3-13-1978

# 1978 Vol. 26 No. 7

Cleveland-Marshall College of Law

# THE GAVEL

*Johnny Dromette sez: "Unique ideas lead to prison."*

Volume 26, Issue 7 | Cleveland-Marshall College of Law | March 13, 1978


## Hanging out with Tom Hayden

**by Marty Nadorlik**

At first glance Tom Hayden looked very much like the myriad of businessmen who wander around Cleveland. Brown herringbone suit, white monogramed shirt, subtly patterned tie, the only exception was a West Coast touch--cowboy boots. We met him in the reception area of Mayor Kucinich's office. On the way downtown Lee Andrews and I had picked up two friends of Hayden from the Ohio Public Interest Campaign, who were interested in the details of the mayoral conference. As we weaved our way through the corridors of city hall toward the parking garage, the topic of discussion was the Illuminating Company's decision to begin attaching city property in the debt dispute. "Can they do that?" Hayden asked. By the time we reached the car, his friends had explained the intricacies of the dilemma.

On the way uptown Hayden shuffled through some papers and conversed briefly with his backseat companions. It seemed apparent to me from the whispering going on that they wanted some private discussion time. Lee had anticipated this problem prior to picking up Hayden, and had dropped some obvious hints they were not included in our luncheon plans. Upon our arrival at the law school, they immediately accepted my offer to let them confer in *The Gavel* office. Lee was somewhat miffed by this turn of events. After all, the Student Bar Association had bankrolled Hayden's airfare and speaker's fee, and now these two were monopolizing him. The meeting adjourned after about fifteen minutes. Hayden embraced his friends and they then departed. Lee suggested that we go across the street and have lunch. So off we went upstairs through the atrium and out the front door of the Law Building.

"I've been pushing since six-thirty this morning" Hayden said. He lamented that with his demanding schdule that day he had been unable to answer a compelling call of nature, and that it would be the first order of business upon our arrival at Swingos. While crossing the street, Lee related that he hailed from the same part of Detroit as did Hayden and that they had both gone to the University of Michigan. Those reminiscences were the topic of discussion as we arrived at the restaurant.

Swingos was crowded with luncheon patrons and no seating was or would be immediately available. The problem was that it was nearly one o'clock and he was scheduled to meet with students at one-thirty. While Tom visited the mensroom, I ambled over to the Hi Luncheonette to see if prospects for a speedy meal were better there. "It's not as fancy a place," I said as I returned "but the food is good and it's not this crowded." As we sat down at an available booth, Tom inquired "can you guys lend me some cash? I only have about a dollar." Lee assured him that we would pick up the tab. I asked how he could travel so extensively on such limited funds. "I have friends who take care of me. And I've been doing it for a long time." We ordered. Tom and Lee both asked for beef barley soup and a hamburger. I had my customary

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## Gavel Editorial

# *Making the grade*

With the end of another quarter imminent, the law student is again to be exposed to the weakest link in the educational process, namely, the paucity of quality examinations. To those who have critically analyzed the situation, it is not the spector of being examined which is to be feared but rather it is the nightmarish confrontation with a test that does not give the student an opportunity to demonstrate the knowledge of the subject which has been learned. And, regardless of how calloused a position one may assume in laying the blame for students' pathetic plight at their own feet, only one person can formulate the examination.

After ten weeks of badgering by little Napoleons and listening to lectures given from notes yellowed by age, it hardly seems a presumptuous request to expect an exam which is related to material taught in class, or which, at the very least, is freshly drawn.

