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Cleveland-Marshall College of Law

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People in law school complain a lot. We gripe about professors, classmates, homework, exams, the weather, the air conditioning, the library, placement, too many interviews, lack of interviews, too-small lockers, too-heavy books, the spring course schedule, lack of sleep, being called on, not being called on, grades, the grading system, lack of parking facilities, being on law review, not being on law review, the price of books, the price of study aids, the cost of education, etc...

The list is nowhere near complete, but I'm sure you get my point. If there's anything to be complained about, someone else has undoubtedly beaten you to it. That's a general rule of law around here.

Law school is tough. It's hard work, long hours, strict discipline, and an immense challenge. We each need a way to vent our frustrations, and talking about them incessantly is, I've noticed, a way that works well for many people. I would worry about the quality of education here at C-M if everyone walked around without a care in the world. If such were the case, the faculty and staff would not be doing their jobs, and the school would be turning out second-rate attorneys. Then we would really have something to complain about.

As the holidays approach, let's all remind ourselves that the fact that we can complain so much is actually a luxury. How many starving or underprivileged people would understand our groaning over low grades, poor interview results, or too much homework, when their only goals are to survive the winter with food on their tables and warm places to live. No, they would have a hard time understanding our ivory tower attitudes.

So, as we enter the holiday season, let us convert our complaining attitudes into ones of humility and thankfulness. Let's each try to do at least one special good deed for someone less fortunate: send food to a needy family, spend time with a lonely senior citizen, or visit a hospital or nursing home. There are many out there who would appreciate a kind word from any one of us.

On behalf of the Gavel staff, I extend to all of you a wish for a very happy holiday season. Good luck on finals!

Sandi Kowiako
The month's of hard work and long nights going through pot after pot of coffee paid off for C-M's National Moot Court teams. The teams returned home from the regional competition, which was held in Columbus November 7-9, with six of the seven top awards of the nation's largest and most prestigious moot court competition.

The team of Charles Hannan, Kathleen Kordeleski and Mary Sotera won the first place team, best team in the round robin and best petitioner's brief awards. Ms. Sotera won best oralist in the final round and Ms. Kordeleski was named second place advocate in the round robin. Marshall's other team of Judith Francetic, Edward Kraus and Marc Strauss won the award for best respondent's brief. This is the first time a law school has won the award for best brief on both sides. Marshall was also awarded best Ohio law school and five of the six team members designated outstanding advocate in individual arguments. The overall team record of seven wins, one loss in the round robin was the second best school record.

The teams argued the constitutionality of a hypothetical city's effort to grant an exclusive cable franchise even though three franchises could be accommodated by the city. The competition was judged by three justices of the Ohio Supreme Court, a U.S. District Court Judge, a Federal Bankruptcy Court Judge, and two noted Columbus attorneys. All law schools from Ohio and Michigan, except for the University of Michigan, participated.

The team of Hannan, Kordeleski and Sotera, as regional champions, will represent the region in the national finals to be held in New York in January. Of the 175 plus schools which entered the competition, approximately 26 will be competing in the Big Apple. The region will also be represented by Ohio State University, which Marshall defeated in the final round. A U.S. Supreme Court Justice is expected to be on the judging panel in New York.

The Moot Court Board of Governors and faculty advisor Professor Stephen Werber are to be commended for their outstanding performance. In addition to their recent success in this year's national competition, C-M teams also won last year's Benton and Cardozo competitions. The Student Bar Association, while not involved in any political struggles or heated debates, has been active this semester in its promotion of academic and social events. Our student groups also deserve credit for expanding the number of activities which are occurring on campus and we hope that everyone will continue to support their efforts. Not surprisingly, attendance has been particularly strong at all happy hours, especially on Halloween, and we are also pleased to announce that our 100 seat allotment for the Browns game on November 24th sold out.

Our next major event will occur on January 30th, when the S.B.A. will reinstate the Follies for a night of satirical skits. The renaissance of the Follies will occur in the moot court room for the first time since 1982. We have assembled an array of talent for the evening, but are still in need of several acts. Now is the time for the Follies to realize its potential. Any aspect of your law school experience is susceptible to satire. All interested contributors, from the ridiculous to the sublime, should contact Eddy Kraus at the S.B.A. office.

