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Cleveland-Marshall College of Law

Student sleuthing

C-M Fair Housing Clinic is suing for alleged "racial profiling" in homeowner insurance billing practices in Cleveland. As a result, City Council is backing legislation to investigate.

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Like Father, Like Son?

Not if Bush II can help it. Despite outward appearances, George W. Bush doesn't want his father's presidency.

OPINION, PAGE 7

It's a wonderful life

What would Cleveland be like if C-M had never existed? The Gavel looks at C-M's contributions to Cleveland.

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THE GAVEL

VOLUME 51, ISSUE 6 MAY 2003

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

C-M slips to tier four

By Amanda Paar
ASSISTANT EDITOR

C-M slipped to the 4th tier in the *U.S. News & World Report* 2003 law school rankings. Although the rankings are widely criticized as unscientific, many people look to the magazine to evaluate higher education.

Several factors determine a law school's rank. Full-time entering student undergraduate median GPAs and LSAT scores, along with the school's acceptance rate, comprise 25 percent of the final ranking. C-M Associate Dean Jack Guttenberg said part-time students' scores are not included for any school. Part-time C-M students tend to score higher than full-time students, so the exclusion deflates C-M's numbers. Guttenberg also said that adding these scores might increase the C-M's ranking because not all law schools have part-time programs.

The acceptance rate is determined by dividing the total number of applications into the number of matriculants. C-M's acceptance rate for the 2003 ranking was

See RANKING, page 4

ED PEKAREK - GAVEL

James J. McMonagle '70, discusses Sulzer's settlement

It was one "hip" settlement

James J. McMonagle '70, claims administrator for the Sulzer hip and knee prosthetic litigation, appeared with lead counsel for both sides and presiding Judge Kathleen O'Malley in a symposium examining the case at C-M April 30.

Sulzer and the class of 26,000 reached a $1 billion settlement. McMonagle also testified before the Ohio General Assembly's Finance Committee April 5 regarding C-M's rumored closure as an Ohio budget cut measure.

Turn to page 2 for more.

Closure plan panned

By Ed Pekarek
NEWS EDITOR

The Ohio House Subcommittee on Higher Education recently withdrew a controversial amendment to House Bill 125-95 to compel the Ohio Board of Regents (OBR) to eliminate one of Ohio's five public law schools. The amendment did not identify a target, but Cleveland-Marshall was named by the *Plain Dealer* as the school slated to have its doors shut.

C-M Dean Steven Steinglass quickly marshaled widespread opposition to the amendment. Two hundred Northeast Ohio judges expressly opposed the measure and impromptu testimony from James J. McMonagle '70, and Michael P. Cassidy '83, as well as lobbying from Larry James '77, all played key roles in halting the amendment.

Steinglass was alerted to the closure threat March 31 by Cleveland State University President Michael Schwartz. Steinglass said he had "heard a dozen different rumors" within the next few days. An April 1 *Plain Dealer* report briefly mentioned the amendment without naming a target. Ohio's medical schools were also considered for the cuts.

"Were we targeted? I have no evidence that says we were, but it's the kind of proposal that catches your attention," Steinglass said. Columbus republican Jim Hughes is the subcommitee chair and a graduate of the private Capital University Law School. Bill co-sponsor Chuck Calvert heads the Finance Committee. The Medina GOP representative was a CSU graduate student.

C-M leaders established a strategy with Schwartz and CSU Trustees, including Michael Climaco '72, "which included ensuring that our key constituencies — alumni, students, judges and friends all knew what was going on," said Steinglass.

The proposed section 88.14 of 125 H.B. 95 required the OBR to "eliminate duplications of academic programs." Section 88.15 of the same GOP amendment titled, "Elimination of One Public Law School," stated, "[n]ot later than September 1, 2003, the OBR shall identify one public law school for elimination."

See RUMORS, page 2

You Should Know — 2003 Academic Org Awards

By GAVEL STAFF

The *Journal of Law and Health* awarded 2003-2004 Editor-in-Chief 2L Nathan Wills its "Note of the Year" award. 3L Allison Mantz received "Associate of the Year" honors. 3L Lana Mobydeen took "Editor of the Year" and 4L Chris Peer received "Mentor of the Year."

The *Cleveland State Law Review* awarded its "Best Note" to Eric Daniel. Outstanding Editor honors went to: Laurie Melville; Justine Dionisopolous; Kevin Kelley; Karin Bottone; Marci Greci; Michelle Conroy; Scott Slaby and Patrick Burke. Outstanding Law Review Associates: Cynthia Bayer; Eric Daniel; Tamara Karel; Brad Link; Stacey Palmer; Doug Smith; Dean Williams; and 2003-2004 Law Review Editor-in-Chief, George Zilich.

Moot Court awards: Advocacy Excellence - 3Ls Renee Davis and Benjamin Hoen; Associate Member Advocacy Excellence - 2003-2004 Governor, 2L Dean Williams; Best 2002 Intramural Brief - 2L James Martines; Outstanding 2002 Intramural Oralist - Gavel 2003-2004 Editor-in-Chief, 2L Colin Moeller.

Court hears oral arguments in Michigan cases

By Eric Doeh
STAFF WRITER

The U.S. Supreme Court heard oral arguments in the University of Michigan Law School admissions case of *Grutter v. Bollinger* April 1.

Maureen Mahoney, attorney for the University, argued the government has a "compelling interest" in having an institution that is both academically excellent and racially diverse.

Kirk Kolbo, attorney with the Center for Individual Rights (CIR), argued that plaintiff Barbara Grutter has a right guaranteed by the U.S. Constitution that race would not be considered as an admissions factor.

"There are important constitutional rights at stake," said Kolbo. "[A] mere social benefit that is having more minorities in particular occupations, or the schools, simply doesn't rise to the level of compelling interest."

Justice Antonin Scalia agreed with Kolbo, stating that Michigan does not have a compelling interest to warrant overstepping equal protection guaranteed by the Constitution. Scalia asked, "if Michigan really cares enough about racial imbalance, why doesn't it do as many other state law schools do, lower the standards, not have a flagship elite law school?"