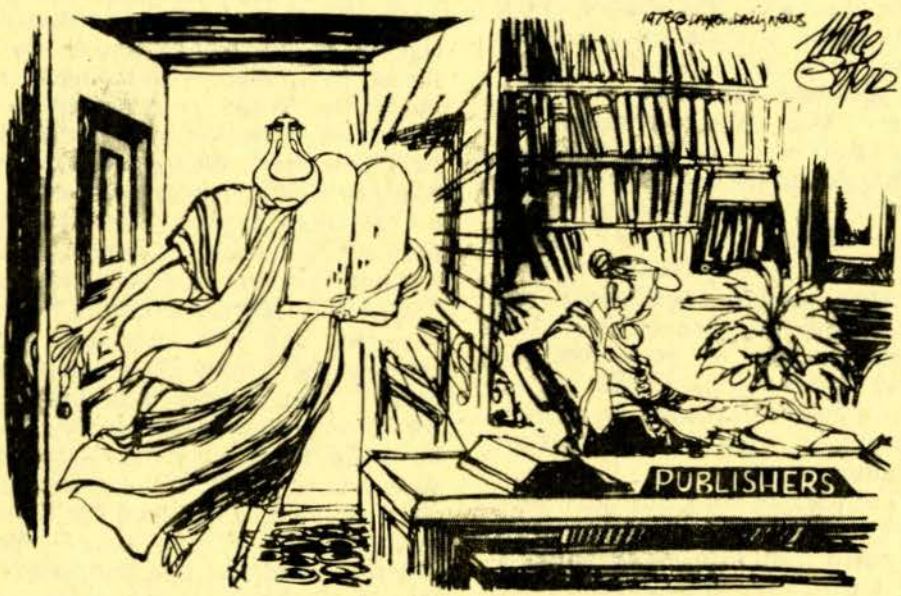
Yet, derelictions of even this humane obligation abound. In the past two years, several exams have been given which were taken almost entirely form previous exams given by that same professor. An exam last year was so remote from the material taught that all students in the class were given a pass-fail option.

To those professors who wish to rehabilitate themselves, these suggestions are proffered. First, do not use previous questions. It is quite unfair to those students who can not obtain access to them prior to the exam.

Second, do not ask nebulous questions, deciding on the answer after reading the exams. Review what was taught, define distinct areas in your mind, then ask questions which seek to elicit an appropriate answer in each area.

Third, remember that the students' concept of what is important in a course is based on what you emphasized in class. The student has several exams, and will concentrate on these accented areas. Allow him to demonstrate his knowledge, do not delve into other areas which your own approach has made to seem unimportant.

Finally, do not use an exam to exact revenge on a disfavored class. Instead, analyze your teaching methods for, in most cases, an adverse response by the class will be in reaction to ineffectual and intimidating classroom techniques.




SIR... MR. NIXON IS HERE WITH HIS MEMOIRS.

# Bogomolny breaks bread

**by Lee Andrews**

Twenty students ate lunch last week with Dean Bogomolny in the Faculty Lounge. The lunch provided the Dean with an opportunity to unveil his plans for the law school directly to his constituents. For the students, the lunch provided a chance to voice long held criticisms about the quality of their education, and to voice the frustrations of the law school experience to the man whom, some seemed to feel, controlled it all.

The Dean opened the session, which had been publicized by a one day notice on a student bulletin board, by talking about his plans for Cleveland-Marshall. Bogomolny said that he would like to see the school develop in two directions. C-M, he said, must develop a stronger relationship with the commercial comunity in Cleveland, and also increase its identification with the urban community in which it resides.

As the overseer of the development of an urban law school "70 years old, but really only 5 years old", Bogomolny noted that he has many constituences, alumni, the Cleveland legal community, the rest of the University, which make up his daily work schedule and prevent him from spending more time with students. He said that he would like to teach a course in his field of criminal law in the future. "But I don't know if students would like me as a teacher--I'm very theoretical and require a lot of reading."

The Dean said that he had spent a lot of time recently speaking to law firms about the schools library campaign. He said one of his goals in the future would be to bring more members of Cleveland's legal community into the law school. He said more enrichment programs like Professor Barnhizer's Public Defenders training program will be held, to draw lawyers to the school.

On the subject of teaching, the Dean repeated his contention that many of the teachers complained

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THANK YOU, MR. PRESIDENT.... AND NOW TO REPRESENT THE OPPOSING VIEW, HERE'S A REPLAY OF ONE OF MR. CARTER'S CAMPAIGN SPEECHES.