The S.B.A. scheduling committee believes that students should be better informed as to when courses will be offered during their last two years as well as provided with advice as to how courses are linked together. In an effort to ease the process, we have presented Dean Lifter with a list of those courses which we believe should be offered every semester, every year, and courses which could be offered once at any time during the last four semesters. We have examined various sequences of courses and their enrollments.

From The President's Desk

The Student Bar Association, while not involved in any political struggles or heated debates, has been active this semester in its promotion of academic and social events. Our student groups also deserve credit for expanding the number of activities which are occurring on campus and we hope that everyone will continue to support their efforts. Not surprisingly, attendance has been particularly strong at all happy hours, especially on Halloween, and we are also pleased to announce that our 100 seat allotment for the Browns game on November 24th sold out.

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Letter To The Editor

There is a vast injustice in that Trial Advocacy is being offered three times in the summer session and only once in the spring, on Wednesday nights at 6:00 p.m. This is extremely difficult for third year students, especially due to the fact that only sixteen students are permitted in the class. This is extremely poor planning on behalf of the administration.

— Anonymous
Office of Career Planning: A Viable Alternative

by Deborah Gibula

The Office of Career Planning is looking for all Cleveland-Marshall law students concerned about future careers. It is peculiar, with one of the most apparent characteristics of a law student being the ability to seek out available resources when researching problems, when it comes to career planning the most accessible resource is often overlooked. The Office of Career Planning offers much more than a bulletin board with job listings. Through the office law students can get help with resumes, guidance for interviewing, ideas about what the legal profession offers as well as information about alternative careers.

One stigma the Career Planning Office is working hard to relieve itself of is that it caters only to those students ranked in the top 20%. This is not true. As a matter of fact, the bulk of concern for the Career Planning Office is guiding those students who rank in the remaining 80%. For example, many students see the on-campus interviewing in the fall and think if they did not have an opportunity to participate in the interviews there is no hope for them. In all actuality, the on-campus interviewing works to get Cleveland-Marshall noted among various large law firms (which, incidently, was very successful this year) and really works separately from the Career Planning Office. The real work of the Career Planning Office begins in November after the on-campus interviews are completed. This is when those students who did not get offers or did not get interviews at all come in to the office to evaluate the other opportunities available.

Through the Career Planning Office law students can find a library of literature and aids from video cassette tapes of mock interviews, which may be borrowed for review in the library, to information about alternative careers outside the legal profession. Many students do not realize all that is available to them only for the asking. The Career Planning Office can help with resumes for first year students getting ready for summer jobs. It also offers seminars and workshops for all students to attend throughout the year. Some workshop topics have recently included Mock Interviewing and Small Firm Practice, with a Solo Practice workshop to come sometime in the spring.

The Career Planning Office also participates in the Law Consortium in Columbus, which is a one day recruiting conference offering second and third year students interviews with various firms and companies located in Ohio and surrounding states. This is a great opportunity for those students looking to leave the Cleveland area. Another opportunity offered for those law students seeking to work outside the state (or elsewhere in Ohio) is Cleveland-Marshall's reciprocity with any ABA approved law school in the country. Through this process Cleveland-Marshall can work with any law school to aid students in planning a job search strategy with other cities.

Early next semester the Career Planning Office, in conjunction with the Cleveland Bar Association, will be offering the opportunity for law students to go to lunch with an attorney practicing in an area of preference to the student. This “Take a Law Student to Lunch” program gives the law student a chance to ask questions and obtain information in areas of interest to them without the formal setting of an interview. Also next spring there will be a Federal Government Careers Day which will allow law students to talk with and get information from various government agencies. Last year there were thirteen government agencies represented at Cleveland-Marshall.

With so much available through the Career Planning Office why not look into it? Whether the concern is a resume, seeking a clerkship position, help for more successful interviewing, or guidance for future career planning, the door to the Office of Career Planning is always open.

Library Etiquette

There is a necessary evil that confronts all law school libraries from time to time. This is our time to issue annual pleas and demands for courtesy and cooperation from all of our law student patrons. Our motivation is the desire to provide equal service to all patrons. If the following guidelines are followed, the law library will become an environment more amenable to effective study and research. (WARNING: some of the guidelines listed below may seem like just commonsense. Don’t be fooled. If you’ve been in the library lately, it is probably plain to you that someone around here has a different notion of commonsense. It may even be someone you know.)

