduce homicide only if it affects possession of that particular weapon . . . (P)rohibitionists abruptly stopped referring to England in 1971 with the appearance of (a) Cambridge study (which) attributes England's comparatively low violence wholly to cultural factors . . . Those who blame greater handgun availability for our greater rates of handgun-banning Japan's low homicide rate is plainly inappropriate because of our totally different culture and heritage and our substantial ethnic heterogeneity. (. . . Japanese-Americans, with full access to handguns, have a slightly lower homicide rate than their gunless counterparts in Japan.) (A) seminal work . . . Bendis and Balkin's study finds Illinois's moderate and sensible gun laws failing not because they are inherently insufficient but because they are virtually unenforced . . ."

Drinan did not come out and say that "punishment does not work" — compared to what, non-punishment? — but his references to prison standards and related matters all but exclaimed such a ridiculous proposition. Like most Jesuits I've known, and indeed most "professors," he actually believes his own pious bombast.

"... (a prisoner's) drab uniform (is just another form of) humiliation..." Let's increase taxes and make sure they're decked out in polyester leisure suits.

"Do we need cells?" Do we have to pay you before you leave?

"(What we need is) faster parole and more rehabilitation!" Let's start with political prisoners.

"After serving time, 39 states do not allow the (ex-con) to vote . . . (another) humiliation." In his heart he *knows* that every ex-con in the country is an incipient liberal of some sort.

"John Conally beat the rap." So did the so-called "Chicago Seven" and they lived to brag about it.

"Corporate crimes are increasing." And all this time I thought poverty created crime, fancy that. . .

"We're being ripped off by conglomerates." A second year student by name of Jim Camp nearly had his wallet removed from his slacks while he was in a compromising position. As one law professor remarked: "Ya can't even take a No. 2 in peace anymore." Now ask yourself (or Jim) which is of a greater and more immediate concern.

"Young people don't know who owns Avis." I walked up to your average all-American slob of a teenager because "all opinions are of equal value" and every opinion must be treated seriously. I chose him from among scores walking Euclid Avenue because his demeanor had shown a sober acceptance of limited capacity and ultimate insignificance which is neither undemocratic nor disrespectful. It merely recognizes the universal truth that a slob is a slob, possessed of nothing more significant than his citizenship, the rights and privileges of the Constitution, his mother's love and God's, of course. With perfect composure I asked him: "Hey, do you know who owns Avis?" He was very blunt and articulate.

And then the good Reverend delivered one of the best intellectual spitballs I've seen thrown in a long time:



"Indignation at Exxon leads to crime."

Even Bob Newhart doing a stand-up comedy routine in a funeral parlor couldn't have said that with a straight face.

To summarize, this sad-eyed Vicar of Liberalism believes that crime is the deserved punishment society suffers for its sins — poverty and racial oppression — and that crime will disappear if society reforms.

No evidence was presented (because none exists!) to indicate that less poverty or less racial discrimination leads to less crime. Only that deterrence is useless; that mostly lower-class minorities are jailed *because* of a discriminatory criminal justice system; and that had it not been for the juveniles' rude experience in prison, he would have been a law-abiding citizen. Probation, parole and more psychiatric counseling will take care of everything!

Prisons exist for two reasons: (1) to punish and (2) to remove specific individuals from society. The existence of these two capacities implies an adjudicating authority. Laws and punishment can never eliminate crime, merely reduce it. The more frequent conviction and the more severe penalties experienced by some (minorities) relates to previous offenses and records, and not to race, economics or "police discrimination."

Absolute poverty has never been shown to be "a basic cause of crime." (*Challenge in Our Changing Urban Society*, Daniel Goldberg, p. 109) Poverty, defined as not having all you want, must be a cause of at least all property crime. But no society can provide everybody with everything he wants. People are still tempted to steal, or assault, or murder, or get drunk.

Law and order is in the interest of every American and most particularly to poor people who cannot hire or buy private collection systems. As a noted black economist, Dr. Walter E. Williams, stated in a recent article: "Black people in the slums of Brooklyn, the Bronx, Roxbury and North Philadelphia are not huddled in their homes afraid to walk the streets because they fear the police or that some white person may attack them. Nor are they afraid of being victimized by "white-collar" criminals. To blame the situation on racism in the larger society is not only nonsense, but it justifies postponing attempts to reduce crime in the black community until all of society's problems are solved.

"True, there is racial discrimination in today's society — but there was more of it yesterday. And yesterday there was less terror in the black community. I know. I grew up in the slums of North Philadelphia . . . the tolerance of black criminality and the acquiescence of black "spokesmen" and white liberals can produce some awesome results that no one wants."

A "question-answer" period followed wherein "busing" was justified (saith he) because "they (your ancestors) allowed separate schools . . ." The guilt-ridden quickly applauded. Holding white Americans responsible for discrimination imposed by generations past is like holding the Polish and Italians liable for the fate inflicted on the American Indians by the colonists or today's Frenchmen for Napoleon's invasion of Germany. The good Reverend does not seem to be familiar with Deut. 24:16: "The fathers shall not be put to death for their children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin."

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What Bobby Sands Died For

By J. O'Reilly

Northern Ireland is a sectarian "State" created by a British government for sectarian purposes. Despite the wishes of the massive majority of Irishmen to establish Ireland as a free country, British politicians choose, instead, to partition the country and keep the Six Counties as part of the United Kingdom. Although the founder of Northern Ireland, Lord Carson, was "genuinely non-sectarian, the inheritors of his legacy were avowedly anti-Catholic."

The Nationalists, so opposed to the "State" called Northern Ireland, refused to have anything to do with government and had as their dream the destruction of that "State" and a re-unification of their country. Their actions, coupled with their sentiments, paved the way for fifty years of blatant discrimination against the Catholic population in every conceivable manner. After all, reasoned the Loyalists, if such are their aims why should they be afforded the rights of citizens.

The various governments of England, meanwhile, choose to ignore the plight of the Nationalists. It may well have come to as a shock to Britain and her citizens that Northern Ireland still existed when, after relative calm save for a few sporadic incidents over the years, violence broke out in the late 60s.

The Loyalist population was unwilling and to an extent unable to quell the violence. "The beginning of the subsequent story of Ulster is a fatal error by the ruling Protestants. It was to mistake the Civil Rights movement of the sixties for an attack on the State of Ulster itself. Thus, by choice of the ruling elite, the energy of the reformist impulse has been made to shake the foundations of society."

Having blundered on many occasions, and, indeed, through some of its actions having alienated the Catholics, the IRA no longer posed a threat. Furthermore, during the sporadic violence of the fifties, the confidence and the structure of the IRA was badly shaken by the introduction of internment in the Republic of Ireland. The IRA felt it would always have a safe haven in the south and were thunderstruck when its members were interned.

Protestant law and order was strengthened by a remarkable piece of legislation called the Civil Authorities (Special Powers) Act (Northern Ireland), 1922. This act allows for "indefinite internment without trial. It permits the authorities to suspend at will any and all of the basic liberties, from habeas corpus to the freedom of the press: they can arrest on suspicion, search people and buildings without warrant, restrict movement, reverse the onus of proof, and dispense if they wish with the holding of inquests on 'any dead bodies found in Northern Ireland.'" Soon England was to become deeply involved in a problem she had helped create and equally helped foster through her blind refusal to acknowledge any wrong doings by the Protestant majority in Ulster.

On August 9th, 1971, two years after the introduction of British troops in Northern Ireland, the government introduced internment. The timing could not have been

worse. Two days earlier Arthur Murphy had been a passenger in a van driven by Harry Thornton, which backfired outside a police station. A soldier on sentry duty, thinking he was being fired upon, returned fire at the driver "and blew half his head away." Murphy was taken into the station and returned from his interrogation badly beaten. Murphy claimed he had been, "with a soldier grasping each arm, pulled face first into a concrete pillar."

Meanwhile, Northern Ireland Prime Minister, Brian Faulkner and English PM, Ted Heath, while wishing to wait for an IRA atrocity, were under pressure to do something and duly introduced internment. The reaction was swift and violent. Twelve people died that day and much property was burned.

Meanwhile, the army was increasingly being accused of torturing those whom it interrogated. Doctors routinely admitted, without hesitation, that people were being badly beaten. "The grievances against the Army which most inflamed the Catholic population of the whole province were the ones which arose from the growing belief that the men in detention or internment were being ill-treated." The British Press with the notable exception of the Times Group choose, for the most part, to ignore these allegations. The Compton report confirmed that "citizens of the United Kingdom—innocent citizens because not proven guilty—who were also Northern Ireland Catholics had been made to prop themselves against a wall by their fingertips, and to wear black hoods, and to hear frightening and deafening sounds, and to go without food and sleep for long periods. Whatever that meant for the moral health of the United Kingdom, its meaning for Northern Ireland Catholics was clear. Internment had been a grave injury: this was an irredeemable outrage. There could be no forgiveness for a state which did these things to their people. For the great majority of Ulster Catholics, the State of Northern Ireland was dead."

In 1972, IRA leaders decided to discuss peace proposals with government officials and at the same time suspend hostilities. Two preconditions were set for these talks by the IRA: the release of interned IRA supporter Gerry Adams and the concession of political status to IRA prisoners. Catholic MPs, John Hume and Bernadette Devlin, had talks in London with government officials and were later able to inform the IRA that the government had agreed to their demands. Special Category Status had been granted to the IRA and would later be granted to Loyalist prisoners. This Status was to cover five main areas:

- 1) The right to wear civilian clothing.
- 2) The right to abstain from penal labour.
- 3) The right to free association with others of the same persuasion.
- 4) The right to educational and recreational activities.
- 5) The restoration of sentence remission lost through protests.

The Army and many of the Loyalists were outraged that the government was negotiating with the IRA and indeed the truce was short lived. "However, though hostilities resumed outside Long Kesh compound, comparative peace reigned within through

the introduction of Special Category Status — conceded not as a matter of natural justice but solely and wholly for a time because British political thinking hoped that it would encourage a truce on the ground outside the jails. It had nothing to do whatsoever with concern for the prisoners themselves or the merits or demerits of their demands for special treatment but was given as a matter of expediency. It was taken off them for the same reason. The H-Block protest is aimed at restoring that status, not at creating a fresh situation or securing amnesty."