# Attorneys face disbarment

**by Jack Kilroy**

Two prominent attorneys--Jerry Paul of North Carolina and Lennox Hinds of New Jersey--are currently under attack by the organized bar for out of court statements regarding the criminal justice system. Paul, many will remember, successfully defended a young Black woman, Joan Little, in the summer of 1975, who was accused of murdering a white jailer. Hinds is the national director of the National Conference of Black Lawyers.

Jerry Paul is charged by the North Carolina State Bar of several violations of the disciplinary Rules of the Code of Professional Responsibility by allegedly making several statements during the course of his defense of Joan Little.

Paul allegedly described himself as "a freedom fighter". According to the North Carolina State Bar, this is an unprofessional manner in which to attract clients.

Another of the charges is "the Defendent (Paul) stated that the quality of justice in this country is directly related to the pocketbook. Lawyers want to believe that it's their ability that wins cases."

Paul also is said to have made comments concerning the trial judge's racial attitudes, legal ability and knowledge. The Code of Professional Responsibility rule that "a lawyer shall not knowingly make false accusations against a judge or adjudicatory officer" has been invoked to answer Paul's criticisms.

Finally, the complaint against Paul states, "On August 10, 1975, in a TV interview conducted by Bob Carlton, WTVD-TV, the Defendant stated that at that time the state had no case whatsoever." He further proclaimed that his client was innocent.

Meanwhile, in New Jersey, the Middlesex County Ethics Comm. is investigating Lennox Hinds for out of court statements concerning the case of Assata Shakur (Joanne Chesimard). Hinds, who was not representing Shakur at that time, is alleged to have called the trial taking place a travesty of justice and to have said Judge Appleby did not have the judicial temperment or racial sensitivity to sit as an impartial judge. Hinds is also supposed to have called the entire proceedings a legal lynching and that Judge Appleby's questioning of prospective jurors was creating a hangman's court.

# Letters

To the Editor:

I would like to commend Mary Jo Kilroy for her call for sensitivity among law students concerning the crime of rape. (December 6, 1977)

It certainly should be the responsibility of an accredited law school to teach students not simply what the law is, but also that the purpose of many laws is not only to protect personal safety but to maintain human dignity. If this is not expected in the law schools, there is no hope of ever achieving it in the courtrooms.

Jeanne Van Atta
Education Coordinator
Cleveland Rape Crisis Center


# THE GAVEL

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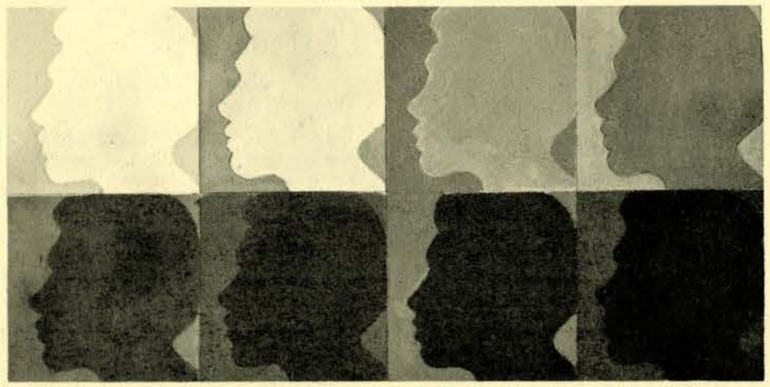


Marty Nadorlik

# Bakke:

## Bad facts make bad law

The following article is the first of a two part installment on the *Bakke* case, reprinted courtesy of Professional Group Publications and author Ralph Smith. Ralph Smith teaches at the University of Pennsylvania School of Law and is chairperson of the National Conference of Black Lawyers' Task Force on Legal Education and Bar Admission. We invite our readers' responses.

**by Ralph R. Smith**

*Regents of the University of California v. Allan Bakke* has become the most widely discussed and publicly debated Supreme Court case in recent American history. Millions of white Americans--from militant blue-collar factory workers to the normally placid intellectuals who populate the ivory towers of academia--expect Allan Paul Bakke to vanquish the much despised common foe they have come to call "reverse discrimination." So young Bakke--a 37-year-old white aerospace engineer--has become a latter-day Great White Hope. But the *Bakke* case is worthy of neither the attention nor the hope that surround it.