Sharing
- Do not hoard reserve materials. Reserve materials may be used in the library for only two-hour intervals. You must return the materials to the reserve desk at the end of the two-hour period. If no one else has requested them you may renew the items for another two-hour interval. However, if someone has requested them, you must relinquish them. Unfortunately, the library just does not have the manpower to track down offenders.
- Do not hide or misshelve books you want to use later. All law libraries encounter this phenomenon. It is not always a case of the paper chase syndrome. It is just selfishness. The result is the same. Someone who has just as much right to use the books is frustrated in their ability to locate and use the books.
- Return indexes to ALRs, jurisdictions, table of cases volumes, etc., to their proper shelf locations. The library has multiple copies of most of these basic research materials, but we do have limitations. We cannot provide enough copies for everyone in a class of seventy-five.
- If the book you’re looking for is not on the shelf, check the shelving areas which are located by the stairwell on each floor. Remember, even if the book is supposed to be on the first floor, it may have been taken and left on another floor. You may have to check all three shelving areas.
- Let the attendants at the circulation desk know if something is missing, particularly if other people are going to need it too. They will ask you fill out a missing report on which there is a place to indicate if the item is urgently needed for a course assignment. If you bring the problem to our attention, we may be able to come up with an alternative source.

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To buckle up only takes a second, is painless and doesn’t cost anything. It could save your life. Yet fewer than 15% of people in this country wear seat belts. To a logical observer such behavior may seem foolish and even suicidal. To Stephen J. Werber, professor of law at Cleveland-Marshall College of Law, not wearing a seat belt is immoral.

Werber is an expert on seat belt law. He has published several articles on seat belt issues in legal journals and has represented automakers in numerous cases.

"Non-use of a seat belt is a moral issue because it results not only in injury to that person, but also creates tremendous emotional and financial hardship to that person’s family and to society," said Werber.

He said each state is expected to pass laws requiring motorists to wear seat belts because of pressure from the National Highway Traffic and Safety Administration, a division of the Department of Transportation. If the states don’t pass the laws by 1989, the feds will require automakers to install automatic occupant protection, such as air bags or seat belts that strap automatically.

It’s up to each state to pass the law. The 15 states that have passed seat belt laws have made the offense a misdemeanor punishable by a small fine.

In Ohio, the law is in House and Senate subcommittees. At issue is whether seat belt use is admissible evidence in a law suit, Werber said. Almost everyone agrees on the necessity of a mandatory seat belt use law, he said.

"Studies from other countries show that in order for seat belt use laws to be effective, they need to be combined with education campaigns stressing the benefits of wearing seat belts, instead of the penalties," said Werber.

"Immediately after a mandatory use law is passed, 80-90% of motorists comply. That figure usually drops off to about 50-70% compliance after a while.”

Werber said that at least one-third of auto fatalities to frontseat occupants would be prevented if the passengers wore lap-shoulder belts. Seat belts not only save lives but are a deciding factor in the severity of injury. Werber presented a scenario in which a passenger wearing a seat belt could suffer bruises from the seat belt, but a passenger not wearing a seat belt would become a human projectile and suffer head and spinal cord injuries.

"The magnitude of human loss attendant to automobile accidents may be better appreciated by comparing it to losses incurred in recent wars," said Werber.

"The total number of Americans killed during the Korean or Vietnam conflicts was only slightly higher than motor vehicle-related deaths during any single year from 1970 through 1978.

"In fact, the loss of life from war pales in comparison to the death toll attributable to the automobile.”

Werber believes seat belts are the most cost-efficient auto safety device. He doesn’t support requiring passive restraints such as air bags because they will take at least a decade to become used in most cars, they can only be used once, they are designed to work in conjunction with seat belts, and may increase the cost of new cars by several hundred dollars.

"In seat belts, the means to substantially reduce the human carnage due to automobile collisions is available,” said Werber. “Yet the public remains more outraged by aircraft mass disasters than the everyday automobile accident.”
THE GAVEL

What's Happening To The Legal Profession?

by Kassia Maslowski

On November 7th Roger Cramton, the first Cleveland-Marshall Fund Lecturer for the 1985-86 school year, spoke on “The Changing Legal Profession: Developments, Dangers and Opportunities.”