In 1972 the Diplock Commission was set up to investigate "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organizations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities." Lord Diplock reported to Parliament in December 1972. His Commission reported that for the duration of the "Emergency" certain offences be designated "scheduled offences" for which:

- 1) The accused would be tried by one judge with no jury.
- 2) The burden of proof be transferred from the state to the accused. This pertained to charges involving the possession of firearms and explosives.
- 3) The common law principle that a statement by an accused person be admissible in court only if it were made voluntarily was dropped. Any confession would be admissible unless it could be clearly shown that such confession had been obtained through the use of torture.

Proving such torture could be somewhat difficult. Amnesty International reported in 1978 and again the government's own Bennett report in 1979 did show that during interrogation prisoners were being systematically beaten. Today, by some estimates about 80% of IRA prisoners in Northern Ireland institutions are there convicted through the legal process suggested by Diplock and the major confessions which the prisoners have steadfastly maintained they were tortured into signing.

On November 5th, 1975, Merlyn Rees, Ulster Secretary, announced the ending of Special Category Status. "Suspected terrorists" could be arrested, detained, questioned, tried and sentenced by what appeared to be and was certainly loudly proclaimed to be, due process of law. Because the rules had been changed, the government was also able to change the public perception of the war they were fighting. As long as internment had existed, with its Nissen huts and barbed-wire fences, reminiscent of POW camps in the second world war, it was difficult to counter the Provisionals' propaganda that they were prisoners of war, an impression that the Conservative government had reinforced in 1972 when William Whitelaw granted the imprisoned paramilitaries 'Special Category' status. Special Category was political status in everything but name. Whitelaw later called it the greatest mistake of his political career. Special Category status was abolished and all prisoners sentenced by the Diplock courts were regarded as or

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GUN CONTROL OPINIONS

By Fedele DeSantis

Forget all the statistics pro or con concerning hand gun control; we're dealing with a cultural pathology immune and antithetic to logic. To properly address the issue, a few unfounded, yet true, sweeping generalizations are in order: (1) Some women buy "tiny little guns" to guard against the criminal types who frequent the White House; (2) most hand gun owners are men; (3) many men purchase hand guns seeking to compensate for inadequacies in traditionally-defined masculine traits, i.e., muscles, stature, self confidence and a full head of hair; (4) all 120 pound men who buy hand guns are accidentally shot, six times in the back, by their 140-pound wives; (5) many men violently opposed to hand gun control suffer from "pistolmania."

Pistolmania, a maladaptive or neurotic reaction similar to fixation, usually afflicts men and is caused by the anxiety resulting from either technological advancements and economic changes which erode the utility of traditional male roles (the drone syndrome) or John Wayne's death. Many pistolmaniacs would argue that hand gun ownership is essential to the protection of family and flag. In actuality, they unconsciously crave a surrogate masculine trait, one which will distinguish their existence as prototypically macho and avert the ultimate cataclysmic form of entropy — a gender neutralized or unisex society. In a society where female weightlifters, truckdrivers, lawyers and other nefarious misanthropes are commonplace, an inordinate amount of pistolmania inevitably manifests itself, and for many man hand gun prohibition would be the last and most devastating form of emasculation.

Hand gun ownership, a vestige of the wild and rugged individualism of the uncivilized, 19th-century American west, only serves to give 20th-century cowards a socially debilitating and virulent form of security. Back in the old west gun slinging wasn't the sole means of asserting one's masculinity; fist fighting was also in vogue. A more honorable strain of man used to fist fight to resolve differences, to establish dominance, territorialism and other ritualistic tendencies characteristic of a reptilian type of brain. However, gored knuckles, shattered teeth, broken noses and all the various feedback which serve to remind the besotted that beer and wine really don't mix, are too strenuous, painful or emotionally upsetting for the average ecto or endomorph to endure these days. Consequently, a detached, coldly methodical and infinitely more gutless means of venting frustration and crenelating a frail ego has evolved.

Unfortunately, pistolmania is only one of a myriad of maladaptive manifestations plaguing a society already given to violent and crude reverberations. Let's face it, ours is a society lacking the finer, civilized, and mature means of responsible human interaction. The "melting pot" society is fragmented and fraught with a hodge podge of subcultures, ethnic and racial divergency and clusters of interest groups evincing a malicious mode of competitiveness if not outright combat. Hopefully the violent catharsis and socially irresponsible behavior prevalent today are traits of a still evolutionary and developing culture striving for homeostasis, and will someday dissipate giving way to a more progressive, productive, and harmonious cultural distinctiveness.

In short, given that many Americans have a propensity for committing violent acts, the question ultimately comes down to a matter of degree. All hand guns should be confiscated and replaced with bows and arrows, since they are not as inherently dangerous; it's much easier for the police to apprehend a crazed Indian than it is to outgun Wyatt Earp.



Despite the recent shooting of President Reagan and John Lennon, and growing outrage among Americans, attempts to enact a federal gun control law are still hamstrung in Congress. Unbelievably, the Gun Lobby, through its front, The National Rifle Association, and the members of Congress that it owns, has successfully defeated or watered down any bill that would limit the spread of handguns.

This travesty has been accomplished even as the horror grows. Each day the newspapers tell of more lives lost by the uncontrolled spread of handguns — the fifteen-year-old girl standing in a doorway, who is killed by an errant shot when two twelve-year-olds stage a duel in the street; the wife that kills her husband in a quarrel, when she brandishes a gun she thought was disarmed; the four-year-old who blows his brains out playing with Daddy's gun, because Daddy did not keep the gun in a safe place.

It is time to stop this lunacy. There must be a federal gun control law, because even states such as New York, which has a strict gun control law cannot stop a Mark Chapman from bringing a gun into the state, if the gun is purchased outside of the state.

Such a law must recognize that a gun is as dangerous an instrumentality as a car. All handguns would have to be licensed, and any handgun owner would have to go through an instruction course, similar to the course required for an automobile license. There would be a three-week waiting period for the purchase of any gun, so that the prospective purchaser could be cleared by Federal Law Enforcement officials. There would be a mandatory five-year jail sentence for using a handgun, which would be tacked on to the previous sentence.

In conjunction with this law, there would be several associated pieces of legislation. First, there would be legislation establishing that the owner of a handgun could be held civilly liable for injuries inflicted by his handgun if he knowingly allowed another to carry it, or he was negligent in storing the handgun, thus allowing someone to come across the handgun.

Secondly, there should be legislation providing that anyone who conspires to provide someone with a handgun in a manner not prescribed by law shall be subject to the same Draconian penalties as a handgun user would be, if that handgun is used in a felony.

It should be noted that these measures do absolutely nothing to take guns away from the ordinary citizen. Any person who wants to obtain a gun would still be able to do so, if not disqualified by law, upon passage of the instruction course. Such gun owner would then be encouraged to keep his gun in a safe place by the civil penalties that he would be subject to if his gun were used improperly. Finally, as noted above, attempts to evade compliance with this law would be dealt with severely.

— Chuck Fonda

Dear Sirs:

It's too bad the *Gavel* is now a house organ for a psychotic minority from the Moral Majority.

I am referring to the bizarre ramblings of Mike Varga-Sinka and the other "writers" and "editors" on the staff.

The February edition of the *Gavel* was so utterly offensive that I felt compelled to comment. Prospective students might otherwise be left with the impression that Cleveland-Marshall has not yet entered the 20th Century.

Varga-Sinka, in particular, seems obsessed with exposing the dire threats of feminism, atheism, and even psychosis. Some examples of his peculiar and incoherent views:

On feminism: "Sensible women know that it is not only harder to be a man, it is harder to become one."

On feminism: "Sensible women know that it is not only harder to be a man, it is harder to become one."

On atheism: "There is a common touchstone for this political radicalism (feminism) . . . but it is rarely if ever discussed: atheism."

On anti-semitism: "All of the Jews who developed and operated the concentration camps in the Soviet Union . . . were atheists; all of the camps under German control during WWII were similarly managed by atheists."

On psychosis: "Man, when he discovers his real self, more often than not finds nothing there."

Varga-Sinka's writing typifies the ludicrous quality of the rest of the *Gavel*.

I am not suggesting that the university censor these rambling, insulting, and inarticulate articles — merely edit them, right out of print. Unfortunately, the *Gavel* is not subject to the kind of free market pressures which Varga-Sinka and the editors would advocate. Editors of real newspapers are seldom able to peddle trash without repulsing their readers and feeling the effects in declining revenues.

CSU is subsidizing the journalistic pretensions of a group of untalented Moral Majority proselytizers, spending our fees to abuse our intellectual integrity.

While the *Gavel*/editors will likely respond to these comments with predictable personal vindictiveness, I suggest the following constructive alternative: The University should survey the Cleveland-Marshall students to determine whether the majority favors the continuation of this peculiar publication, or would prefer to see it drastically altered or abolished. At the very least, this will ensure that the paper reflects more than the views of the three editors.

Betty Grdina
3rd Year Student

A concise account on some of the Russian Jews involved in the development of the still-existing communist concentration camps may be found in Alexander Solzhenitsyn's *Gulag Archipelago*, Vol. II. The relevant information on the Nazi camps and the apostates who were in control there can be found in an article entitled *Are Christians Responsible?* by Michael Schwartz (*National Review* magazine, Aug. 8, 1980, pp. 956-958).

I used both examples quite deliberately to emphasize the fact that what a person believes — or does not believe — has a greater effect on their individual conduct (and, implicitly, on what they espouse) than the "environment" or some other sociological, pseudo-scientific explanation. Applying your logic to the entire sentence of that quote, the writer is also anti-Christian. The sentence in its entirety was anti-atheistic.