Mahoney responded to Scalia, saying Michigan does not feel it should be forced to choose between academic excellence and racial diversity.

Justices Anthony Kennedy and Sandra Day O'Connor, both of whom many refer to as the "swing votes on this issue," referred to Michigan's admission policy as a "disguised quota." Kennedy went on, however, to say that the impact of having fewer minorities in the legal profession is a legitimate social and political concern when so few minorities are members of a profession which is designed to protect our rights and to promote progress.

O'Connor expressed some concern about Michigan's affirmation action policy with respect to its duration. O'Connor asked whether Michigan's policy was for a fixed time period or was permanent.

Michigan's lawyers stressed that the University's affirmative action policy is not permanent, stating the current policy would end when the number of high-achieving minorities had grown and when society realizes that the experience of being a minority does not make a difference in people's lives.

A related case, *Gratz v. Bollinger,* was also before the Court, John Payton, attorney for

See MICHIGAN, page 3

THE GAVEL
Law

Spring of Support

By Steven H. Steinglass

I received a call from CSU President Michael Schwartz March 31, informing me that the Subcommittee on Higher Education, in its efforts to balance the state's budget and perhaps to make a statement about lawyers, was considering a proposal to require the Ohio Board of Regents to eliminate one of Ohio's public law schools. "You have a new client," Schwartz said. "The client is the law school."

The Dean's Column

Support for C-M was immediate, overwhelming and gratifying. In short order, 100 state court judges, about two-thirds of whom were our graduates, signed a letter to House Speaker Larry Householder and to members of the Finance and Appropriations Committee, opposing the proposal.

All the county's federal judges wrote on our behalf; the Eighth District judicial conference adopted a unanimous resolution supporting the law school. Countless e-mails and letters poured into the General Assembly.

I traveled to Columbus with James J. McMonagle '70 and Michael P. Cassidy '83, April 5, to testify in an extraordinary Saturday session before the House finance committee. We were joined in our efforts by Larry James '77, Schwartz and CSU Trustees.

We stressed the law school's century-old tradition of providing opportunity to men and women from many cultures and backgrounds. McMonagle and Cassidy spoke eloquently of what opening the doors of the legal profession had meant, not only to their own families, but also to generations of Northeast Ohio citizens in search of a better life. And we reminded the Committee that studies commissioned by the Ohio Board of Regents in 1996 determined that the number of public law schools in Ohio was appropriate.

We sensed that our efforts had been successful. Early in the week State Representative Tom Patton of Strongsville made a motion on the floor of the House to remove the offending language from the bill. His motion was seconded and approved.

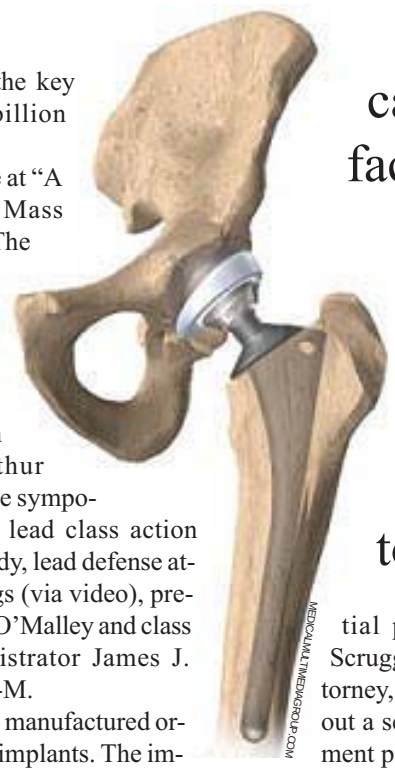
I am grateful to our numerous supporters. I am certain that, if the challenge comes again, we will have, once more, the ample resources of many talented men and women behind this college of law.

Cooperation leads to $1 billion

By Jason Smith
ASSISTANT EDITOR

Cooperation was the key to a successful $1 billion settlement agreement.

This was the theme at "A Novel Approach to Mass Tort Class Actions: The Billion Dollar Settlement in the Sulzer Artificial Hip and Knee Litigation," presented at C-M April 30.



Profs. Susan Becker and Arthur Landever organized the symposium, which brought lead class action counsel R. Eric Kennedy, lead defense attorney Richard Scruggs (via video), presiding judge Kathleen O'Malley and class action claims administrator James J. McMonagle '70, to C-M.

In 2000, Sulzer AG manufactured orthopedic knee and hip implants. The implants were designed for the bone to attach to the device without the cement commonly used in such procedures. However, due to a manufacturing problem, oil residue remained on some of the implants, preventing them from properly securing to the patients' bones.

The non-adherence led to severe pain in many patients. Ultimately, Sulzer recalled 26,000 artificial joints. As of August 2001, more than 2,400 people had undergone operations to replace the defective implants. Furthermore, it is estimated that an additional 1,600 replacement surgeries will ultimately be performed.

The participants in the symposium, lead by Kennedy, discussed the problems encountered during the class action suit. The main problem that counsel on both sides were facing was the threat of insolvency, and Sulzer's possible bankruptcy. Sulzer was concerned about this potential problem and hired Richard Scruggs, the celebrated plaintiffs' attorney, to cross party lines and work out a settlement with the hip replacement patients.

> "What made this case work was the fact that David Wise [chief counsel for Sulzer] realized early on that the best result for the company was to settle."

Sulzer wanted to avoid bankruptcy, but also wanted to prevent a "race to the courts" by individual plaintiffs, which would cause thousands of other plaintiffs to receive no compensation. One $15 million judgment had already been entered in favor of three Texas plaintiffs. Because Sulzer could only pay out $1 billion without going bankrupt, if any more similar judgments were entered, the money would run out fast.

Counsel for both sides had to convince potential plaintiffs to join the class and accept the offer, rather than suing separately. Kennedy said, "The most difficult issue was how to get 26,000 plaintiffs to voluntarily participate in the resolution that would put a lien provision on Sulzer's assets until all 26,000 were paid."