Cramton opened by saying that his friends tell him that “the law practice isn’t as much fun as it used to be.” Three reasons for this are: competition, the large number of lawyers under the age of forty and the question of whether they are doing is really worthwhile.

However, some lawyers feel that these are the best of times because of the growing demand for lawyers, the increase in quality and in specialization.

So, if things are improving, why do many lawyers feel so bad? Traditionally lawyers had three basic ideologies: learning, organization and public service. Cramton feels today’s lawyers are not believers in these ideologies and, as a result, these beliefs are eroding away.

Learning is eroding because people are questioning whether there is anything that lawyers do that can’t be assigned to other disciplines. People also believe that experts can’t be fully trusted.

The organizational aspect is decreasing because there is no longer a feeling of “brethren.” With the increase of blacks, women and other minorities into the profession, it is no longer an exclusive men’s organization.

There is a public interest problem because when a lawyer gives total commitment to his client without any interest to third parties or the public, he does not have the public’s interest at heart.

Cramton suggests three features a lawyer should have if we are to create a new image of what it means to be a lawyer and a professional:

1. A lawyer should care about clients and be accountable to them;
2. A lawyer should care about justice and strive for efficiency;
3. A lawyer should allow his conscience to bear on everything he does.

In conclusion, Cramton believes that our discomfort is due to the loss of faith in the traditional tenets of the profession. However, these beliefs cannot be recreated because circumstances have changed. Therefore, a new vision needs to be created to deal with today’s circumstances. If lawyers believe in accountability, efficiency and legal justice, the legal system will remain sound.

CLEVELAND BAR ASSOCIATION

Wanted: Work Study Students

Well over 100 law students have benefited for Bar Association employment which has materially assisted them in getting law degrees.

Law clerks at the Cleveland Bar have an excellent opportunity to meet and work with attorneys and judges in a variety of challenging ways.

They also have an opportunity to absorb a practical lesson in what not to do once they begin practicing law.

Currently there are five (5) openings for law clerks. You may apply by sending your resume to Mary L. Cibella, Counsel, Cleveland Bar Association, 118 St. Clair Ave-Mall Building, Cleveland, OH 44114-1253.
**Test Tactics**

by Sandi Kowiako

Women's Law Caucus and Delta Theta Phi co-sponsored a Test Tactics Seminar on November 14th. Professor Janice Toran and Instructor Sandra Kerber gave students hints on how to prepare for and take law school exams.

Professor Toran began by stating that there is no single magic formula for taking an exam. She suggested that students practice writing ahead of time. Textbook squibs, class hypotheticals, and old exams provide good factual situations to work with. Learning to organize and write out answers under a time constraint will help alleviate stress when one is under the actual time pressures of the final. Toran emphasized that it is necessary to have a firm knowledge of the law and to be able to analyze and relate the facts to the law and the law to the facts.

In setting out to take an exam, Professor Toran recommended reading the fact pattern twice to get the general overall idea of the problem. She then suggested noting the question being asked. The question often appears near the end of the entire fact pattern. Next, she said it is very important to outline one's answer, and this is accomplished by tearing apart the fact pattern paragraph by paragraph. One must be able to spot key facts and interweave them with relevant rules of law.

Instructor Kerber agreed with Professor Toran, that preparation and organization are essential and that the most important facet of the written exam is the interweaving of facts with rules of law. Kerber reminded everyone that they will only be tested on material covered in class and that students should look through their textbook's table of contents to focus on exactly what they've covered.

Kerber's overall emphasis was on maintaining a psychological edge over the entire examination process before, during, and after each exam. Students can acquire the edge ahead of time by practicing writing out answers to old exams on file in the library. When it is time to sit down for the final, students are encouraged to retain their psychological edge by exuding confidence in their writing style. This entails developing a command over the language, using sophisticated words, and intertwining logic words such as since, next, because, and therefore, between logic steps.

Students were also reminded to define legal buzzwords and to include elements when stating rules of law.

Finally, according to Kerber, it is important to maintain the psychological edge after the exam by refraining from discussing it with other students. Collectively, she said, a class of students is a genius, but individuals do not necessarily have the same overall answers or abilities. This after-exam tip will help in preparing for subsequent finals.