Years ago when the *Gavel* was in the perennial clutches of the radical-fringe National Lawyers' Guild — the parent body of which has always been and remains the legal mouthpiece for the Communist Party U.S.A. — it published "representative opinion" such as two photos of Nixon, one with his winning grin and the other overdrawn with Hitler's mustache and forelocks (Vol. 23, No. 5, Dec. 11, 1974, backpage). I do believe that the very same thing was done to the portrait on a billboard near Hopkins, of a heroic former Cleveland mayor.

That the two politicians had quite a bit in common beyond the caricatured insult is unquestionable. The only question you ought to ask yourself is which of the two is really offensive and why?

— M. V-S.

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Finally, George Gilder's "Wealth and Poverty" points out a key ingredient of growth, the entrepreneur, creator of wealth, jobs, and new products. Over the past decade, firms which began with less than 20 employees created 80% of the jobs in this country. The area of electronics and associated new products has been driven by newcomers such as Intel, AMD, Wang, Verbatim, etc. The vast majority of the firms bringing new technology and products to the market are spearheaded by entrepreneurs and did not exist 10 years ago.

The problem entrepreneurs have is similar to, yet more severe than, that of the common wage earner. Why risk their existence and possessions, which most of them do, if the rewards, in the form of after-tax income, are declining over time?

If the reader understands these basic theories, he will know more than the average law student, U.S. Senator, and living ex-President. In fact, he will be downright enlightened.



Moot Ct. Interview

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Gavel: A lot happened to you and the organization over the past year. What are your feelings on this past year?

CG: I have no complaints. All of our teams felt they'd done well going into their respective competitions and were well-prepared. They did a good job by our criteria.

I'm proud of an innovation we introduced this year. We assigned a student advisor to each team to handle all procedural matters, and to serve as general administrative assistant. The Law Review Editor-in-Chief and I were friends which smoothed a lot of things over, since we shared a secretary, even though the Law Review and Moot Court are organizations that appeal to different types of people.

We got along pretty well with the administration. Our interests aren't always the same which did create some differences. But I think it was natural that it happened.

I should mention that our year ends Thursday, May 21 at 8:00 p.m. with our *Spring Moot Court Night* where we'll see how our new people look. Our panel of judges consists of The Honourable Frank Celebrezze, Chief Justice of the Ohio Supreme Court, The Honourable John T. Patten, Judge of the Ohio Court of Appeals and the Honourable Ann McManamon, Judge of the Cuyahoga County Court of Common Pleas.

Gavel: Thank you for the interview.

CG: Hope to see you there on Moot Court Night.

— Chuck Fonda

MOOT NEWS

By Chuck Fonda

Over the weekend of March 20-22, the Cleveland-Marshall Moot Court Patent Law team of Dave Brown and John Beckinridge travelled down to Houston, Texas to participate in the Giles Sutherland Rich Patent Law Competition.

The prospects were not promising in the first round. When the first round competition began Friday night at 8:00 p.m., finals were only a day behind, there had not been much time for sleep, and the team was still suffering from jet lag. Furthermore, the opposition was to be provided by the team from the University of Miami, Fla., the top-seeded team in the regional.

Yet, Miami was sent to the sidelines, the victim of a unanimous decision. Next was the University of Texas in the finals, the following afternoon. Despite the handicap of having to check out of the hotel room, an hour before the argument, and a bout of sickness, the team turned in a creditable performance, losing a split decision.

Next stop for the team is the finals of the Giles Sutherland Rich Patent Law Competition to be held in Washington, D.C. on April 15, 16, and 17. Having already done a great deal to spread the name of Cleveland-Marshall, this team has already gone the furthest of any of this year's Moot Court teams. With few of the distractions that affected the team being present in Washington, the team may go a lot further.

A MODEST PROPOSAL

By Steven S. Smith

During these declining days of the Republic, we find cut-throats, bandits and brigands of every description doing a brisk business as crime, of both the organized and independent-contractor varieties, soars to new heights undreamed of even by public-interest and defendant-oriented law-firms. Indeed, inviting a citizen to take an evening stroll down once-fashionable Euclid Avenue (or the main thoroughfare of any major town) is like suggesting to one of our early Christian forebears that he "take in a show" at the Coliseum; offering to enlighten a city-dweller about the joys of urban living is like seeking to convince Napoleon of the delights of wintering in Moscow.

For, the Great Republic, and most especially its shining metropoli, have become a sort of vast game-preserve, in which every day is open-season on citizens. An expanding fraternity of thugs, rapists and other scoff-laws daily sharpens its skills in our midst, pillaging and throttling the populace, and laughing in the face of arrest and jail.

Meanwhile, above the rising mayhem, every pol in the land is bursting to express his noble sentiments in favor of "gun-control," (a snake-oil charm which not only fails to prevent crime, but also fails to deal with the nature of the criminal himself). But then, these polys are the same birds who would deal with criminals through "prison reform" and "rehabilitation."

What these pseudo-scientific charlatans neglect to tell us (or simply do not know) is that prisons *themselves* came into being as a "reform" measure in the nineteenth century, superceding physical punishment. I do not, by the term "prison," refer to the dungeons of an older age into which one chieftain or another tossed "political prisoners" who had sought to overthrow his semi-barbaric regime in favor of one of their *own* semi-barbaric design. Instead, I advert to prisons erected by enlightened Liberals who sought officially to promote what the Romans termed *Paenitentia*: making one feel a want, or to feel sorry.

Placing criminals into these penitentiaries rather than punishing them physically, reasoned the Liberal reformers, would remove them from society for a period of sufficient to enable them to ponder their past conduct, and (emerging repentant), to take a respectable place in society.

Unhappily, this Liberal vision has not come to pass, and the fault does not lie with prison conditions (which to a large extent simply reflect the violence and immorality of the prisoners themselves). The real fault lies in Liberalism's failure to take account of human nature. Being abject slaves of every behavioral-science fad, Liberals are easily bewitched by such socio-political tosh as the notion that environment is the cause (and, hence, the cure) of crime. By this logic, such sons of poverty as Tom Edison and Samuel Johnson should have grown-up to be pick-pockets and muggers rather than the greatest inventor and the finest literary critic of all time (while some of history's greatest villains — Rousseau, Robes Pierre, Marx and Lenin, to name but a few — came from the highest levels of society).

As for genuine criminals, neither society nor the most splendid prison can coerce into repentance any person unwilling to reform. "Those who would reform *society*," observed Hawthorne, "should first undertake to reform *themselves*." But what society *can* do is to make its wayward members aware that their transgressions against innocent people's persons or property will not be tolerated. Prisons, however, have proven singularly unable to foster such an awareness. Isolated from the rest of society, prisoners in the penitentiary come to form their own community of criminals, in which the traits of the worst are passed along to all, and where an even more hostile attitude toward the outside world is encouraged.

Prisons are also rather dangerous places in which to reside, as their residents practice upon each other the violent talents with which the entertained the innocent public before conviction (and which they will encore after they release). Because of such violence, and the space limitations within the prisons, moreover, judges often actively seek to keep felons *out* of prison, by means of plea-bargaining, parole and suspended sentences. These devices, which enable some wrongdoers to evade punishment, can only encourage the repetition of crime just as much as the torment, isolation and bad-company of imprisonment itself.

Amdist the failings of the penitentiary system, there remains nevertheless, an increasingly desperate necessity that the apprehension of wrongdoers be rendered more probable and (most importantly) that their punishment be swiftly meted-out. An atmosphere must be restored in which would-be disturbers of the public peace are almost certain that they will be held to strict account for their misdeeds. The deterrent effect of such an atmosphere would exceed by far that of the present Pandemonium in which ruffians and scoundrels are properly confident of not serving a full sentence even if caught and tried.

And yet, even if certainty of punishment had no deterrent value at all, the declining morale of peaceful citizens must be restored by the re-establishment of an order of things in which violent attacks upon person, property and community values are dealt with in a manner which vindicates society's sense of justice.

To summarize the matter, peaceful civilization is being swept by wave upon wave of thievery, assault and molestation, and is in danger of being inundated by this tide ridden by cut-throat buccaneers whose acts of piracy are undiminished by threats of being thrown in the brig. Thrill-seekers fire weapons from moving motor-cars at innocent passers-by. Barely-human miscreants batter old ladies and make-off with a few dollars in a pocket-book. Savages lurking in alley-ways ravage girls and women.

A modest proposal is submitted for handling those whose rapine brigandage has transformed civil society into a battleground *they must be given a taste of the lash*. Public horse-whipping must be re-instituted.

No doubt, implementation of this modest proposal would provoke brayings from the barnyard of judicial jack-asses, and howls from some Hay-yard University hyenas, for being an "unenlightened" act of "intolerance" for the vaunted "Rights" of criminals. So much the better. As the Austrian Prince Metternich once said (while waging war with the "enlightened" French Revolution notions which would eventually lead to Naziism and Communism), "The Liberals honor me by their sneers." Indeed, there is no surer sign that one has strayed from the path of common sense and rectitude than to hear murmurs of approval rising from the Liberal set, those wine-and-cheese party-ers who use such wondrous non-grammar as "Ms.," "chairperson," "post-person" and "fore-person;" who would eliminate from Holy Scripture all reference to God as Almighty Father; and who become fevered with enthusiasm in favor of such fashionable nonsense as "children's rights" (including a "right" to have courts order parents not to search a child's room for drugs; a room in the very house owned by the parents!) Such trendy Liberal intellectualoids have totally divorced themselves from the common experience and common sense of the rest of us "unenlightened" folk. And so, we ought not to attach even a farthing's value to their cries that the whipping of criminals would signal mortal danger to constitutional "rights." They are, after all, fine specimens to speak of the Constitution! Liberalism believes that the Constitution means whatever the Supreme Court says it means *this* morning (as opposed to what it meant yesterday afternoon); provided, of course, that the interpretation of the Constitution increases Federal power over the economy, education, and social matters. I submit that the Constitution means what the Founding Fathers intended; if it is to be changed, it must be by amendment, not be a handful of whichever judges are on the Court at any given moment. And as written, the Constitution leaves the matter of criminal law to the States.

