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THE GAVEL

VOLUME 72, ISSUE 5

THE STUDENT NEWSPAPER AT CLEVELAND STATE COLLEGE OF LAW

March 2024

An Interview with County Prosecutor Candidates Matthew Ahn and Michael O'Malley

Christina Lakatos
Gavel Contributor

Cuyahoga County residents have a unique opportunity to make a meaningful choice in the upcoming Democratic primary for county prosecutor. Around the country, prosecutor races are rarely contested. Current prosecutor Michael O'Malley, first elected in 2016, ran unopposed in the primary in 2020. In Cuyahoga County, the Democratic primary is essentially the general election. Given the challenge from CSU Law visiting professor Matthew Ahn, this primary election season has produced a robust and at times contentious dialogue between the two candidates.

What is your 30-second elevator pitch for why voters should choose you in the primary?

Ahn: I'm fed up with the outcomes we're seeing out of the criminal justice system here. Cuyahoga County is the worst in the state on trying children as adults and wrongful convictions; the worst in the country on the death penalty. These are the kinds of things that the data and research tell us don't actually make us safe. I believe that the office needs a restructuring and an overhaul so that it's actually geared toward those things proven to make our communities safer and make the system fairer, all at the same time.

O'Malley: It's about experience, leadership, philosophy. My philosophy is trying to rehabilitate low-level offenders and also trying to keep the community safe.



Image from signalcleveland.org

What do you view as the greatest challenge currently facing the prosecutor's office?

O'Malley: I think doing deep work with the families of juvenile offenders trying to get these violent juveniles on the right path. [In 2023, 41 juveniles were charged with homicide – a record – topping 35 in 2022 and 21 in 2021.] The reality is in Cleveland now, there's no proactive policing going in. We don't have enough police on the force, the federal consent decree... if there's no proactive policing going on, guns aren't being taken off the streets.

Ahn: A crisis of leadership. The way the elected prosecutor has reacted to meaningful critique demonstrates that this is not the person we want setting policy in terms of our public safety and exercising the kind of discretion and restraint in judgment that is required from a prosecutor's office to really do justice.... One of the things we're seeing is a rise in se-

rious juvenile crime, and I think that has a lot to do with how the prosecutor's office is structured. Juvenile units have some permanent attorneys, but they're almost all geared toward the most serious juvenile crimes. In other words, they're reacting to the serious crimes that have already happened, rather than implementing measures to prevent those crimes.

What distinguishes you from your opponent?

Ahn: I've spent my entire career really trying to make data-driven and research-based arguments. These are the kinds of experiences we actually want from our leaders. We want someone who understands what they don't know, who is willing to adjust their expectations based on new information and is willing to make the data their starting point. That includes not just statistics but people's individual experiences. That is accompanied by the kind of policy thoughtfulness and sensitivity that a prosecutor's office really needs to

make sure they are getting the balance right in any individual case between what we see as necessary punishment and the resources and tools someone may need so that they do not return to the system again. My understanding of how to better manage an office and give subordinates ownership over their work and motivate them to do the best job that they can, and understanding that that will improve outcomes in the prosecutor's office.

O'Malley: Experience. Mr. Ahn got his Ohio license in 2022. He's never had a case in a state or municipal court in Ohio. I have an office of 400 people, 230 lawyers; a great deal of my job is managing people and the issues that come forth daily. Matt managed six interns remotely during COVID.... Matt pushes forward some extreme views, including abolishing the police, which I think is inconsistent with the role of county prosecutor. My job goes beyond buzz words; it's beyond a 10,000 foot level. We are every day

on the ground on all these different issues, working for the public. You have to put your time in, learn, and really in a serious manner, with experience, and then choose the right path. It should call people to question his credibility.

What do you think the prosecutor's office is currently handling well?

Ahn: There is a self-defense committee that reviews self-defense claims earlier in the life cycle of the case. And that is one thing that I've been looking to in general – let's talk about some of these complexities and nuances in the law at the outset of the case rather than on the eve of trial. Let's make sure we're not needlessly prolonging a case that doesn't need to be in Common Pleas Court in the first place.

There seems to be an ideological struggle between protecting public safety and working to reduce the jail population and racial/economic disparities. How do you view this struggle?