**From The President's Desk**

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since 1982 to make these projections. We have also compiled a list of defunct courses which we believe should be removed from the bulletin. The faculty is currently examining the way in which courses are linked together, for example, by class content, and we hope that their findings will also help students know what course offerings to expect. The faculty will soon be submitting their course choices for the 1986-87 academic year. Our goal is to see an evolution of a set of core courses which students can expect to see every semester and possibly every year.

Another area of student concern involves placement. In an effort to allow students to express their ideas about how we can improve the process, the S.B.A. will sponsor a placement forum early next semester. Students can voice their opinions about the placement office to the S.B.A. officers who in turn will relay these view-points to Nancy Goldman and the Dean.

One area of interest currently being explored is the formation of an annual alternative career fair, for students who seek information about the practice of law outside of its traditional setting. Hopefully this fair will occur in the spring.

One final note, Cleveland-Marshall continued its domination over CWRU law school at the Barristers Bowl by trouncing them on November 16th by a score of 26-7. Our defending intramural champs, the S.T.U.D.S., utilized a superior playbook and the deep threat to take a commanding lead by halftime. A party was held at Case following the game.

Aside from some trouble guidelines concerning academic standards, life at law school appears relatively content. Good luck on midterms and finals and if anyone has any specific concerns, please let us know about them.

Jim Tavens,  
S.B.A. President

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**Moot Court Night**

by Rick Smith

In presenting the seventh annual fall Moot Court Night on October 29th, the advocates argued very visible issues concerning the Cleveland area.

The issues stemmed from the conducting of an auction, the licensing of cable operators in a particular jurisdiction, and the restrictions of allowing only one operator to be awarded a franchise. The city and the cable operator may have been presented as fictional, but the constitutional questions posed by this situation certainly were not.

Arguing for the cable operator were Moot Court team members Edward Kraus and Marc Strauss. On the city's behalf, team members Judith Francetic and Mary Sotera presented the case. Both sides went before the distinguished panel of Ohio judges led by the Honorable Frank D. Celebrezze, Chief Justice of the Ohio Supreme Court. The two other presiding judges were the Honorable Richard M. Markus, Ohio Court of Appeals, Eighth Appellate District, and the Honorable William R. Baird, Ohio Court of Appeals, Ninth Appellate District.

As the petitioners, Kraus and Strauss presented their argument first with intermittent interjections and questions from the panel who challenged their positions. When they were finished, Francetic and Sotera, the respondents, stood before the panel one at a time, facing similar scrutiny previously experienced by their opponents. The petitioners were permitted a rebuttal to finish their presentation and requested the panel to rule in favor of their clients.

Before rendering their decision the panel critiqued each side's presentation and pointed out that they knew the law well in response to the questioning. The panel also discussed the importance of body language, both while arguing in front of the court and while listening to the other side argue. They stressed that while arguing, body language should exude confidence in the position taken by the person arguing, and while listening to the other side, body language should be almost emotionless and straight-faced.

In the end, the panel said the arguments were close, but they all finally agreed that the petitioners, Kraus and Strauss, had the edge.
Library Etiquette
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— Other great places to look for missing books are the areas around the copiers. This, of course, is another problem. Please do not leave the books you've copied from in the copier areas. You should reshelve them, which as graduate students you are expected to be capable of doing. If not, take them to the shelving area so they will be easier to find.

— Do not expect ready access to every resource you need if you intend to use it between 2 p.m. to 5 p.m. on a weekday. The law library is open ninety-nine hours a week. Sometimes you must take advantage of the opportunity to be among those diligent souls that close the library at midnight (or Friday, or Saturday or Sunday afternoon; the study of law is not a 9-5 activity.)

Professors Not Exempt from Being Part of the Problem
— If professors give an assignment in which a large group of students are expected to use the same material, and one of the goals of the assignment is NOT for students to learn how to locate resources in the library, resource-sharing problems can be avoided in advance by asking the library to place the material on course reserve.

— Course reserves are materials normally located outside the permanent reserve collection, which are moved to the reserve room at the request of a faculty member. These items have a two-hour circulation limit.

— Patrons can determine those materials that have been temporarily placed on course reserve by checking the card file kept at the Circulation/Reserve counter.