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BENJAMIN HOOKS

By Maquita Moody

Does racism ever end? No, it never does. Benjamin Hooks, National President of the N.A.A.C.P., eloquently relayed the history of racism in this country over the past one hundred years. "If you want to know the future, look to the past," he stated.

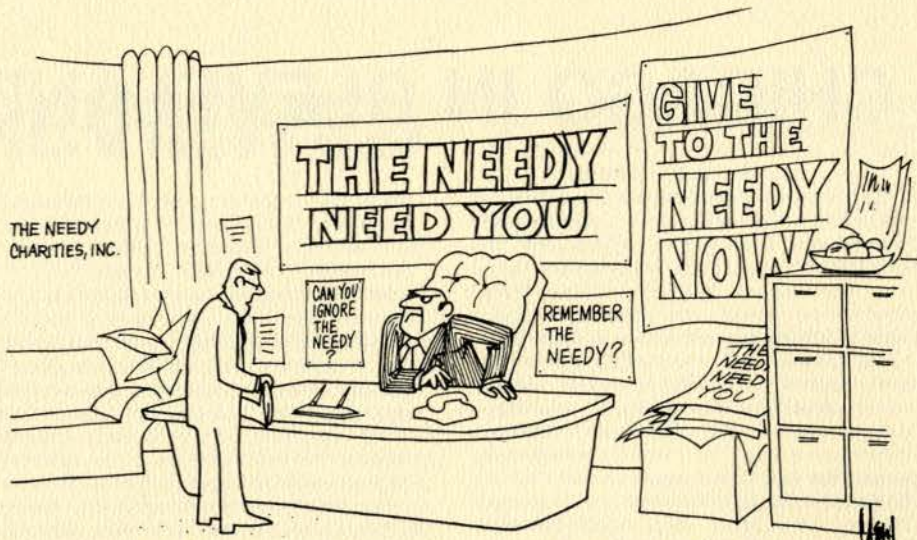
In the 1870's, stronger civil rights laws existed than in the 1960's. The decade of 1870 liberalism was followed by a history of lynchings that remained a part of our southern culture well into the second world war.

In April of 1981, the major article of the N.A.A.C.P.'s Crisis Magazine explored the resurgence of black lynchings in the 1980's. Shocked, why should one be surprised to learn that the same group of people who will not support the Equal Rights Amendment; who want to repeal the Voting Rights Act; have no conscience, and will lynch black people in 1981.

Mr. Hooks stated that in 1936 he could not get a law degree in the South. Somehow Lady Justice peeked beneath her blindfold and saw something other than white skin. In 1981, very few black people can get a law degree in the North. There will be less than 25 blacks graduating from both Cleveland-Marshall and Case Western Reserve School of law this Spring. This fact exists notwithstanding that both schools stand in the heart of the black ghetto. What's the excuse: Black people still aren't qualified.

Mr. Hooks spent years as a public defender, never to receive a promotion. Young white attorneys, with less experience, never had this problem. A judgeship for Mr. Hooks suddenly ended that inequity. One victory over a history of oppression.

Will racism ever end? Will my grandchildren tell the same stories of inequity that my grandfather told?



"Frankly, the Better Business Bureau thinks there is a deception here, Mr. Needy."

VINCENT BUGLIOSI

By Karen Kilbane

Vincent Bugliosi, trial attorney and author of *Helter Skelter* and *Till Death Do Us Part* spoke to C-M students on the "Tactics and Techniques of a Criminal Trial."

Throughout his presentation, Bugliosi stressed thorough preparation. He said, "The overwhelming majority of American lawyers are inadequately prepared. A good portion of the trial can be orchestrated before you even get to court. The trial is merely the acting out of the scenario you have on your yellow pad."

From his years of courtroom experience, he has developed his own style. Bugliosi usually waives an opening statement to let the witness' testimony have a dramatic effect. He introduces any damaging evidence first to prove his credibility to the jury. He stressed that real witnesses do not cave in as in novels and TV, so he often uses the "why" question to cross-examination to destroy their credibility.

Many attorneys address the jury off the top of their head in the summation. Bugliosi feels that in a close case, this can tip the scales. An attorney should appear spontaneous but present a well-prepared summation sprinkled with humor and metaphors. He asks the judge to supply the jury with pencil and pad to take notes. Juries often base their verdict on tangential points so all the facts should be included.

Bugliosi asks for instructions on the jurors' duty. The ultimate issue is whether the prosecution has met its legal burden, not the moral issue of defendant's innocence.

After the speech, Bugliosi answered questions. When asked about Manson, he said that Manson's followers really believed he was Jesus Christ and the devil. Bugliosi received death threats from Manson sympathizers during the trial.

Just as Bugliosi had emphasized, his presentation was well-prepared. It was heartening to learn that even if you are not the most brilliant person, you can be an excellent trial lawyer through preparation.

E. ALLEN FARNSWORTH

During the week of April 5th, Cleveland-Marshall was privileged to entertain Professor E. Allan Farnsworth of Columbia University who presented the nineteenth visiting scholar fund lecture "Contracts During the Half-Century Between Restatements." Renowned for his work in numerous areas of the law, Professor Farnsworth is best known in the area of contracts as co-author of a widely-used text and as reporter for the restatement and author of ten of its tentative drafts. He was pleased to announce that the three volume Second Restatement, some fifteen years in the making, is nearing completion.

The mustachioed Farnsworth is a tall, stately, Ted Turner look-alike, proud of his fine physical condition and possessing of a rare combination of qualities that invite the description debonaire. He showed a genuine interest in Marshall's curriculum, methods of instruction, and students, and expressed considerable disappointment that a greater number of different students did not attend the several informal open meetings which were scheduled (and nonetheless well attended).

Farnsworth's lecture was relatively brief, but comprehensive and very well-organized. In it he noted the explosion of statutes affecting contracts and the greater emphasis of substance over form, but concentrated on the increasing recognition of reliance as opposed to expectation. In this respect he concluded with awards to the case, article, and statutory provision which had the greatest influence on the completion of the Second Restatement. The winners were the 1958 California case *Drennan v. Star Paving*, the Fuller and Perdue article *The Reliance Interest in Contract Damages* in the 1937 Yale Law Journal, and section 139 of the Second Restatement under which reliance on a promise barred by the Statute of Frauds may nevertheless be enforceable.

Joseph J. Jerse

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CHICAGO IN CLEVELAND

By John G. McCarthy

"The Dinner Party" is in Cleveland. Its arrival has been what Holden Caulfield would have referred to as "a very big deal." If "The Dinner Party" is art, then I'm going to move out West, grow a beard down to my knees, find an attractive mountain, and dynamite it into a three-thousand foot tall statue of Daffy Duck.

The "sculpture," which appears to have been inspired by a triopoly board, consists entirely of a table shaped like an equilateral triangle with thirty-nine place settings, thirteen on a side. The invitees are all female. Some, like the Indian goddess Kali and the Mesopotamian goddess Ishtar, never existed. Others, like Mary Wollstonecraft and Sacajawea, were real people. Only one, Georgia O'Keefe, is still alive. I understand that she is nearly blind. I mentioned this fact to the attendant, and pointed out that Georgia would be unable to see the place-setting that had been made in her honor. The attendant thought that this was tragic irony. I thought that it showed that there could be advantages to being blind, but I decided to keep my mouth shut.

Disciples of Dorothy Fuldheim will be actively disappointed to learn that she was not invited. At first, I thought that this was a credit to the artists' good judgment, but then I remembered to my sorrow that hardly anybody outside of Greater Cleveland has ever heard of Dorothy Fuldheim. Actually, the work of Judy Chicago is very similar to the commentary of Dorothy Fuldheim. Dorothy, as you know, recites things to you that you already know yourself or could have found out by reading the same general-circulation newspaper that Dorothy read yesterday. Then she says, "Isn't that terrible," or "Isn't that wonderful?" There is no analysis, no scholarship, no originality.

Analogously, Judy Chicago tells you what you already know, or could have found out by reading an encyclopedia, and then says, "Isn't it an honor to be invited to my dinner party?" And that is all she does, as near as I can see. There is no subtlety. There is none of the complicated, original organization that is common to all great art. There is a little bit of beauty in some of the needlework, but it isn't

worth traveling miles and paying three dollars to see. And there is a physical barrier between you and the sculpture, which makes the needlework hard to see, anyway.

Most of the plates have designs on them that resemble the Rorschach ink blot test. I was disturbed by the fact that I seemed to have only one thing on my mind, but was relieved to find out that what I thought I saw was what I was supposed to be seeing. If you don't that you could conceive of thirty-odd interesting variations of the Vulva, then you needn't feel inferior. Judy Chicago couldn't do it, either.

The only real insight that the sculpture provides has to do with the sculptures' personality. If I threw a dinner party, I would invite at least *some* women. I can't imagine a social event without them. It would appear that Judy Chicago's idea of a social event does not include men. Doesn't she like men? Why should I like Judy Chicago if she doesn't like me? However, I am sure that Judy Chicago would not approve of those feminists who want to integrate the Rotary Club, because I am sure that she is not a hypocrite.

"The Dinner Party" is a shallow work, because it is incongruous. It is difficult to imagine why thirty-nine personalities would want to socialize with each other simply because they are famous and female. High achievers, feminine or masculine, do not necessarily have anything in common. They are complicated human beings, if they are human, and if they are more than human, *deities* even, well. . . But what do I know, anyway? I suppose that the fact that I feel this way only shows what a misogynist I am. . .

Trendy Howard Metzenbaum was one of the prime backers of this exhibition. His name is displayed prominently at the front of the exhibition, next to someone named "Anonymous," who is probably not running for re-election next year. Thanks, Howard, for bringing this monstrosity to my neighborhood, but if you want to advertise to the world how sensitive and liberal you are, why not help to exhibit the work of some *real* women artists, like Germaine Richier, Marisol, or my favorite, Louise Nevelson.?



Blue, J.: — This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused charge under the Small Birds Act, R.S.O., 1960, c. 724, s.2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking his right foreleg. In accord with Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, s.2 of which states:

2. Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars.