This initial settlement would give the settling class a lien on Sulzer's assets, which would give settling plaintiffs collection priority over the plaintiffs filing separately. Through the cooperation of counsel, this plan was laid out to solve the potential problem of insolvency.

The proposed settlement, with the lien, was approved by O'Malley and survived several challenges. The settlement led some lawyers representing individual plaintiffs to claim class-action plaintiffs agreed to a deal benefiting the class and the company at their expense.

O'Malley recalled that many attorneys challenged the arrangement, arguing that the agreement violated the constitutional right of due process. O'Malley said, "anytime lawyers have nothing else to argue, they always argue a violation of due process."

While the lien was not part of the final accepted settlement, it was effective to get most of the 26,000 to join the class. Less than 10 plaintiffs opted out of the class action settlement. Those cases have yet to be heard.

O'Malley said, "what made this case work was the fact that David Wise [chief counsel for Sulzer] realized early on that the best result for the company was to settle." She said that Sulzer had sympathy for the injured plaintiffs and wanted to compensate all of them, and Sulzer knew that reaching a settlement was the most fair and efficient way of doing so.

Amanda Paar and Eric Doeh contributed to this article.

RUMORS: Ohio General Assembly cuts closure from budget bill

Continued from page 1--

Steinglass noted the amendment's momentum was based in part on "bad information" suggesting the OBR recommended closing a law school in a 1996 study. "Some people misread or misrepresented the 1996 effort by the OBR," he said.

Steinglass insisted the OBR "never made any formal or informal recommendations to eliminate a law school" in the 1996 study. "In fact, the OBR performed studies that defended the number of schools based on the population distribution."

C-M's response was designed to halt the amendment at the subcommittee level. Steinglass said, "All we had to do was tell people and they rushed to take steps to stop it."

Steinglass said of the amendment, "it might save a little bit of money, but it's not credible to view it as a serious effort to balance the budget... budget bills have become like Christmas trees but they're filled with goodies and baddies."

Steinglass said it was difficult to ascribe motives as no legislator emerged as a proponent. "All we have is second, third and fourth-hand information."

"CSU officials were very concerned about this aspect of the bill," Steinglass said, and Schwartz and CSU Trustees "were very much involved" in opposing the amendment. Schwartz kept Steinglass apprised of the Columbus undercurrent and that the Finance Committee planned to hold public hearings in an unusual Saturday session.

As nervous murmurs on campus grew, C-M leadership went to the Eighth District judicial conference to garner support from influencial jurists. The effort resulted in unanimous support from the bench.

"It was fortuitous that the Eighth District was having its conference, which they only have once every 18 months," said Steinglass. The "buzz" at the conference was in total support of C-M. "People were saying no one could seriously think they could balance the budget by eliminating a public law school.

"By the time we got to the conference, we had already spoken with dozens of judges who said they would sign on to an opposition letter. By April 3, we had 60 judges and by Saturday we had over 100...as far as I could tell, we had every single judge in this county." Steinglass also noted that two-thirds of the judges are C-M alumni.

Conference Chair, Judge Ann Dyke '68, signed a unanimous resolution of over 200 judges urging the Ohio General Assembly to "reject all efforts to eliminate this important community institution and asset."

The U.S. District Court sent a unanimous letter to House Speaker Larry Householder. The missive called C-M "the school of opportunity" and stated, "it attracts men and women from every ethnic, racial, religious and economic background."

The District Court also stressed the diversity C-M fosters and noted a "legitimate" legal profession must reflect a community's diversity. The federal judges also cited C-M has "among the highest percentage of minority and women students of any school in the state." Steinglass said the opposition by the federal bench was especially gratifying because appointed judges are typically reticent to participate in politics.

SBA President 3L Chris Tucci fomented an e-mail campaign after the *Plain Dealer* identified C-M as the target April 5. As students voiced opposition, Steinglass, McMonagle and Cassidy testified before the Finance Committee in opposition to section 88.15.

According to Steinglass, "It wasn't so much the testimony itself, but rather the act of testifying," that made the difference. The C-M contingent also included Columbus attorney James, who lobbied legislators during the day-long session. Steinglass said, "by late Saturday, things were turning around."

"If no one had gone down there," Steinglass said, "this outrageous proposal would have continued to have momentum because the message would have been that no one cared."

Instead of C-M, it was the amendment that was scuttled the following week by Strongsville Rep. Tom Patton's successful motion before the General Assembly to drop the proposal.

Fair Housing Clinic sues Ohio insurers

City Council backs investigation of alleged race-based red-lining

By Ed Pekarek
NEWS EDITOR

A 15-month investigation by the attorneys and students of the C-M Fair Housing Clinic led to what attorney and C-M adjunct Prof. Ed Kramer, at a press conference at Cleveland City Hall, called a "shocking" case of "racial profiling" of insurance billing practices.

Cleveland City Council recently backed legislation sponsored by Councilman Michael O'Malley '92, to establish a subcommittee to investigate the pricing practices. Some insurers charge Clevelanders double for identical coverage in the rest of Cuyahoga County.

The case was brought under Ohio's fair housing law and falls under the jurisdiction of the Ohio Civil Rights Commission (OCRC), according to Kramer. Cleveland's fair housing ordinance also gives the city's fair housing board the authority to investigate. 4L Bernard Houston, Cleveland's assistant administrator for fair housing, said he was encouraged by the investigation and hoped it would result in fair insurance pricing for all Ohio homeowners.

Kramer asked City Council to employ its investigatory power to issue subpeonas for records from named insurance companies to find out if there are "smoking guns" that would establish that they red-lined the city of Cleveland based on race.

ED PEKAREK - GAVEL

C-M Fair Housing Clinic attorney Ed Kramer holds a complaint alleging racist insurance billing.

Representatives Matthew Zone, Merle Gordon, Joe Cimperman, Joe Jones, Fannie Lewis, Council President Jackson '84, and O'Malley appeared with Kramer at a press conference at City Hall April 2 to announce the lawsuit and Council's investigation.