Now for the Demands
— No food or beverages are allowed in the library. There are several reasons: cockroaches, mice, rats, and ants. Need we say more?

— If you break this rule and get caught, expect to be asked to leave the library until you get rid of the contraband. In some instances, the contraband will be confiscated and discarded for you.

— Have the courtesy to clear the table or carrel you have used so that it is ready for the next person. Discard refuse, etc. It makes a more pleasant atmosphere.

— When requesting reserve books, you must give a call number to the attendant. Use the card catalog to find the call number.

— Be polite to the attendants at the Circulation/Reserve Desk. Most of them are undergraduate students. Don't expect them to answer reference questions for you.

— The library's professional reference service operates:
  MON-FRI: 10 a.m. - 9 p.m.
  SAT: 10 a.m. - 6 p.m.

If a reference librarian is not stationed in the reference area during those times, please ask the desk attendant to page her/him for you.

— Be patient. Wait your turn for assistance. There is a smaller number of attendants this year. The accuracy of the work you request depends on careful attention to detail.

— We may ask you to open your briefcases and bags for inspection when leaving the library. Our security system is not yet fully installed.

Comments
— Give us your suggestions for improving library services or offering additional service. We appreciate your comments and enjoy providing the service you need.
A Day In The Life Of A Personal Injury Lawyer

by Darlene Amato

On October 30th the Special Projects Committee of the Student Bar Association held a seminar in which speaker Richard C. Alkire, an associate from Nurenberg, Plevin, Heller and McCarthy law firm spoke on the topic of personal injury. His discussion revolved around the typical day and life of a personal injury attorney.

Alkire stressed that the nuts and bolts of this field is the intense preparation of cases. Extensive research plays an important role; without thorough research, an attorney has little chance of being victorious in court. Since there is a considerable amount of work involved in taking each individual case, an attorney must know the telltale signs by which he should not accept the case. Although there are no cardinal rules for a lawyer to use as a guide, one must use common sense in deciding whether or not the client is relaying the truth. If it does not feel right from the beginning, then be cautious in considering if you should take the case. Also, you must weigh the chances of a positive outcome in court. Along with these points, many firms have a set rule that they will not take a case unless the client is insured. Alkire believes that these aspects must be considered before deciding whether or not to represent a client.

Alkire then went on to talk about a typical week as an attorney within this field. He deals with people from all walks of life; white collar, blue collar, and unemployed. Thus, he emphasized that one must be able to communicate with a variety of individuals. In this field one must not talk over the client’s head; this does not impress them or the court. This is very important to remember since 25 percent of the time is spent with the client.

He also spends time taking depositions, drafting requests for interrogatories, preparing discoveries and attending pretrials. Finally, the workload must be realistically evaluated by the attorney in order to estimate the time that will be needed to prepare the case for court. An attorney should not overload his work schedule or nothing will be adequately accomplished.

Finally, Alkire discussed the advantages of working for a firm rather than working privately. First, when working within a firm an attorney does not have to worry about cash flow to cover the client’s expenses because the firm covers this expense. Secondly, Alkire believes there are more cases to choose from when an attorney works within an established firm. This is due to the fact that references are sent to firms in many instances. Lastly, along with receiving references, an attorney does not have to worry about incoming business. Usually in assigned workload is delegated to each member within the firm.

In conclusion, Alkire stressed that in order to be successful in this field, an attorney must like to work with others. Interaction plays an important role in this field. Without this, attorneys become machines shuffling papers and lives, instead of being the professionals they set out to be.
THE GAVEL

The Chinese Perspective

by Professor Barry Kellman

The local literati advise that if you want to write a novel about China, write it within six weeks of your arrival; after that the complexities and contradictions overwhelm perception and sensitivity and judgement. I have been here seven weeks, and writing of my experience is indeed difficult. This country has an internal logic highly analogous to that of the U.S. Tax Code. It is multitudinous and little concern is given to disparities among various sections. Words do not mean what they mean but must be defined within a limited and ever-changing context; all comprehension is therefore subjective. There are an infinite quantity of rules and regulations to govern activity which are always unavailable for inspection or challenge but which always serve to prevent you from doing anything simply. Yet the system somehow works and contains within itself its own coherence.