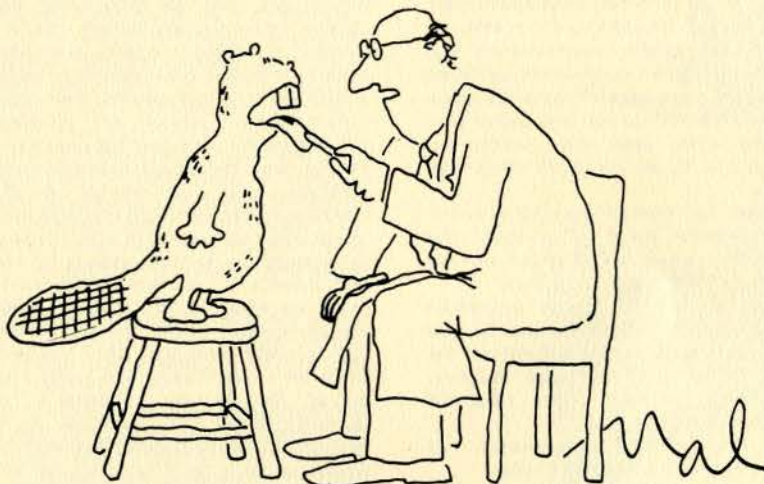
The learned magistrate acquitted the accused holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

In light of the definition section my course is quite clear. Section 1 defines "bird" as "a two-legged animal covered with feathers." There can be no doubt that this case is covered by this section.

Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of his life.

Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offence at all. I believe counsel now sees his mistake.



"It looks like a splinter!"

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Points V. Counterpoints

Mr. Reynolds,

I was always taught that before one writes anything, he or she should have some knowledge as to his subject matter. Apparently, this basic tenet of writing has never been demonstrated to you, either in law school or in the outside world.

While it may be true that Buzz and Reg and all the other grand fellows down at the yacht club do not need student loans to make it through law school, it certainly is not true of a substantial portion of the Cleveland-Marshall community! Had you bothered talking to all ten of the Gavel staffers, you would have been made aware of this. Or better yet, had you visited the financial aid office, you could have discovered this astounding fact for yourself! Of course, that wouldn't have left you much to write about.

Just like your president and his jolly gang, your enthusiastic fervor about his budget cuts has left you blind to their inevitable consequences. By the combined actions of decontrolling oil and gas prices, gutting Amtrak and wreaking havoc upon mass transit, this great 19th Century thinker (!!) has just about made it impossible to control inflation. With no rail system to handle intercity travel, and no mass transit to take people to work (except for electric subway systems), people will be forced to make greater use of planes for intercity travel, and cars to get to work. The resultant rise in gasoline prices will wipe out any of the gains made in the battle against inflation. How then, will this great practitioner of peace combat inflation? Why, by getting us involved in a little war!

Turning to those great models of fiscal restraint in the Pentagon, it strains credulity to believe that any thinking person could advocate increasing the Defense budget without demanding changes in the manner that the Pentagon handles its affairs! Yet you do, as does your president.

When it comes to waste in government, no finer practitioners of the art can be found than those in the Pentagon. Last year, one arm of the Defense Logistics Agency lost 500 million dollars through sloppy accounting procedures alone. It is not unusual practice for contractors to be awarded contracts despite the fact that they have already defaulted on prior work, or have performed shoddily on a prior contract. Last, but certainly not least, are those infamous 70% cost overruns.

I could see giving more money for Defense Research and Development, since everyone would benefit by subsequent discoveries. I could understand raising the budget to make the starting salary for recruits more commensurate with the risk involved, say around \$20,000, which would provide a high-quality volunteer army. Instead we are giving the biggest wasters in government more money, with no strings attached. But what do I know about all this, I've only worked for the Defense Department, while you are one of its chief apologists.

What wonderful returns can we expect from this increased bill? More botched helicopter rescue missions? More actions like they Mayaguez where only a few servicemen died, when none had to? Another Vietnam-type debacle in a place like El Salvador that chews up men, machines, and money, while relieving inflation for several years? More near-miss nuclear accidents? Or will we finally hit the big one, and cash in all our chips? The only thing we can be sure of, is that whatever return our increased defense budget gives us this year will be surprising.

Cheer up! Even though your recent attempt at journalism could not exactly be called a success, your stirring defense of the policies of the Reagan Administration may lead to a job, something along the lines of a position once held by a fellow named Ziegler.

CWF



Mr. Fonda's letter embodies not only the illogic and repression which is endemic in the thought processes of most liberals but also the mad ranting and mawkish mush of the Coventry Road set.

I proffered, for the benefit of Mr. Fonda and others, three examples of student loans given to those who don't need them and who admit they don't really need them. My point was that the Congressional bread and circuses routine of the past several years has led to such waste and abuse that to cut back, not eliminate, the student loan program would not work any real hardship.

I did not deny that some students need government subsidized loans. "Let us look at reality. There are some students who would need loans to get through Cleveland Marshall, need loans to get through Cleveland-Marshall."

In addition, before writing the article, I did visit the Financial Aid Office at Cleveland-Marshall and was able to observe and learn more abuses than just the three cases mentioned. Did you know that there are more students receiving financial aid where the household in which they reside has an annual income of over \$50,000 a year?

Eliminate the program? Of course not! Reduce it so that *only* the truly needy get aid? Only a fervent worshipper of the pagan god Statism would answer in the negative.

Mr. Fonda's preference for government control and subsidies concerning energy and transportation does conflict with my preference of liberty and free choice.

Currently, people will not use Amtrak if the ticket prices reflect the cost of running the trains. Government subsidies are used to make up the difference between ticket prices which are low enough to attract sufficient people and the total cost of running the system. Ticket revenues are now approximately 40% of the system costs. Subsidies are used because when ticket revenues equal costs, people apparently feel that cars and buses (not planes) are cheaper and more convenient than trains.

This same logic applies to mass transit. Those people who drive to work do so because, in their mind, it is cheaper in dollars and more convenient than a train or bus.

If energy were decontrolled it might become so expensive to drive a car that people would begin to choose mass transit. However, as Mr. Fonda indicates, he is against decontrol and a possible subsequent free choice to change to mass transit.

I say let the people decide via the marketplace and price mechanism which reflect the true cost. Freely agreed upon prices are the measure of the costs to and the preferences of society for a good or service.

What Mr. Fonda advocates is the imposition upon society of his ideas concerning what and how much should be consumed. This can only be done, of course, by the state via subtle coercion (e.g. subsidies and controls) or by more overt repression such as rationing.

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." — L. Brandeis

I will not address the remaining two-thirds of Mr. Fonda's letter, as after much rereading, I cannot find one mention of the military in my article. However, I do agree on one point. Waste in government, whether it be in student loans or the military, is despicable and should be eliminated.

Therefore, I welcome the appointment to secretary of defense a person with the moniker of *Cap the Knife*, earned via experience in ferreting out waste in social and other programs. Fortunately, he, unlike Mr. Fonda, dislikes waste in both social and military programs.

In addition, I have heard many economists say that war increases inflation. I have even heard a few say that war has no effect on inflation. But never has anyone ever, not even that emaciated sophistic John Kenneth Galbraith, proffered that war *reduces* inflation. Congratulations Mr. Fonda, you have certainly made a unique statement, if only unique because not even the most addled and infantile would embrace such a thought.

Finally, I find it sad that liberals and nihilists, such as Mr. Fonda, must invoke Vietnam to justify the overindulgence of domestic subsidies and programs. Vietnam must be like a touch stone or sacred amulet which, when brought out into the open, justifies mass transit, student loans for the wealthy and other societal inefficiencies and coercive social engineering.

— John Reynolds

CWF Replies

My dear Mr. Reynolds,

The only solace I have been able to gain from the election of Ronald Reagan is that I can get a chance to see those "long-suffering" conservatives get a chance to put their ideas into practice, and finally grapple with the problems of putting words into action. Nowhere is this more clearly seen, than with the concept of the "truly needy." You hastily add that you cannot believe that either you or Mr. Reagan could tell a "truly needy" person, even if he came up and tugged at your coat for a handout. The actual effect of the cuts in financial aid will be to close off another opportunity for those seeking escape from poverty, which is the effect cuts in other programs will have. Sooner or later, we will all have to face the consequences of these measures.

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A distinguished Federal judge, who is said to be somewhat too caustic in his wit, at a complimentary dinner recently given him in a Southern city, wishing to produce a laugh at the expense of a prominent lawyer, cut off the ears of a roasted pig and directed a waiter to take them to the lawyer with his compliments. The lawyer, who had long considered himself, as the company well knew, unfortunate with his cases in the judge's court, received the ears gracefully, and directed the servant to say to the judge that he felt especially thankful for the gift, as he had vainly sought for a long time before to get the ear of the court. — *Virginia Law Journal*. (1889)

A lawyer of Temple Court was looking over some papers his German client had brought, and every signature had a menace in it, as it stood, —

"A Schwindler."

"Mr. Schwindler, why don't you write your name some other way, — write out your first name, or something? I don't want people to think you are a swindler."

"Vell, my Got, sir, how much better you dink dat looks?" and he wrote. —

"A dam Schwindler." — *The Hotel Man's Guide*. (1889)

"Well," said an Irish attorney, "if it plaze the court, if I am wrong in this I have another point that is equally conclusive." (1889)

In an attack directed against the character of a witness, the examining counsel came off second-best: —

"You were in the company of these people?"

"Of two friends, sir."

"Friends! two thieves, I suppose you mean?"

"That may be so," was the dry retort; "they are both lawyers." (1891)

A New Hampshire judge tells the following of the late Gen. Gilman Marston, who practised long and successfully at the Rockingham County Bar. The General was arguing a case, and made a rather outrageous statement. "I knew that it was not law," said the Judge, "and rather thought the General did; still I put the question to him, 'Do you think that is the law, General?' to which he audaciously replied with a quizzical look, 'No, I do not, Judge; but I thought you might.'" (1891)

A certain lawyer arguing a case before a justice of the peace came across the expression "choses in action" in a decision from which he was quoting to the court. Fearing that the justice might not understand its meaning, he stopped to explain: "Your Honor, 'choses in action,' you of course know, means that a person has several rights of action and can choose which he will pursue." (1889)



ARE YOU THE SORT OF INDEPENDENT THINKER WHO VANISHED WITH THE MIDDLE AGES?