A statistical study performed by the non-profit Housing Advocates, Inc. acted as the basis for determining the pricing policies are discriminatory. The study was performed in conjunction with staff from the CSU College of Urban Affairs. Kramer said the study assessed 57 companies representing 85 percent of Ohio's insurance market and concluded that 52 of the companies require a higher premium for identical policies for homes in the city.

Kramer called the study the "first that has been done on the issue of territorial base rates in the U.S." Urban Affairs adjunct Prof. Doreen Swetkis developed the study with Urban Affairs Prof. Mark Salling.

Swetkis also serves as the associate director of development for Housing Advocates. Swetkis said of the 57 companies studied, not one charged Clevelanders a "base rate" lower than rates for homeowners in the Cuyahoga County suburbs. Insurers use various proprietary formulas and are expected to contend that such trade secrets are protected from discovery. Swetkis said that while the public is not privy to the methods used for establishing premium pricing, the methods are well known within the industry.

Kramer said Clevelanders must pay a premium average of $100 more per year for the same policy. "The question we asked is are the differences based on risk or based on race?" Mary Bonelli, a spokesperson for the Ohio Insurance Institute denied the allegations, telling the *Plain Dealer*, "Race is not a factor in any way, shape or form."

Zone insisted it is not a safety issue. "Don't be fooled by that argument," Zone said. "This is the type of issue that is having a tremendous impact on our neighborhoods. Money is improperly taken from our constituents based upon this red-lining," O'Malley said.

The study suggests that the pricing disparity affects not just African-Americans and Hispanics. Jackson said, "The people who are paying and are impacted by this are all the citizens of Cleveland, regardless of race. We believe the cause of this red-lining is similar to predatory lending, where people are taken advantage of simply because they live in the city of Cleveland." According to O'Malley, the base rates alone cost Cleveland residents at least $8.5 million per year in added premiums.

3L Steve Parisi was among eight C-M students who poured over thousands of documents to prepare the case. Parisi said, "Anyone who reviews the insurance rates would see unexplainable discrepancies between the insurance premiums of Clevelanders and for those homes outside the city limits."

Kramer alleged that insurance "territories" were established in the 60s after racial riots in Cleveland. Kramer said, "the insurance industry divided Cuyahoga County basically between the city of Cleveland and the remainder of the county."

The filing was the first phase of the litigation. Swetkis said the OCRC requested staggered complaints. Damages are estimated at over $55 million.

C-M hosts debate on Michigan system's merits

By Eric Doeh
STAFF WRITER

C-M's Federalist Society hosted a debate, April 14, focusing on the University of Michigan's affirmative action cases, *Gratz v. Bollinger* and *Grutter v. Bollinger,* recently argued before the U.S. Supreme Court.

Terrence Pell, president for the Center for Individual Rights (CIR), a Washington, D.C. based public interest law firm, argued in opposition of Michigan's admission policy and affirmation. Raymond Vasvari, legal director of American Civil Liberties Union of Ohio, argued in support of the policy.

National Public Radio personality and host of the WCPN "Morning Drive," April Baer, moderated the debate.

Pell argued that Michigan's dual admission system is segregation and goes against democracy and equality. "Those who favor racial preferences think that it is okay to set aside the rules in order to get equality of results, while those who are opposed to racial preferences think that we pay a price when we dispense with formal equality, the kind of equality that is captured by the idea of treating everyone equally according to the same rules." Pell said schools like Michigan are too willing to throw out the rules in order to get the racial result they want.

Pell pointed out minority students, especially African Americans, are the "real victims" of affirmative action. "By using a vastly different academic criteria to evaluate minority students, the university is reinforcing exactly the racial stereotypes that it should be seeking to minimize," said Pell. "They [African Americans] are told that they are being accepted according to the same standards as everyone else, when Michigan knows for certain that this is not the case." The result, said Pell, is when African Americans students show up in Ann Arbor, they cannot compete very well with the other students who are picked according to highly refined measures of cognitive ability, like standardized test scores.

Vasvari said in response to Pell's argument, "I think this argument is deeply disingenuous. How are minority students who are given the chance to succeed in a challenging environment victimized by the opportunity?"

Vasvari said Caucasians do not have a moral claim of right to admission seats. "It is profoundly dishonest to say that we can now forget about race in the effort to build a color-blind society, when so much inequality has been premised on race." Diversity, Vasvari said, is important for America today because the world is increasingly interconnected and our own society is increasingly diverse.

Vasvari went on to say the nature of a university as an autonomous community provides that it reserves the right to decide who will teach, who will be taught and what will be taught. Both Vasvari and Pell agreed race is important but they differ with respect to how programs should be implemented to achieve diversity, yet preserve democracy and secure equality.

MICHIGAN: Behind the Points

Continued from page 1--

Michigan, said that the diverse environment created at the university allows students to set aside previously held stereotypes through their interactions in small settings such as classrooms and residence halls. Payton later described the centerpiece of Michigan's admissions system known as a selection index.

The index has as a maximum of 150 points. For example, an applicant is awarded 20 points for race, 20 points for athletics, 20 points for being at a socio-economic disadvantage and 12 points for test scores.

University of Michigan President Mary Sue Coleman said, "in our undergraduate admissions systems, 110 points out of 150 are given for academic factors including grades, test scores and curriculum." Coleman emphasized that students do not earn 20 points for race and 20 points for being at a socio-economic disadvantaged, the 20 points is only awarded once.

Payton emphasized learning is only possible if minority students are present in sufficient numbers to create what Michigan refers to as a "critical mass." "A critical mass is where you have enough of those students (minorities) so they feel comfortable acting as individuals."

Payton said if there are too few African-American students, there is a risk those students will feel they have to represent their group and their race. Kolbo said the court should not rely only on educators to define what is fair.