**Highly-charged questions of social theory and calculations of strategy shuld and must combine with the crucial statutory issues of so *how*--to overshadow the highly publicized plight of Bakke himself. But so far, the poor, rejected image of Allan Bakke, oversimplified though it is, has prevailed.**

One major problem with the public perception of this case has been the fear that considering non-academic factors for admission to universities would resurrect the quota systems used against Jews and other groups for much of this century. Yet such fears do not acknowledge the salient differences between the *quotas* of yesteryear and the *affirmative action guidelines* employed by the University of California at Davis Medical School.

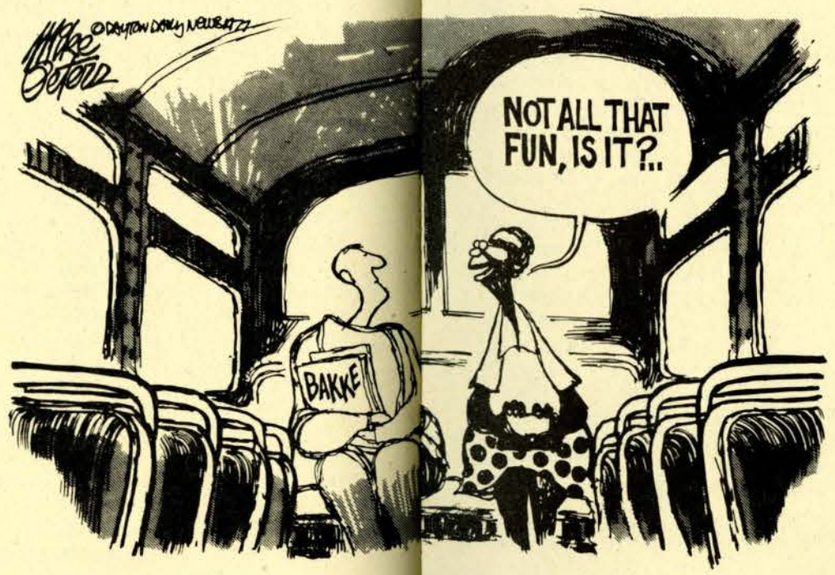
Ironically, *Bakke* has been propelled to the Supreme Court of the United States and transmogified into a case of landmark potential through the efforts of both proponents and opponents of affirmative action. These strange bedfellows are bound by their common hope for a ruling that will end the confusion and ambiguity now surrounding affirmative action.

But they hope in vain. The Supreme Court has no magic wand to dispel differences and still debates. No matter how the Court decides this case, educational institutions and the society at large must continue struggling to share limited resources with those who have historically been deprived, remaining aware of those who are, of necessity, temporarily denied.

**A fair appraisal of the specifics of the *Bakke* case history compels us to the conclusion that the case has no business before the highest court of the land, that the facts do not fairly raise the issue purportedly presented, and that *Bakke* is a decidedly inappropriate vehicle to carry what may well be the most profound judicial prononcement of the decade.**

*Bakke* is a third-rate lawsuit. The Supreme Court should have summarily disposed of the case when it granted *certiorari* last February. Having not done so, the Court can still avoid the disaster of having a bad case make hard law only if it perceives the disingenuousness of the arguments presented by Allan Bakke's supporters; if it retains a firm grasp on the reality to which affirmative action is addressed; and if it recognizes the calamitous consequences that would result from an affirmance of the California court.

Allan Bakke twice applied for admission to Davis medical school. He was rejected on both occasions. He subsequently sued, asking the state court to order his admission. He contended that the medical school operated a special program to admit some minority applicants






with lower grade point averages and MCAT scores than his. This program, called the "Task Force program," he said, resulted in denying him admission solely on the basis of race and violated the Privileges and Immunities Clause of the California Constitution, Title VI of the Civil Rights Act of 1964, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

**While virtually ignoring the state constitutional and the federal statutory claims, the trial judge and six of the seven California Supreme Court justices found that the affirmative action program at Davis violated the Equal Protection Clause and eventually ordered Bakke admitted.**