China is, of course, the Middle Kingdom—the center of the Earth surrounded by barbarians. This national sense of egocentrism does not result in snobbery (a trait the Chinese deplore) but in exceptional insularity. The Chinese want science and technology from the West and management skills from Japan, but fundamentally they do not want to join the world community if its means opening the country to foreign influence. The past few years have eased the severity of China’s isolation, but centuries of a closed-door policy have left a profound cultural preference for Chinese ways regardless of their merits.

Foreign experts like myself are treated something like a rare and highly valued zoo animal. We are adored, even revered, and gawked at endlessly; however, they really do not believe that we can long survive on our own. I have often eaten in restaurants with Chinese friends and colleagues and have never once had the opportunity to order for myself or express a preference regarding what I would like to eat. They insist on making decisions for us because they truly believe that we cannot decide things for ourselves. If you had a prized pet, would you let it eat scraps of its own choosing or would you prepare a diet for it in its own best interests? The analogy here to the treatment of foreigners is remarkably apt.

This is the only country I have ever been in where I do not count my change when I buy something. Ninety-nine times out of a hundred, the change is exactly right. They simply do not cheat. Occasionally, I have received the wrong change (always, I believe, unintentionally), but requesting a correction is a waste of time. Even if a mistake has been made, they will deny it vociferously and will say anything to gloss over the error. Never mind that three plus four does not equal nineteen; the regulations say that in this context three is really eight and four is really eleven and the seller faced great hardships in getting the goods and, no, you cannot see the regulations etc. etc. Fortunately, they are honest to foreigners (who would cheat a pet?), but they are also subjectively infallible regardless of objective reality.

What they expect is to get along, and they think we are too contentious and quarrelsome, too prone to anger and hostility. They have refined “getting along” to a high art but in the process have forsaken certain elements of realism and objectivity which most Westerners cherish. It is an interesting trade-off. One can hardly deny that this society is far more stable and far less violent than virtually any nation in the West. And, despite the claims of the right-wing press, this is not the stability of totalitarian automatism. China has existed for two and a half millennia under Confucian principles of order any harmony. It has now recouped nearly all its territory from foreign control and is experiencing remarkable economic prosperity. By and large, there is freedom of thought and expression, and the political purges seem to have ended (although no one knows for sure). It is, upon reflection, difficult to criticize this system, but it is bewildering and even a bit amusing.

The critical questions are of the future. Will China continue its course toward modernization after Deng Xiaoping has passed on? Can China modernize its technology without changing its culture? If China wants to participate in the world economy, can it do so and still exclude “decadent” foreign influences? The legal challenges facing a society of this size as it enters the twenty-first century are awesome; but this is a culture with few lawyers and an historical disdain for adversary process. China would like to consider itself the third most powerful nation on Earth, but to take a leadership position it must forsake some of its insularity. I do not sense that even the intellectual elite here really understand the enormity of the changes which await China. From their perspective, China has long faced adversity and long survived; the future will take care of itself. Perhaps they are right.

I am learning enough to not even try to answer these questions. We all may share a small planet, but I am from its other side; what is right-side-up to an American is upside-down here. Perhaps China will be more comprehensible in another seven weeks, but I doubt it.

C-M Rolls Over Case

Neither fourteen consecutive days of rain nor a porous Case Law School defense could stall the explosive Cleveland-Marshall “STUDS” offense as the STUDS summarily disposed of the Case Law School squad, 27-6, O.S.J., in the inaugural gridiron battle of the Cleveland Law Schools.

The combination of a disciplined yet wide-open offense and a stingy defense allowed the STUDS to control the game. Quarterback Tom Mays lead a high-powered aerial attack that featured first half scoring strikes to Ron Kanda, Tony Kellen and Keith (Weegie) Pryatel. The STUDS added a second half insurance touchdown to put the game out of reach. Case did manage a late game touchdown but it was a little too late.

Thanks to Eddy Kraus for organizing: Brian Schorr and Chuck Morgan for unbiased officiating: the “countless” C-M supporters and to S.B.A. for picking up the post game tab despite the prior agreement, ‘loser buys.’ Better luck next year.
For almost 25 years, millions of Americans have viewed home audio taping as a legitimate consumer practice. It has made music both more enjoyable and more popular. The recording industry, in urging a royalty tax on audio recorders and blank tape, now bears, a heavy burden to demonstrate that such a tax is justified or necessary.