If so, the Gavel may be precisely what you've been searching for. Does "Modern Art" excite your friends and call forth their warm ruminations on the futility of the world, but leave YOU cold? (and longing for Rembrandt and da Vinci). Does "Disco Night" at the local Single's bar find you at home, by a crackling fire with Plato's REPUBLIC, while your friends are out doing the "Funky Chicken?" Do Justices Brennan and Marshall's visions of the Constitution dazzle and impress your unlettered school-mates, yet leave you puzzled after actually reading that document, and the Founding Fathers' FEDERALIST PAPERS? Do you sometimes find yourself sneaking to the library under cover of night to peer at Rehnquist's dissents?

If any of the foregoing descriptions apply to you, you may be just the sort of "pre-Renaissance Man" who is in need of the GAVEL. The GAVEL's sprightly Editors are familiar with the Middle Ages; indeed, they are rapidly approaching it.

The GAVEL's editors have been termed "reactionary, pre-historic, and ante-deluvian" by a wide spectrum of legal, social and economic New Age scholars. (This alone should commend the GAVEL to your edification.)

The GAVEL staff, as well, has been known to undergo the Spartan regimen of medieval monks — especially with respect to the frequenting of wine-cellars.

So isn't it time YOU awakened from the New Age stupor of conformity and complacency, to plunge instead into the exhilarating atmosphere of wit, wisdom, and subtle satire comfortably lodged between the pages of each GAVEL issue?

Lay another log on the fire. Put on your slippers. You deserve it.

The Cleveland State Law Review recently announced its Editorial Board for the upcoming 1981-82 academic year. Bob Walker was named as Editor-in-Chief, with other positions being filled as follows:

Managing Editors Jeffrey Key (Editors)
Joseph Condini (Staff)

Research Editor David Beal

Issue Editor Nancy Haas

Business Editor Mary Bittence

Article Editors Janis Reynolds

Deborah Komat

Did it ever occur to you why a lawyer who is conducting a disputed case is like a trapeze performer in a circus? Didn't! Well, it is because he flies through the air with the greatest of fees. — *Sprinters*. (1889)

There is some Law Review news at the top of this column.

The Saint Margaret Hungarian School presents the ninth in its series of academic lectures jointly with the University Ethnic Culture Program at Cleveland State University on June 5, 1981 at 7:00 p.m. in University Center Room 109.

The title of the presentation is "Vitamins and Their Role in Nutrition." Guest speaker is Julius Kerkay.

Julius Kerkay received his Ph.D. in biochemistry from the University of Louisville, Louisville, Kentucky, and presently he is Professor Chemistry and Biology at Cleveland Professor of Chemistry and Biology at Cleveland State University.

Dr. Kerkay's major interest is clinical biochemistry. He served as Laboratory Director for Euclid Clinic Foundation, International Medical Laboratories, Professional Clinic Foundation, Internauion Medical Laboratories

Dr. Kerkay's major interest is clinical biochemistry. He served as Laboratory Director for Euclid Clinic Foundation, International Medical Laboratories, Professional Clinical Laboratories, and Smith Kline Clinical Laboratories. He is certified by the American Board of Clinical Chemistry and the American Society of Clinical Pathologists. He is also a charter member of the National Academy of Clinical Biochemists and a member of the Board of Directors for three national scientific organizations.

Dr. Kerkay has numerous publications in refereed scientific journal dealing with clinical-analytical chemistry.

The Saint Margaret Hungarian School cordially invites everyone to attend who seeks a deeper understanding of the Hungarian culture and history.

Admission and parking are free.



A DREAM GOES ON FOREVER

From time to time when everything happens to be going right for me, I get to thinking that a man of my mind can do anything. For the most part though, I'm living the proverbial life of silent desperation relying heavily on the warrior's humor spoken of by the Yaqui sorcerer Don Juan. In this respect one of my few truly cherished pleasures is among my friends to say "Come let us build a fire and tell stories of kings and men." Recently while so engaged, a reclusive intellectual friend of mine remarked rather pointedly, "Joe, I've only recently resigned myself to the serious possibility that I may never get off this planet."

Then Ronald Reagan got shot and I managed to cope with it fairly well and the space shuttle proved that we aren't really that sick of a society after all and things seemed kind of normal for a while. But Monday I had one of those strange existential experiences that haunt me (and set me to wondering whether they're trivial or worthwhile). I'd watched the second of two M*A*S*H episodes and Dr. Winchester, who had missed having his head blown off by a sniper by about an inch, went to the front lines to try to find out somehow about what death was really like. He happened upon a patient who was conscious but beyond hope. As the man lost his sense perceptions and slipped away, the major asked him what was happening to him and the fellow said simply "I smell bread," and passed away. That night as I dozed with the radio playing, somewhere in the half-world of Poe's "fancies," the word came over the Bobby Sands was dead. I'd already heard and wasn't sure it was real important to me, but at that moment I felt quite mortal.

And there was the remark of a prof. that someday we'll all be decedents. It's true and it assures me of the truth of Emerson's statement that if anyone wants to get rich, all they need to do is write a book about what is really happening to them. These are hard time for dreamers. The hard and fast world of the law has crystallized my dreams. And the world seems intransigent and material as well. It used to be easy for me to think of dreams as contained in the world. To me the most down and out bum in the world had a worthwhile existence and an impact on the world by virtue of the human nature we all share. To me

reality was at once created and sustained by the collective human mind which at once held the sum total of all thoughts and actions of those who went before. It was as if mankind were a sleeping giant. While not waiting for dreams to become reality I always felt confident that it was possible.

What's really bothering me, I suppose, is the intense feeling that we have as a nation lost sight of our role as building a society. I retain the ideal that this is a nation in which our elders may be revered and can live out their lives in peace and security. I don't know how (and I don't condone the idea of a welfare state), but I believe we have the *power* to do such things. I retain the ideal of America as a nation which can make something of itself. Yet all I see are streets with chuckholes. Nothing is made to last in the sense of classic antiquity. The South Bronx remained a shambles during the Reagan administration (in my crystal ball), but defense spending approached a quarter of a trillion dollars annually. Very little was allocated to a *domestic* defense budget.

If all this seems disconnected it's because I'm trying to express a feeling through freely associated thoughts. In law school there aren't too many non-linear thinkers. Most law students would rather have two huge propellers churning (see *Dick vs. United States*) than to merely be floating freely on the sea of substantive law. People don't seem to realize that words get in the way. That mental silence is the only way out of the time lock we're in. That between any two points on a line there are an infinite number of points. That they should avoid stale mushrooms, Stroh's Beer, and decaffeinated coffee. Sometimes, I just don't know.

But I'll tell you that dreamers should keep on dreaming. We can't give up just because they may never elect us president. We don't have to hide just because most of what we do believe is against most of the laws (just joking, only some of it is.) We can control the vertical and we can control the horizontal. And we can still try to go forward while the rest of the world goes straight and gets nowhere. Because the world may never make it without us and though things may not change before we're gone, like the song says, a dream goes on forever.

Joe Jerse

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This time, CSU closes indefinitely. No classes, no lectures, nothing. Professors are encouraged to give "alternative finals," with questions not on the subject of the course, but dealing with "repression" and "peace." (Again, CSU is lucky. Some colleges never reopen again that spring.)

That was 1970, when anyone on campus who dared speak against the radical "peace" or women's "liberation" movements risked having "peaceful protest" come crashing down his head. A stifling atmosphere of intellectual conformity hung over the campus: lectures on "Women and the War: Solidarity with North Vietnam" summed up the atmosphere nicely.

All the university newspapers proclaimed "Protest and mobilize for Peace!" But it seemed the only approved route to "peace" was North Vietnamese communist victory.

Ten springs have come and gone... the old G.T.O., made in '70, can still crank out 300 horsepower and burn rubber, but no one much cares about that sort of thing anymore. The radio is tuned now to stations that play old songs; the new music had degenerated into an eclectic trashery of pseudo-country, schlock-ballads, and the cleverly-calculated rubbish called "punk."

One thing that has not changed is the smug atmosphere of intellectual conformity, demonstrated by the "protestors" at Governor Rhodes' speech in its more violent form. The university continues to be pervaded by a crushing intolerance for any opinions which do not express the trendy Spirit of the Age. Bureaucrats, many professors, and all sorts of professionals whose jobs are dependent on tax money continue to attack anyone who expresses the principles held by most *taxpayers*: thus it is that support for women's "liberation," for a socialist economy, and for surrender to the Soviet Empire centers almost exclusively in institutions and professions dependent on tax money for their livelihood. There too centers opposition to any reduction in the size of government. For lower spending and taxes would let taxpayers KEEP THEIR OWN MONEY and save or invest it, (which would mean real, productive jobs for people now poor and unemployed). But fewer poor people would result in less "work" and less money for "public interest lawyers, government bureaucrats, and other scoundrels who delight in supping at the public trough. And therein lies the reason for the double-standard of many Liberals with regard to "toleration," "open-mindedness," and "freedom of speech." The only views which are "tolerated" are those which demand more government control over the citizenry's jobs, education, and social matters. These people, dependent upon government for their salaries and perquisites of power, violently attack anyone who would expose and end their thievery against the honest, hard-working citizenry.

No, in some ways, nothing has changed in the ten springs since May 1970. CSU has added many new buildings. A lot of faces have come and gone. The days of youthful freedom and excitement may have passed. But the domination of Liberal ideas continues unabated among university elites.

And, on the *positive* side, the Pontiac still runs...

Abortion bothers me. I guess it bothers a lot of people, who really do not want to choose sides on this issue. The fanaticism on both sides of the issue can really get to you, until you wish the whole problem would just go away. Yet, it won't. I do not believe that even the most vocal defendants of abortion, would deny that abortion is dirty business.