When asked by O'Connor whether race could be considered as one of many factors in admissions (as was permitted in the 1977 case *Bakke v. Regents of California*), Kolbo said it is impermissible to use race as a factor. He said that race should only be considered in "extraordinary and rare circumstances, rising to the level of life or limb."

THE GAVEL Career

May 2003

Money won't buy happiness

By Karin Mika
LEGAL WRITING PROFESSOR

Q: I am graduating this May and, unfortunately, I am neither in the top 10 percent of the class, nor even the top 20 percent. Like so many students, I started out thinking I might be a Supreme Court Justice and didn't discover until later about law school hierarchies and grade stereotyping. Realistically, what are my chances as a C-M graduate to have a decent, fulfilling career where I can still repay all my student loans?

Legal Writing

A: I am always amazed and even perplexed by the amount of people who believe success and fulfillment in life are related to everything else except what the individual sets out to do for him or herself. Who you know, where you go to school and even what grades one receives might make it easier to get a few doors opened initially, but it is ultimately the performance of the person going through that door that makes the only difference as to what happens afterward.

Just ask Pete Rose, Jr. He spent his life being groomed to be a MLB player and wound up floundering in mediocrity for years. For a non-sports analogy, consider many members of the Kennedy clan who went on to live unhappy, unfulfilled lives.

Not every person who graduates from Yale or Harvard is happy, fulfilled, wealthy or even employed. And the only people who are limited by graduating from C-M are those who choose to assign blame for their limitation to a source other than themselves.

If Jones Day won't interview you, then establish a career for yourself better and more fulfilling than the one you would have had at Jones Day. Then, years down the road when you're the "big shot" and they come calling, tell them they have nothing to offer you.

If you want to work at the U.S. Supreme Court, head down to Washington, D.C., park yourself at the courthouse and figure out how to get a job there (deliver the mail if you have to) and then how to get noticed.

Despite what the media often represents, not too many people are handed anything in life. Those who are, often don't make the most of it. So, as this school year comes to an end, make it a point to believe in yourself and remember the only limitations you have are the things you perceive to be limitations.

Grading gaffe may bar one Ohio licensee

By Ed Pekarek
NEWS EDITOR

Ohio Bar Exam applicants were informed they had passed, only to later have the results nullified by a massive Multistate mistake.

The scoring error was made by American College Testing, Inc. (ACT) of Iowa City, Iowa, and affected roughly 20,000 Multistate Bar Exams (MBE) scores all over the U.S., including 114 C-M applicants. The Ohio Supreme Court announced May 8 that 27 of the 28 whose status were in jeopardy had passed after retabulation.

C-M represented more than one-fifth of all February applicants in Ohio and over one-fourth of all applicants with a degree from an Ohio school. Sixty C-M alumni who originally passed may have been affected.

The aberrant multiple choice question was also graded on a sliding scale with scores measured in tenths of points. Court Clerk Marcia Mengel stated in a May 6 memo that virtually every score was likely to change as a result of number crunching and some "*could* change from 'pass' to 'fail.'" The memo stated every exam would be retabulated and scaled using new ACT data and scores "close to the pass/fail line could see a shift in their status."

The Court notified dozens of applicants they would not be sworn in May 9 at a Columbus ceremony because of the inaccuracies. Overall, 294 test-takers passed prior to the gaffe — 53 percent of the 551 who took the test. Of the 294 passing, 227 have Ohio law degrees, 26 percent (60) from C-M.

The Court also stated that scores less than 405 but over 404 after corrected results will be eligible for an automatic essay review. Only one applicant fell into that category.

Ohio State graduate Greg Lestini told the *Plain Dealer* he received a 413, yet was informed his career must remain in limbo. Jennifer (Brown) Matyac '02, told WOIO CBS-19's Bill Younkin that ACT is "playing with her life."

Exam procedures came under fire at a C-M faculty meeting last year when professors reportedly saw Bar graders with exams at a local coffee shop and during breaks at court. Critics questioned the objectivity of essay grades when there is no control measure for the process. Office of Career Planning Director Jayne Geneva noted that Ohio is one of the few states to use a "re-grade" policy.

Geneva called placement officials across the country to discern what responses and remedies other states may provide. Missouri, where John Regenbothen '02, just passed, has reportedly already sworn in their next crop of lawyers and doesn't appear to intend to reverse licenses. Michigan plans to announce its policy imminently according to Geneva.

Mengel's memo stated, "[ACT] expects to be able to provide corrected scores to the jurisdictions before the end of the week." It is the first mistake of this type on the Ohio Bar Exam since Mengel began administering the test 16 years ago. Mengel said the Court will hold a special ceremony in June for any applicants who pass after retabulation.

Geneva spoke with Justice Maureen O'Connor '80, May 7. O'Connor indicated a silver lining to the ACT fiasco might be a review and revamp of Ohio's examination standards and procedures. Geneva also said there would be no state fee for the pulled licensees to retake the test. Mengel's memo also said the Ohio Court is only currently contacting applicants whose "pass" status could be reversed.

C-M finished precisely at the state average for the test, but fared far better state-wide based on first and second-time takers. First-time takers from C-M passed at a higher clip than alumni from Capital, Case Western Reserve University (CWRU), Ohio Northern and Dayton. C-M second-time takers fared better still, passing at a 70 percent rate, second only to CWRU. C-M also had the highest total number of test-takers from any school in February, followed by Capital's 85.

Ohio State and Akron led first-timers, passing at 78 and 80 percent, respectively. A dismal 29 percent of C-M third-timers passed, with only Capital lower. C-M also had 21 alumni who took the test for at least a fourth time. The Ohio Supreme Court does not release data on test-takers beyond a third attempt. At least two C-M alumni are also known to have dozens of attempts, but are not described in the data other than within the school's overall average.

Trends suggest that Associate Dean Jack Guttenberg's C-M Bar Exam strategy is taking hold. First-time pass rates for C-M climbed ten percent from 1997 through 2002, to 74 percent overall, while the state average declined. C-M administrators also noted that full-time day students now consistently pass in the upper quartile of Ohio.