The Industry's Obligation: A new royalty tax on audio recording equipment and blank tape is unwarranted, unless the recording industry can show that more money is needed to fulfill the constitutional purpose of copyright — to promote more creation and dissemination of music. The industry must, but cannot, meet this burden of proof.

First, the recording industry currently is experiencing unprecedented success. 1984 was its best year ever: revenues reached an all-time high $4.4 billion; many recording companies posted record-high profits; a host of superstars sold mega-million albums, with Michael Jackson's "Thriller" album becoming the best selling album ever. All evidence indicates that copyright holders are receiving more than enough money to stimulate creative output. They might even use a royalty tax windfall to invest in other businesses.

Second, the industry must show that home taping, on balance, harms rather than helps sales in the long-run. Home audio taping created vast opportunities for the recording industry to sell prerecorded cassettes because it has fueled the growth and development of new, market-generating, portable recording technologies. Moreover, surveys show that home taping itself stimulates record purchases by consumers.

The Industry's Past Difficulties Were Unrelated to Home Taping: The difficulties experienced by the industry in the early 1980's were caused by the recession, the diversion of billions of dollars into video games, the industry's failure to adapt itself, to the public's demand for portable music, and the industry's inefficient business practices. The recession is over, the video game phenomenon is dead, the industry is now making portable music, and record companies are operating more efficiently (e.g., streamlining operations, signing fewer artists). The payoff for the industry is unprecedented wealth.

Why Consumers Tape: Home tapers are the record companies' best customers, and it is simply not true that every album taped is a sale lost. Instead, much home taping is done to create customized collections, either for personal libraries or party entertainment use, or because the music is not available on tape or the prerecorded cassette is of inferior quality for high-fidelity reproduction. Surveys indicate that over half of all home taping involves no prerecorded music, and tens of millions of blank tapes are used creatively by both consumers and institutional users. They also show that, through taping, consumers become familiar with additional works, artists, and composers, leading directly to new purchases of records, tapes, and compact discs.

A Home Audio Royalty Tax Would Not Promote More Musical Creativity: Given the way in which the music industry operates, most royalty tax revenue would flow into the pockets of the established interests of the music industry — the record companies, music publishing companies, and a handful of wealthy superstars — and little would trickle down to the struggling singer or songwriter. Whatever small benefit this group would receive from such a tax would be insignificant. Further enrichment of established interests — the inevitable consequence of any home taping royalty tax — would do nothing to promote the constitutional objectives of the copyright law.

A Royalty Tax Would Create A New Regulatory Bureaucracy: Various mechanisms suggested for setting, adjusting, and distributing audio royalties present an array of bureaucratic and legal problems. Attempts to administer existing compulsory licenses have been universally acknowledged as disastrous.

Who Is The Audio Recording Rights Coalition? The ARRC is the principal group opposed to audio royalty tax legislation. It is composed of consumer groups, audio tape and equipment manufacturers, retailers, and allied trade associations.
"Too much rest is rust."
Sir Walter Scott
(1771—1832)
The Betrothed

"In youth we learn; in age we understand."
Marle Ebner von Eschenbach
(1830—1916)
Aphorism

"If that's what this Court says it is, then it is what it is."
Marc Strauss
(1961— )
Fall Moot Court Night
October 29, 1985

(For the holidays)
"I like champagne — because it always tastes like my foot's asleep."
Art Buchwald
(1925— )
"Some Heady Phrases on Wine"
The New York Herald-Tribune, 1954

"The more I traveled the more I realized that fear makes strangers of people who should be friends."
Shirley MacLaine
(1934— )
Don't Fall Off the Mountain

"It is perfectly true, as philosophers say, that life must be understood backwards. But they forget the other proposition that it must be lived forwards."
Seren Kierkegaard
(1813—1855)
Journal entry

"There are many people who reach their conclusions about life like schoolboys; they cheat their master by copying the answer out of a book without having worked out the sum for themselves."
Seren Kierkegaard
(1813—1855)
Journal entry for January 17, 1837

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Domestic Relations Seminar

A Domestic Relations Seminar will be held at the law school on Wednesday, December 11, 1985. All students are invited to attend.