Contending that this was "an issue of profound national importance," the University of California first obtained a stay of the state court's decision and then petitioned for a writ of *certiorari* from the Supreme Court of the United States. Predictably, Bakke's counsel opposed both petitions. Not so predictably, dozens of civil rights organizations joined the National Conference of Black Lawyers and the National Lawyers Guild in urging the Court not to hear the case. Their brief asked the Court to summarily dispose of the case by vacating the state court's judgment. In the alternative, it urged theCourt to deny *certiorari*. The organizations contended that the record developed in the case was so inadequate in several critical areas that an informed decision on this important matter was impossible. For instance, neither party had explored the possibility of past discrimination on the part of the university. Nor was there any evidence about the discriminatory nature of admissions policies that rely solely or primarily on so-called "objective" indicators such as MCAT scores. No evidence was proffered to establish the gross underrepresentation of minorities in The medical profession in Calif. and the resulting critical underservicing of the minority population in that state. Thus, the California decision was triggered by a failure of proof and could be remedied by a remand for an evidentiary hearing, the NCBL and NLG argured.

After considering the matter for two months, the Court granted the *centiorari* and agreed to hear oral arguments. After repeated demands by civil rights groups for appointment of special counsel, the university retained former Watergate prosecutor and Harvard law professor Archibald Cox. On Wednesday, October 12, Cox, Solicitor General Wade McCree, and San Francisco attorney Reynold Colvin spent two hours urging the Court to accept their respective positions.

This case does not deserve and may not live up to its billing as "the most significant civil rights case since *Brown v. Board of Education.*" Nevertheles, how the Supreme Court construes and responds to the issue put before it may profoundly affect the society in which we live.

According to Professor Cox, the issue presented is "whether a state university, which is forced by limited resources to select a relatively small number of students from a much larger number of well-qualified applicants, if free, voluntarily, to take into account the fact that a qualified applicant is black, Chicano, Asian or native American in order to increase the number of qualified members of those minority groups trained for the educated professions and participating in them--professions from which minorities were long excluded because of generations of pervasive racial discrimination."

# A Third-Rate Case Shouldn't Make Hard Law

**He sought to impress upon the attentive justices that their answer to the question would "determine, perhaps for decades, whether members of these minorities are to have the kind of meaningful access to higher education in the professions which the universities have accorded them in recent years, or are to be reduced to the trivial numbers which they were prior to the adoption of minority admissions programs."**

There is more than ample data available to support Cox's contentions. A 1958 study published in *Negroes and Medicine* concluded: "The United States today is confronted with a serious shortage of Negro physicians which affects not only the medical care of Negroes but the health of the entire country. This shortage of Negro physicians is demonstrated by the fact that while Negroes made up 10 percent of the total population in 1950, Negro physicians constituted only 2.2 percent of all physicians.

This study might well have been written today. It's findings have been echoed in Minorities in been echoed in *Minorities in Medicine*, a recent foudation-sponsored report by Charles Odegaard--of *DeFunis v. Odegaard* fame. Odegaard found that although blacks were now 11 percent of the population, the number of blacks employed in medicine remained at 2.2 percent.

*(To be continued)*

cont. from page 1

tuna on rye toast.

Tom evidently had the mayor on his mind, for he immediately launched a discussion of Kucinich specifically and Cleveland in general. "He has a lot of energy. He's good for the city" Hayden remarked. "The trouble with liberal politicians is that they tend to become fiscal conservatives once they're elected. Dennis isn't yielding to the business community." I made the point that mayoral office tends to be a dead-end job politically. Hayden made a distinction between purely ceremonial mayors whose aim is to languish in office, and those like Kucinich who are unafraid to generate controversey.