RANKING: Controversial system excludes important factors

Continued from page 1--

44.8 percent. The University of Akron's acceptance rate was 30.4 percent, while the University of Toledo was slightly higher at 32.6 percent. Guttenberg said that C-M's larger acceptance rate may be the result of lower applicant numbers compared to schools like Akron and Toledo that use on-line applications, attracting more students to apply, and in turn, decreasing acceptance rates.

> The potential of C-M closing, "much less the threat of it being proposed in budget enactments of the state legislature, would not be uttered, no matter how vicious the regionalism"

Resources per student comprise 15 percent of the magazine's annual ranking. Guttenberg said the number represents resources based on the average of 2001-2002 expenditures per student for instruction, library and support services, student/faculty ratio and average per-student spending in 2001-2002 on items including financial aid and total volumes in the library. Toledo had a student/faculty ratio of 12.4, compared with C-M's 20.2 ratio and Akron's 18.5 ratio. Guttenberg also said that Toledo contributes more dollars per law student than C-M and Akron because it subsidizes its law school with more funding.

Categories, including graduates employed upon graduation, employed at nine months after graduation, and Bar passage rates comprise 20 percent of the ranking. C-M's 70.3 percent pass rate is considerably lower than Akron's 85.6 percent and Toledo's 78 percent. Guttenberg said that this rate did not help C-M, but noted that it comprises only 20 percent of the calculation.

The ranking's remaining 40 percent is comprised of assessments from law faculty, deans, lawyers and judges. This year, faculty and dean assessments had a 70 percent response rate with a 25 percent weight on the ranking. The lawyer and judge assessments had a 34 percent response rate with a 15 percent weight on the ranking. C-M's assessment numbers are somewhat higher than both Akron and Toledo.

While it is important to consider what factors make up the rankings and the weighting, there are also many factors that are not considered in the ranking. Prof. Joel Finer said that the breadth and support of C-M's alumni network, the intensity of writing instruction, law library services, part-time enrollment option, public interest programs, the quality of teaching, racial and gender diversity within the faculty and student body and the size of first-year classes are all aspects of law schools that are not considered in the rankings.

Despite the unscientific nature of the rankings, Finer said the fact that the public puts value in the rankings is an "unfortunate reality." He said the rankings tend to "generate reputations rather than measure them."

Guttenberg said the rankings are appealing to the public because they are "quick and easy to read" and provide a large comparison base in an uncomplicated format for every law school in the nation.

Despite the flaws, Prof. Candice Hoke said, "The rankings have a great impact on garnering respect within the academic community." She said they impact respect C-M students and faculty receive within professional and educational environments.

This year, while there are still four tiers, the first and second, which previously included 50 schools each, were combined into one, now including all 100 schools. Guttenberg said that the only difference is that the 50 schools that would have been in the second tier can now say that they are in the top tier.

"If C-M were ranked substantially higher, employers would show greater interest in our students and leading academics would accord our faculty and law reviews far greater respect," Hoke said. The potential of C-M closing, "much less the threat of it being proposed in budget enactments of the state legislature, would not be uttered, no matter how vicious the regionalism," she said.

SBA execs elect wish C-M good tidings

By Sasha Markovic
Brendan Doyle
Michael O'Donnell
David Van Slyke
SBA OFFICERS-ELECT

As the end of the Spring Semester draws to a close, everyone's thoughts are focused on preparing for final exams and planning a rejuvenating, if not relaxing, summer. However, before the actual close of the semester, a few words of thanks from the incoming SBA officers are in order.

First, we would like to thank the outgoing SBA officers and Senators for a job well done. As incoming officers, we hope to build on the foundation that 3Ls Chris Tucci, Matt Basinger, Brian Stano and 2L Anne Zrenda put in place. The guidance already provided by Chris and his officers, as well as the insight of the returning Senators, will be crucial to next year's success.

We would also like to thank the entire C-M student body for the large turn out in voting this year. The large number of voters shows the level of involvement and the dedication that the student body has toward C-M.

Upon the arrival of the Fall Semester, we look forward to working with a veteran Senate, the many student organizations and the C-M faculty, staff and administration to achieve our collective goals. The new school year will bring many challenges that will require the cooperation of the entire C-M community.

Last but not least, we would like to congratulate the graduating class and wish them good luck on the July Bar Exam.

On a lighter note, it will be strange walking the halls next year and not seeing them wandering around seeking the motivation to complete the last few weeks of class. In closing, we'd like to thank everyone for giving us this opportunity and look forward to working together in the upcoming school year.


MPTV.NET

C-M's Wonderful Life

Rumors of C-M's demise prompted the Gavel to consider the effects of C-M and its graduates since 1897.

Although the inane budget cut proposal was quickly thwarted, the mere suggestion is cause enough to celebrate the many achievements of C-M alumni.

> The Gavel
> *Editorial Opinion*

Like the Frank Capra classic, "It's a Wonderful Life," the Gavel took a glimpse at Pottersville: Ohio without its "school of opportunity," and without the contributions of the more than 10,000 attorneys who have or had C-M degrees on office walls.

In the past 106 years, C-M launched many successful careers in and out of the legal field, and although these notable C-M graduates may have found success at another law school, it is likely that without a public law school in Cleveland, many would have looked elsewhere for their legal educations.

What would Ohio's legal community look like without the first law school in Ohio to admit women, with its first female graduate in 1908. According to Prof. Arthur Landever's essay, "Hard-Boiled Mary," the Cleveland Law School admitted women to its night program from its inception in 1897. Its 1904-05 bulletin stated, "'No distinction will be made in the admission of students on account of sex.'" Legal pioneers like Mary Grossman '12, the first woman (ever) to serve on a Municipal Court bench, might have been limited to lesser achievements without C-M.

Many notable Ohio politicians would be missing from the campaign trail. This includes, Carl Stokes '56, the first African American mayor of a major American city; former U.S. Rep. Louis Stokes '53; former Cleveland mayor, five-time governor of Ohio and former U.S. Sen. Frank Lausche '21; former Cleveland City Council President George Forbes '62; current Council President Frank Jackson '84; and U.S. Rep. Steve LaTourette '79.