From my background alone, I would be inclined with the so-called "Right-to-Life" movement, and the sanctity of life argument. The fact that abortion is often used as the "Last Contraceptive" by people who make no effort to receive sexual counseling, or to learn about contraceptives would lead me in the direction of those who favor a ban on abortions. Unfortunately, those people who speak so eloquently about the sanctity of life, don't seem to have much concern for this life once it enters the world. For the same people who talk about sanctity of life, cheer for the abolition of programs designed to help this new life, and they seem to wash their hands of the matter once a child is born. Furthermore, instead of encouraging better sexual counseling, greater availability of contraceptives, and a better counseling system for pregnant women, these people seem to favor a return to the repressive sexual atmosphere which resulted in the abortion boom, where the most shameful and heinous thing an unmarried girl could do to her family was to get pregnant. What is advocated in too many quarters is a return to sexual ignorance, with contraceptives being generally unavailable, little counseling being provided, and research into sexual matters being curtailed.

So after long soul-searching, I come out on the side of the "Pro-Choice" forces. For although, this side says some things I do not agree with, it is the side of reason, and not reaction. I say to the "Right-to-Life" movement that concern for the sanctity of life does not end when a child is born, it only begins there.

Were my opinion to be solicited on the matter, I would say that I am in favor of seeing an end to abortion. However, I will not support a law banning abortions without more, since a ban on abortions will not end them since you can only end abortions by removing the need for them. I might say to both sides that I hope to see the day when there will be no need for abortions.

At such a time, abortion will be unnecessary. Any pregnant woman who does not desire to carry a fetus to term will not have to do so. The fetus will be surgically removed and brought to term outside the womb, or transplanted in the womb of a woman willing to carry it to term, with the mother surrendering her rights to the fetus. Such a day is not far off, but it cannot be brought about in an environment of ignorance. It can only come about in an atmosphere that encourages greater medical research in the area, improved counseling as to the ramifications of sexual intercourse, improved counseling as to the use of contraceptives, and greater understanding of the difficult situation that all too many women face.

It is time to stop fighting. It is time for both sides to put an end to the hysteria and hate that has ruined the political careers of too many good people, simply because they would not unconditionally adopt the aims of one side to advance their careers. It is time to move toward that day when each side sees its aims fulfilled, and everyone wins as abortion becomes another forgotten relic of the past.

— Chuck Fonda

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The bill will permit various genetic tests to be made and submitted as evidence that a man is either unlikely or likely to be the natural father. Passage of this provision will greatly improve the ability of either the mother or the alleged father of an illegitimate child to present scientific evidence to convincingly show whether a man is not, is unlikely to be or is likely to be the father.

Representative Fix's legislation is important and necessary for both parents of illegitimate children. If passed, it will for the first time enable a father or his representative to bring an action to establish paternity or prove non-existence. It will also, largely because of the new language regarding genetic testing, help unmarried mothers and their representatives, including County Welfare and County Prosecutors, to obtain a paternity order and child support.

Because illegitimate births are currently about 15% of all births, and because 90 to 99% of fathers are avoiding or attempting to avoid responsibility and payment of child support, the bill, if enacted, will have a wide and immediate application.

It may surprise you, but I am for the most part in favor of the liberty and free choice you hold so dear. I have enjoyed immensely the spectacle of airlines falling all over themselves to lower prices, since the airlines were deregulated. However, I do believe that federal intervention is sometimes mandated in an area. I cannot believe that you opposed federal action in the areas of civil rights when some states did all they could to circumvent the intent of the Supreme Court's desegregation ruling of 1954. I also favor federal intervention when it is the only means available to correct earlier action taken by the federal government.

For the past fifty years, the federal government has poured untold billions of dollars into erecting a federal highway system. Both Republican and Democratic administrations have painted a picture of a future where people can live in pastoral suburbia and drive to work, since a supply of gas would always be cheap and plentiful. The thriving passenger rail network was throttled by this dream that was thrust down the throats of the American citizenry. Municipal mass transit systems were phased out. But everything was fine as long as the gas held out. Of course, it didn't. Now we face the prospect of gasoline prices, as a result of deregulation, becoming too prohibitive for the majority of the population. Because the cuts in the Reagan budget will have the effect of destroying our rail passenger system, and gutting the various mass transit systems, there will be a major transportation crisis, as people will not be able to afford driving cars. I reiterate, what happens then?

Finally, I was most amused by your reference to the "mad ranting and mawkish mush of the Coventry Road set." You see, I have lived in the Coventry area for a few months now, and I am still quite intrigued by the area. I know of nowhere else where you can find all parts of the political spectrum so well-represented, from Libertarian to Fascist or Communist-Fascist. Perhaps, you should acquaint yourself with the area by joining me for a drink sometime. Who knows, you might even find one of your "truly needy" persons down there.

Dear Mike:

I'm afraid that too many people around here, myself included, have let your views on the role of women go unchallenged. I can no longer suffer the present situation to continue, although I may be no more qualified to speak on the subject than you are.

I'm sorry, old sport, but I just cannot agree with your assertions that a woman is better off in the home raising a family. Having seen too many wives of high-school friends grow old and vapid before my eyes, while confined to the home, I must take a contrary tack.

Women, just like their male counterparts, should be free to pursue whatever calling they desire, and not be shackled to the traditional roles of teaching, nursing and secretarial work. While Phyllis Schlafly and Taylor Caldwell don't have to worry about pursuing careers, since they married into wealth, most women don't marry into wealth, and desire something more stimulating than remaining in the home — why don't you check this out by talking to some of the mothers in the law school population.

When women seek to develop some sort of career for themselves, they face two momentous hurdles. Society is still very reluctant to let women go beyond the traditional roles assigned to them, and the myth that women still don't deserve equal pay for equal work is still prevalent.

The Equal Rights Amendment was designed to remove these hurdles, so that women who sought careers could do so on an equal footing with men. Thanks to the efforts of Phyllis Schlafly, Taylor Caldwell, and the current occupant of the White House, this amendment is dead. These ladies should celebrate their great victory and feel blessed. For they will never be discriminated against at work. Nor will they be forced to search for a job after spending years in the home, when their husbands die, and accept miniscule wages, while being subject to ridicule and degradation.

Finally, Mike, if you still grieve the inevitable passing of your brand of chivalry, I recommend two works that may change your outlook; the book *A Distant Mirror — The Calamitous Fourteenth Century* by Barbara Tuchmann, and the movie *Monty Python and the Holy Grail*.

— Chuck Fonda



I never asserted "that a woman is better off in the home raising a family." "There is not a harder or more demanding job, or one that needs more quality." — Doris Lessing. I said that a housewife deserves as much respect for her role in life as does a woman who happens to have a "career." Feminoids do not have respect for women who choose this vocation in life. And since when did a 9-5 routine job become so exciting?

Neither Phyllis Schlafly nor Taylor Caldwell married into wealth. Suppose they had, what would it prove? That wealth automatically confers a "career" without talent and perseverance? Even women who have full-time jobs or are career women for the most part think in terms of their family. There is nothing demeaning about such priorities.

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It is also submitted that public horsewhipping is the most proper manner, of dealing with misfits who have no conception of justice, but only comprehend force. A taste of the lash and a bit of corporal correction will soon smartly set them right about what misdeeds will not be tolerated. The miscreant, brought before a magistrate and jury, would if convicted, be immediately given the proper number of lashes, with the severity of the beating to be commensurate with the gravity of the offense; perhaps a few strokes for petty theft and minor assault, while a major battery such as violent purse-snatching from an old woman would see the scoundrel thrashed to within an inch of his life. Repeated offenses would be punished even more severely where possible.

It is imperative that the trend to "model" (should it be motel?) prisons with air-conditioning, television, and access to drugs, be reversed, if any innocent citizen's safety in the Republic is to be preserved. The vipers who prey upon the innocent must taste the lash; for capital offenses, they must face the gallows.

The value of this proposal to the cause of justice increases when we consider that prompt and stiff whipping (far from being sadistic) is in reality the most human manner in which to deal with the felon. Having been thrashed, he is returned to society, physically pained, but knowing the consequences of his misdeed — and spared the torment of isolation like a caged animal in prison, or the dangerous association with the other, perhaps worse criminals found even in Liberal "model" prisons. The effects of prison life in terms of mental torment have proved to be far less humane and therefore, less effective, than corporal correction. Unlike the possible years of isolation, mental suffering, and bad company of prison, horsewhipping offers the most convincing means of saying to the criminal, "You're conduct toward fellow creatures was wrong, your punishment shall be severe. But its severity will not prevent you from another chance to be in society and to mend your ways. Whether or not you correct your *character* is a matter only you can decide. But you will mend you *conduct*, or else each misdeed will lead you to steadily severer correction by the whip."

To punish the criminal by inflicting corporal pain is to render punishment certain and swift, and to give correction immediate relation to the wrong which provoked it. Such punishment also spares the *wrongdoer* the inhumane torture of spirit inflicted on some by the penitentiary, and spares *society* the dangerously smug attitude of other criminals who either are unbothered by prison life, or who are presently kept at public expense in "model" prisons.

Savages rule our streets. Their number is small in comparison with the rest of society; but they have terrorized the innocent majority into absolute fear of venturing out after, or even before nightfall. No one is safe even within his home. "Reform" and the penitentiary have been tried and found wanting — desperately wanting. In short, prisons are an idea whose time has *gone*. The wolves are at the very door of civilization. There is but one remedy remaining. The savage element must be horse-whipped into submission.

The great Dr. Johnson was once told by an "enlightened" man of public affairs that corporal punishment could never be the way to govern bad men. "Nay sir," replied the Doctor, "I know not if it be the way to *mend* them; it is the way to *govern* them."

ERA was designed as a power-grab for the federal government; it has nothing to do with "equality." That is why the vast majority of women have rejected it.

Work is only "degrading" when the worker thinks it is. The wages depend entirely on economic and geographic factors. If a man had been "out of the market" for 5, 10, 20 years, he too would be faced with the same difficulties. He would also have the very same job counseling services (public and private) available to help him.