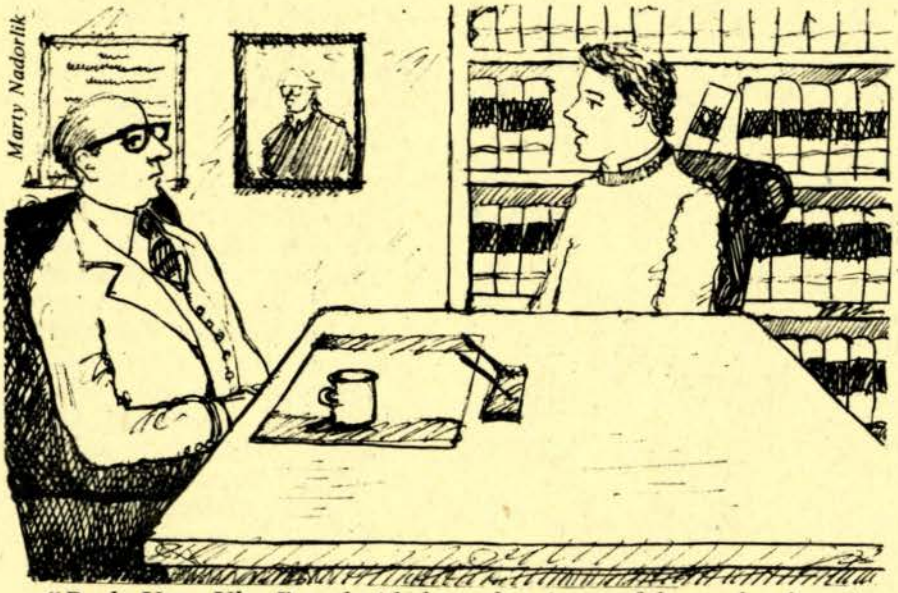
The discussion then turned to Hayden's own past and future political situaiton. I wondered why he had chosen to challenge the incumbent Senator John Tunney in the 1975 Democratic primary, rather than working his way up through successive smaller offices. "I was in a congressional dist. where I could have won the primary and probably the general election. But I had a different motivation than just winning a seat. I wouldn't be comfortable with an easily attainable office. A congressman is pretty much limited to issues within his own district. But a senator is better able to speak on national affairs." He paused momentarily and continued devouring the beef barley soup. "In 1975 a whole lot of things had fallen apart. What with the war and Watergate, why not have a former Chicago eight defendant run for the Senate?" he asked rhetorically. The sandwiches arrived as Lee asked whether he had felt any heat from his former associates. "No they've been very good about it. I've evolved into a situation where you have forty years left in your life, and need to ask how do you have an impact?" He summed up the transition in what has more or less become his campaign slogan: the radicalism of the sixties is now the common sense of the seventies.

Observing Hayden at close quarters, he is an intense, vibrant man. As he approaches forty, his once jet black hair is liberally streaked with gray. His face is a mirror of the toubles he's seen, dominated by a rather direct nose and dark piercing eyes. When he speaks to you, especially about something important, the eye contact approaches the point of glaring. While not totally without humor, he maintained a serious demeanor both at lunch and at the activities that followed.

"I'm still hungry" Tom stated apologetically. "Do you think I could order another hamburger?" We assured him that it was all right. "Do you have any immediate plans to run for office?" I asked. "Not until the eighties. What I'm interested in now is working on our organization. I can't let it become a treadmill for Hayden campaigns." Hayden is chairman of the Campaign for Economic Democracy, a California-based group that advocates among other things, utilizing solar energy and tighter controls on corporations. Hayden is realistic about third partys. They have never worked. Any gains his group makes will have to be within its alliance with the Democratic party. "I'd like to run on an across the board slate" he said as the second hamburger arrived. "Everything from governor right on down to dogcatcher. Basically there are two kinds of Democrats. The corporate Democrats placate business interests. The economic Democrats look after the people's needs. The thing that has preserved that staus until now is the lack of a clearcut social crisis. We think that in the eighties, unemployment and inflation will create a breach that the establishment Democrates will be unable to fill."

We were already late for the student coffe hour, so Lee suggested that we leave. As he paid the check, Tom and I stood silently in the hallway. I thought to myself that he must be tired of answering questions by now. But then the way things were going, this opportunity was unlikely to be repeated. "Would you consider running again for the Senate?" I inquired. "I'm interested in running on a slate. Lieutenant Govenor is a possibility."I stated that I could not picture him playing second banana. "Look," he said, "people are reluctant to vote for non-middle-of-the-road politicians. My wife (Jane Fonda) and I are not exactly models for people to follow. Besides, not everyone carries the baggage of having been a sixties radical. It doesn't matter to me if I play second banana or tenth banana so long as the ideas I believe in prevail."