Picture the Justice Center without C-M grads on the bench. Imagine the Cuyahoga County Prosecutor's Office without Prosecutor Bill Mason '86, and many of his staff members.

One hundred federal, state and municipal benches filled by judges such as Patricia Ann Blackmon '75, James Sweeney '73, Maureen Adler Gravens '78, Ralph Perk '83 and John Corrigan '68, would sit empty. There would be two fewer justices on the Supreme Court of Ohio without Maureen O'Connor '80 and Francis Sweeney '63, as well as the Court's newest Justice, Terrence O'Donnell '71. The U.S. Supreme Court may also be without its Chief Deputy Clerk, Chris Vasil '75.

Imagine the 2000 election without Tim Russert '76, tabulating electoral votes on his dry erase board. Without his C-M degree, the NBC vice president and "Meet the Press" moderator might have been relegated to hosting a show on Fox.

Working Clevelanders hoping to pursue a J.D. part-time would pack their bags and head elsewhere without the oldest part-time law program in the state to educate them.

Clevelanders with cases to litigate would have to search high and low for counsel to take their causes without C-M alumni filling the Northeast Ohio Yellow Pages.

Cleveland would look quite different with a dearth of attorneys and would not be the "top ten" legal market it is today. Imagine the Warehouse District renaissance without law firms in the spaces above the clubs.

Thankfully, for the time being, it is clear that law without C-M would be law not worth practicing, and that should earn all of us our wings.

Editorial clarification

The article, "Affirmative Action on trial in Supreme Court," appearing in the April 2003 issue of the Gavel, incorrectly identified the University of Michigan law school admissions as awarding points for minority status. The undergraduate school, not the law school, uses race as one of many factors in its admissions process.

The Gavel would also like to clarify the statement in the same article attributed to Prof. Frederic White. According to White, when a school uses race as one of many factors in its admission process, it is probably acceptable. Thus, using race is not a cause for alarm.

Gavel welcomes new editors

The Gavel welcomes its 2003-2004 editorial staff. Returning for a third year as a Gavel editor is 2L Colin Moeller, who will serve as Editor-in-Chief. Moeller is currently Managing Editor. Amanda Paar and Jason Smith, both 1Ls, will serve as editors. Paar and Smith were both staff members this year.

Current Editor-in-Chief Clare Taft and News Editor Ed Pekarek both graduate May 24. Pekarek was elected a Gavel editor as a 2L, and served as Editor-in-Chief in 2001-2002. Taft has been a Gavel staffer since 1L and served as Managing Editor in 2001-2002.

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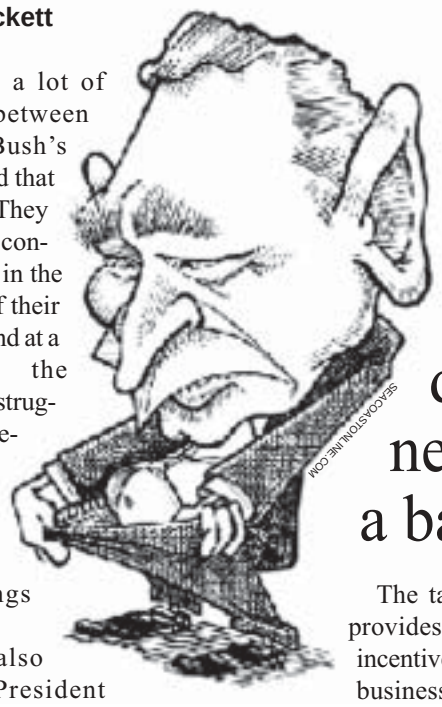
Cuts avoid father's footsteps

By Todd Jackett
STAFF WRITER



There are a lot of similarities between George W. Bush's presidency and that of his father. They both entered a conflict with Iraq in the second year of their presidencies and at a time when the economy was struggling. As a result of the successes of war, they both saw their approval ratings soar.

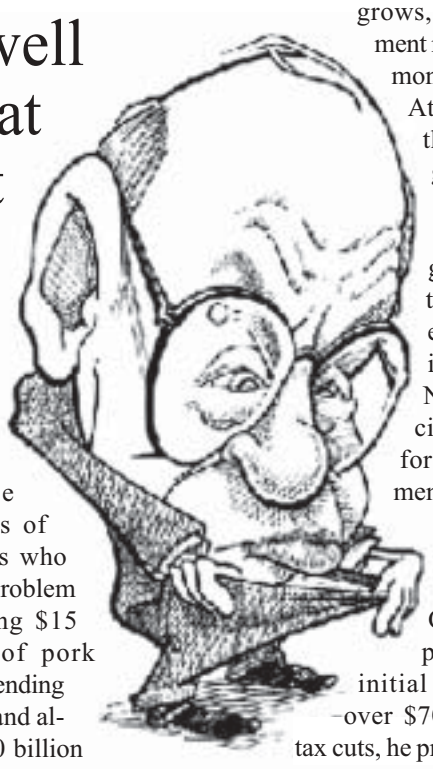
But it also seems that President Bush learned a lot from his father's failures. While former President Bush failed to put an end to Saddam Hussein's regime, his son made it the focus of his encounter with Iraq with brilliant success. And while former President Bush failed to attack the economic woes with the same vigor that he attacked Iraq, his son has put the economy at the forefront of his domestic policy with his proposed tax cut.

As President Bush puts it, "To create economic growth and opportunity, we must put money back into the hands of the people who buy goods and create jobs." That is precisely what President's Bush's tax cut would do. The tax relief that 92 million taxpayers would receive in 2003 would encourage consumer spending and promote investments by putting money back into the taxpayers' pockets.

President Bush is a businessman with an MBA who is well aware that debt is not necessarily a bad thing

The tax cut also provides relief and incentives for small businesses to help them grow and prosper. Because small businesses employ half of this country's work force, the tax cut would create new jobs. The Council of Economic Advisers estimates that 1.4 millions jobs would be created by the tax cut, and Price Waterhouse Coopers forecasts the cut would create an average of 1.2 million jobs per year over the next five years.