I saw the movie when it first came out with a very attractive Jewish girlfriend, who is now an architect as well as a housewife and mother. We both thought it was one of the worst and most boring movies either of us suffered through. It stunk to high heaven and I still want my \$7.00 back! I'll read the book while you read The Enemies of Society by Paul Johnson. Cheers,

— M.V.S.

Doctor Johnson: Garrick (the great actor) exhibits himself for a shilling.

Sir Joshua Reynolds: I do not perceive why the profession of a player should be despised . . . Garrick produces more amusement than anybody.

Boswell: You say, Doctor Johnson, that Garrick exhibits himself for a shilling. In this respect, he is only on a footing with a *lawyer*, who exhibits himself for his fee, and will even maintain any nonsense or absurdity, if the case requires it. Garrick refuses a play or a part which he does not like: a lawyer never refuses.

Doctor Johnson: Why, Sir, what does this prove? Only that a *lawyer* is worse."

— April 29, 1773

Boswell: I doubt the justice of the general opinion that it is improper for a lawyer to solicit employment, for why should it not be equally allowable . . . as it is to solicit votes to be a member of parliament?

Johnson: Sir, it is wrong to stir up lawsuits; but, when once it is certain that a lawsuit is to go on, there is nothing wrong in a lawyer's endeavoring that he shall have the benefit rather than another.

Boswell: You would not solicit employment, Sir, if you were a practicing lawyer?

Johnson: No, Sir; but not because I should think it is wrong, but because I should disdain it.

— March 15, 1776

Boswell: A friend advised me against being a lawyer, because I would be excelled by plodding, drudging dimwits.

Johnson: Why, Sir, in the formulary and statutory part of law, a plodding blockhead may excel; but in the ingenious and rational part of it a plodding blockhead can never excel.

— February, 1766

Johnson to Boswell: I do not wish to speak ill of any man, Sir, but I believe *that* man is a lawyer.



Then some woman from Rm. 204 yelled that "a young man has been waiting to ask a question . . ." The student tried to express his apprehension that federal money now spent on busing may be diverted towards the purchase of riot equipment. That's my translation. How did the good Reverend respond? With utter condescension: "You expressed it better than I could!" The kid returned to his seat grinning, happy, thinking he actually *had* expressed himself when he was terribly inarticulate. There was no attempt by Drinan at even a polite rearticulation for the benefit of all because, heaven forbid, the young man might develop a stigma . . . if he didn't have one already.

Busing, affirmative action, quotas and condescension are precisely what minority groups do *not* need — they discourage responsible work habits, that sense of self-reliance which is the most helpful in the long run and which takes so many generations to develop. The I-have-a-right-to-charity attitude is nothing more than an excuse for social militancy. Failures are allowed to blame an "inadequate social compensation" for their historical abuse instead of themselves or even those who fooled them into thinking that they had a "right to succeed."

Drinan had the full command of Liberal cliches which effectively annihilated the strawmen of his own creation. He attacked and "analyzed" with non-sequiturs, exaggeration, dogmatism and a bleeding-heart's righteous indignation. He should have received ribald hoots, roisterous derision and all the elements of an over-ripe salad. Instead the audience like the mindless donkeys that they were, ingested the slogans and then stood to applaud the flatulent nonsense and intellectual insults they had just been fed. Drinan's dry, depressing diatribe could not have inspired the development of any solid ideas of individual prospective.

Whose bright idea was it to bring him here, anyway?



"No, Benjamin, the Tsar's children were not called Tsardines."

Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court.

Counsel relied on the decision in *Re Chicadee*, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midget of a much larger species. Therefore, that case is inapplicable to our facts.

Counsel finally submits that the word "small" in the title Small Birds Act refers not to "Birds" but to "Act," making it The Small Act relating to Birds. With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c. 725, is just as small. If pressed, I need only refer to the Small Loans Act R.S.O. 1960, c. 727, which is twice as large as the Large Birds Act.

It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two-legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multi-legged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals "naturally covered" with feathers could have been contemplated. However, had this phrase "naturally covered" would have been expressly inserted just as 'Long' was inserted in the Longshoreman's Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and *a fortiori*, a pony with feathers on its back is a small bird.

Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers?

Appeal allowed.

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dinary criminals. The fact that the new legislation which made all this possible conceded the political nature of their crimes was conveniently overlooked. Section 31 of the Emergency Provisions Act defined terrorism as the "use of violence for political ends."

The Provisional wing of the IRA has always maintained that their actions are politically motivated. Their aim is to drive the British out of Northern Ireland and then unite Ireland. The Loyalists through a somewhat obscure loyalty to the Crown but more because of blind sectarian fears and an ingrained hatred for Catholics have always resisted these aims vociferously and physically. Now, in protest, Provisional IRA prisoners have used for several years a protest called "on the blanket." This involves refusing to partake in prison activities in any form and a refusal to wear prison clothing. Instead they wear a blanket. A massive hun-

ger strike was called off last year after negotiations between the IRA and the government. Later, Bobby Sands claimed the government had reneged on its part of the bargain. Clearly the British had won a convincing victory in the eyes of the world media and its listeners. For the IRA and Bobby Sands, in particular, it was a devastating defeat. Sands' influence and leadership was in jeopardy. When he decided to resume the hunger strike he must have known, as did the British government, that without a compromise, which would have to be a victory for the IRA or at least a victory they could claim, he must surely die.

There can be little doubt that Bobby Sands was in some ways a victim of his own IRA. They desperately needed a martyr and should that be Bobby Sands so much the better since they had managed to manipulate public sympathy for his stance into a resounding victory at the polls. Although he was never to take his seat in the Commons, it seems reasonable, in view of the successive policies of British governments, that he achieved much more through his death than he ever could have achieved in politics.

An editorial in one British newspaper unwittingly stated one of the major reasons why a solution to the war in Northern Ireland has not been found. This the paper did unknowingly because it was really justifying the stance taken by the British government: "The British Government has also, quite rightly, taken into account the possible Protestant reaction to the granting of any radical concession to IRA criminals. Critics abroad are apt to forget that Northern Ireland has Protestants as well."

There seems little likelihood that anybody can ever forget that there are Protestants in Northern Ireland so long as the British government fails to make some effort to convince these same Protestants that their future lies most secure in a United Ireland. Indeed, the future of the British Isles would be well served by such an event. The Republic of Ireland is not a sectarian state and never has been. Certainly the constitution of the Republic would need to be scrapped and a new one drawn up to encompass a large Protestant population. Britain, however, will most likely do what she has done for sixty years: nothing!

It has long been held in Ireland that nothing good for Ireland ever takes place while there is a Tory government in England and this would appear to be even more true so long as Margaret Thatcher is PM. In fact, Mr. Pat Duffy, Labour MP (Sheffield Attercliffe), accused Mrs. Thatcher's government of "moral bankruptcy" in its handling of Northern Ireland and the death of Bobby Sands. Mr. Duffy was quoted in the Morning Telegraph in Sheffield as having stated that Mrs. Thatcher "behaves like the Iron Maiden towards Northern Ireland and it will not work. If she thinks she can take on the IRA in this autocratic way over an alleged principle, she is much mistaken." Tory MPs, predictably, described Mr. Duffy's comments as 'disgusting' although there were "clear signs..." that his speech was welcomed by many Labour MPs.

It will be a long time before the British government escapes from the monster it has created through Mrs. Thatcher's blind insistence that there will be no compromise. Without compromise there can only be war. Had there been compromise, four

men would not have starved to death giving the Provisional IRA, an undeniably repulsive organization, a propaganda victory. It is this kind of lack of understanding which has for several hundred years plagued the policies of successive British governments in Ireland. One wonders if England will ever learn. The IRA is now clearly in a very strong position. They have manipulated the media of the world to the point that the same media cannot comprehend why massive outbursts of violence did not follow the death of Sands. Sympathy for the hunger strikers will undoubtedly spill over into renewed support for the IRA. It is, after all, as the Sunday Times (London) stated in an editorial recently that it is the IRA and not its aims which are reprehensible. Again the Sunday Times in another editorial March 8, 1981, after Mrs. Thatcher, in an effort to appease the Loyalists that the status of Northern Ireland would not change without their consent. "This is true both analytically (enforced change would be impossible) and historically (no British government has ever taken the Protestants on). It means, like it or not, that the government can have no long-term policy: policy is in the hands of the Northern majority." Thus has Britain created and perpetuated the repulsive sectarian state that is Northern Ireland.

The author is a well-informed source on this particular subject.

"I must and will have order in this court," sternly remarked a presiding magistrate; "I have disposed of three cases without hearing a word of evidence." (1891)

The following organizations will be conducting interviews next week in the basement of the Y.M.C.A. on Prospect.

Tex Ashun, Litty Gashun, and Mel Practice: Government Attorneys. Shelly Case, Don S. Conditionalibus, and Fay Simple: Property Lawyers. Judge Noah Peel: Federal Administrative Agency Referee. Miss Taka Fakt, Juan Conscionable and Ewell Cici: Contract Attorneys. Misty Meenor and Reasonable Mann: Tort Lawyers. Hassan Bensober: D.W.I. Specialist. Rex Marajis: Divorce Attorney.

Students who had planned to graduate this quarter and now cannot, due to the abolition of the law school, may also be interested in the following positions.

I. Ketchum, Sheriff of Portage County, seeks deputy to ride shotgun, oversee cattle drives, and stoke-up stove in sheriff's office. Pay: \$4700.00/yr. (third year student preferred).

Hiya Legal Clinic seeks third year student who would have graduated at the end of this quarter, to perform all duties of a full attorney, at the pay of a first year student law clerk. \$3.35/hour, supply your own paper, pencils.

Mr. E.E. O'See, Professional Vagrant, seeks individual with legal know-how, to assist in welfare-fraud scheme. Offers 5% of total take.

CSU secretaries and administrators needed. Duties include lounging around, pretending to look busy elsewhere when students come in seeking help, extended lunch-breaks, ~~high~~ pay, \$17,000.00 to \$27,000.00 need not apply).