About thirty students were sipping coffee in the faculty lounge as we arrived. Tom mingled hesitantly, trying to act like just another guest rather than the focus of attention. He approached a group of first year law




*"Dad, Um...Uh...I've decided to drop out of law school and join the Dead Boys."*

# Bogomolny

**cont. from page 2**

about were just dull and would be proven by time to be good teachers. He did say that he would try to spread out the "well liked" teachers more equitably, so more could have a chance to take them.

Bogomolny also announced the formation of a committee on law teaching to be chaired by David Barnhizer, to offer suggestions to professors interested in improving their classroom performance.

The Dean announced that C-M had placed students with every major law firm in the city. "The school is vastly better than you think," he said. He said criticisms of Mr. Greenwood's office for being less than agressive were somewhat unfair because Greenwood had been burdened with the added chore of overseeing the construction of the new building over the past two years. He said Dean Toran and he would be meeting with Mr. Greenwood in the future to discuss placement strategies. The dean observed that placement officers may have been looking at the job market too narrowly. He said law related areas will be considered more closely in the future, for example, positions as staff counsel for corporations. Another problem, he said lies with student abilities; students aren't willing to relocate. There are plenty of jobs in Kentucky, working on black lung cases, but nobody wants them, he said.

Other comments of students were directed at the lack of tradition at C-M, lack of pride among the students, lack of a sense of community at the school, and about personal feelings of "rudderlessness"--as if these problems could be solved by confronting the Dean.

Students used the lunch as an opportunity to comment about their disenchantments with faculty teaching, with the placement office and with life at C-M.

The Dean offered the consoling point that students were not alone. Very few people, he said, like law school. Lawyers are traditionally the lowest contributors to their law schools.

Dean Janice Toran said Bogomolny plans to meet with more students in the future.

# Hayden

**cont. from page 6**

students who were in the throes of trying to understand the Rule Against Perpetuities. "Is that law" he asked. "Property" they replied. "I don't know anything about law. I just know how to be a defendant." He proceded to field a wide variety of questions ranging from the arms race and population control to solar energy and rechanneling corporate profits into public interests. Some questions he dealt with quite ably. On others he was unconvincing. Hayden mentioned that people often ask him about the "quiet seventies." "Sure things are quieter now. The war is over. Two presidents have been deposed. I mean, give us a break. Social movements have peaks. They don't go on indefinitely."

At about three thirty Lee suggested that we give Tom some time to collect his thoughts before the speech. He emerged at four and crossed the atrium to the Moot Court auditorium, which was nearly three-quarters filled. For some reason, the powers that be had chosen not to open the bleachers, and people eventually ended up sitting in the aisles or standing in the rear. Lee gave a brief but effective introduction, calling our guest "the wildman of the sixties". He proved to be casual and extemporaneous. He mentioned the new respectability of former new left figures, some of whom now sit on school boards or work for VISTA. "The purpose of the suit and tie" he declared "was to reach out to a larger audience." Hayden discussed his recent meeting with President Carter, and how he had conceded that some corporate heads have more power than the president. I had heard that story and several others that followed, both at lunch and the coffee hour, so my attention span began to fade. My wife arrived midway through the speech, and we chatted intermittently until the question and answer period ended at five forty-five.

The atrium was dark due to the power cutback. Tom Hayden stood in the shadows near the Moot Court room answering more questions. Several kegs of beer were on tap as the remainder of the audience crossed paths with night students headed to class. Hayden had another meeting with the mayor scheduled, and a friend had arrived to provide transport to city hall and the airport. I helped carry some of his luggage to the car. As we left the law building, he gestured toward the suitcase. "Here, I can manage" he said. "It was nice meeting you" I stated as we shook hands. "Nice meeting you" he replied. "I think you got enough quotes."

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