A key component of the tax plan is the elimination of the dividend tax. The dividend tax works as a double taxation on corporate profits – the double taxation can take up to 60 percent of the profits. Even some opponents of the proposed tax cut, like Alan Greenspan, Chairman of the Federal Reserve, support the elimination of the dividend tax. Some opponents in Congress say it is fiscally irresponsible to cut taxes while increasing spending to create a deficit. These are the same members of Congress who had no problem approving $15 billion of pork barrel spending in 2002 and almost $10 billion already in 2003. This pork included $270,000 to combat the goth culture in Blue Springs, Missouri; $150,000 to study the Hatfield-McCoy feud; $219,000 to teach college students how to watch television; $1 million to preserve a sewer in New Jersey as a historical monument; and $11 million for a private pleasure boat harbor in Cleveland. Talk about fiscal irresponsibility.



President Bush is a businessman with an MBA who is well aware that having debt is not necessarily a bad thing. If the government is making more off the deficit than the interest being paid on the deficit, the deficit actually helps build and grow the economy. As the tax cuts increase spending and create jobs, the economy grows. As the economy grows, the government receives more money via taxes. At some point, the economic growth creates more income for the government than the government pays in interest. Now the deficit is working for the government.

Although it does not appear that Congress will pass Bush's initial proposal of over $700 billion in tax cuts, he probably never expected them to do so. As a savvy businessman, President Bush asked for the stars with the hopes of ending up with the moon. With Congress on board with a tax cut between $350 billion and $550 billion, President Bush got what he hoped for.

President Bush learned from his father's mistakes. He will be rewarded with a recovering economy and a different result in his campaign for re-election.

Getting by 1L with a little help from your friends

By Jason Smith
ASSISTANT EDITOR

The following is the final installment in a six-part series following a first year C-M student from orientation to spring exams.

The end of our first year is upon us. While the process may have been tough, it seems to have gone by in no time. Throughout the year, I think most of us were transformed as students and as people.

1L
First Year Life Part VI

As I entered the building for the first time, way back in August, I was not quite sure what to expect. I was nervous, anxious and excited. I felt like I was in high school all over again. No matter where we came from, whether we were fresh out of college or in the process of a career change, we were all on the bottom of the law school food chain.

I did not have any friends that would be going through this process with me. I was hoping to meet some new friends at C-M to make the days, weeks and months go by faster, but I was not sure if I would be able to meet people that I would want to hang out with. I had the feeling that everyone was going to take this process so seriously that they would not want, or have time, to make new friends. I guess I was wrong.

In a little less than a year, I feel that I have met some people who I will hopefully keep in contact with for the rest of my life. The Thursday nights (and on a few occasions, spilling into early Friday morning) at Becky's helped me get my mind off of the law. Looking forward to going out made the weeks go by faster and was a much needed distraction. Hopefully, as we separate from our sections and start to take different classes, this weekly ritual will not be lost.

With this in mind, I feel badly for the individuals who kept to themselves and did not branch out to make new friends for whatever reasons. I think these people are missing out on an important part of law school life.

When getting advice before entering law school, everyone was advised about how to outline, how to brief and how to take a law school exam, all of which are important. However, in my view, the most important piece of advice that I would give anyone entering law school is to make new friends.

Making friends helped me in other ways. If I had problems with something discussed in class, I had people to talk with about my misunderstanding. I had people who knew what the law school experience is like (unlike my friends and family who cannot comprehend the amount of work and studying needed to do well on finals).

And hopefully, some of these friends become judges in the future. You can use all the help you can get.

I know that some, and maybe even a lot, of people have been upset about what I have written about throughout the year in this column. I have heard people talking about the column, letters have been written about it and people have even criticized it to my face (without knowing that I was the author). For those of you who took exception to what I wrote, please remember my main goal was to entertain. The very fact that people got upset about the column and were talking about it made the column, in my mind, a success.

Short-sighted subcommittee deserves an F

By Grant Monachino
STAFF COLUMNIST

A few weeks ago, many present and future C-M alumni were faced with the possibility of no longer having an institution to call home. Governor Taft had recommended to the "budgeting subcommittee" that closing an "unidentified law school" would be a feasible solution to help Ohio's defunct budget.

Although it was never expressly stated, many thought C-M would be the likely target of this recommendation. This proposal, however, never made sense from the start. First, why would Taft think this was a good idea or an adequate budget remedy? Second, why would he think this proposal would even make it out of committee?

There had been a mid-90s study by the Ohio Board of Regents concerning the proper number of public law schools, but this study had concluded five law schools was not too many.

In an e-mail to the C-M community, Dean Steinglass opined that this proposal might have been backed by legislators with an anti-lawyer (possibly anti-Cleveland) sentiment. Aren't most politicians lawyers? Even though this proposal seemed absurd, it was not to be taken lightly. This was evident from the demonstration of support C-M received, not only from its own, but also from many others who see the obvious benefits of maintaining this institution.

Steinglass and the many others who helped eliminate this proposal shortly after its conception should be thanked. The Ohio General Assembly surely knew there would be backlash from the legal community? So why do it? That question is one I will leave to the politicians.

Whatever the answer(s), this "bluff" was a thought provoking medium for many law students. I never felt truly attached to C-M until I realized three years from now it could no longer exist. Regardless of any criticisms C-M may receive, those who have experienced it in any way would agree it doesn't deserve even the whispered "threat" of closing. If you are unaware of how instrumental C-M has been in its 106 years of existence, Steinglass' e-mail sheds plenty of light.

Luckily for the law school, this thoughtless proposal did not take place earlier in the recruiting year. It could have been disastrous when trying to encourage potential first years to come to a school that may not exist in three years. The next time the Ohio legislature wants an idea to fit within its budget, it should think about the long run instead of harmful and thoughtless short-term solutions like closing educational institutions.