O'Malley: I think you can do both. Under my tenure, we established an early intervention and diversion center for juveniles. In 2020, we opened a diversion center for adults with substance abuse and mental health issues to keep them out of the county jail. When I took over in 2017, we had 2200 people in the county jail. We are hovering around 1450. We use ankle monitors much more; we have 600 people out currently awaiting pretrial.

Ahn: The data and the re-

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Noah T. Seabrook
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On January 26, 2024, the Criminal Justice Center at CSU Law partnered with the Department of Counseling, Administration, Supervision, and Adult Learning (“CASAL”) under CSU Levin College of Public Affairs and Education to provide a space for practitioners in the legal and mental health spaces to discuss the timely topic of human trafficking. The program, “Human Trafficking Unveiled: The Digital Frontier of Webcam Pornography,” continued in the theme of exploring the digital space and its implications on life today. Sparked by the recent arrest of Andrew Tate, the program explored “the growing market for webcam pornography and the industries link to human trafficking.” Presenters brought the

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When and Where:
Friday, April 12
Majestic Hall
3000 Euclid Avenue,
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Happy hour will be from 6:00-7:00 PM and will be immediately followed by dinner from 7:00-8:00 PM.

Ticket Prices:
Tickets will go on sale in March and an email will be sent out with additional information closer to then. Following purchasing a ticket, we will have the same process as last year where students will have the opportunity to pick their table and dinner and dessert choices, so please watch out for that as well.

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Exploring the Complexities of Mental Health and Law: A Series, Part III

perspectives of law enforcement as well as legal and mental health professionals to explore the “supply and demand for human exploitation and the billion-dollar, international, web-based sex industry.” (emphasis added).

In her keynote, Kirsti Mouncey, President and CEO of Collaborative to End Human Trafficking (“Collaborative”), demonstrated the collaborative efforts within Ohio to combat this pervasive issue pointing toward over 70 different organizations and entities all working together for victims and survivors. Mouncey draws on her profound experience in social work and previous 15-year experience as Chief Program Officer at the Cleveland Rape Crisis Center when she meets with new survivors of human trafficking. She explained that through community-led efforts, the Collaborative’s mission to see a world without human trafficking can come into fruition. This involves a strategic approach incorporating education, awareness, technical assistance, facilitation of referrals to services (Greater Cincinnati Coalition Against Human Trafficking), and even a Survivor Advisory Council comprised of over a dozen individuals leading the charge and providing guidance through their lived experience.

Yet, it is far from simple. Human trafficking is intricate and ever-changing along with modern technology. It also intersects with public safety, human services and organizations, public health, behavioral health, government, education, child development, economic organizations, and businesses. On top of that is the cost to victims’ time. There is typically a 10-year journey of trauma healing and restoration once a survivor is no longer being trafficked. Utterly heartbreaking – ten years of intentional and deliberate self-healing and trauma healing to “restore back to a level of someone who has not undergone human trafficking.” CSU Law alum and Director of the Human Trafficking Project at Case Western Reserve University, Maya Simek, expanded on Mouncey’s description. As an Ohio Licensed Independent Social Worker with Supervision designation, Simek broke down the legal elements to the law. An action to induce, recruit, harbor, transport, provide or obtain an individual through the means of force, fraud, or coercion for the purpose of commercial sex, labor, or both. Note that the law does not require the State to prove force, fraud, or coercion for cases involving minors.

With this framework in mind, Simek stated the relevancy of trauma-responsive models where the law is one tool, but not the only one. Simek explained that “if you’re not looking at the whole person, you can’t best assist them.” This further demonstrates the necessity of additional tools to reach goals on micro-, mezzo-, and macro-levels. On a micro level, the goal is to work with people on a one-on-one basis; to provide them with services they need. On a mezzo level, the goal is to translate the law into something the community can understand. On a macro level, the goal is to translate stories of survivorship up and down into positive, protective legislation. To reach these goals, it’s vital to have resources in various “buckets of wellness” to refer persons to; “you can’t be everything for every person.”

But what exactly is human See **COMPLEXITIES**, Page 4

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search tell us that the thing to do to reduce racial disparities and improve public safety are the same thing. If somebody without a lengthy criminal record spends even four days in jail, they are 50% more likely to commit another crime in the next 18 months. Four days in jail, you’re likely to lose your job, your housing is now at risk, custody of your family members is now at risk... even these short jail stays destabilize our communities more than they promote public safety. Low-level nonviolent offenders are not a threat to our public safety. These false comparisons between racial justice and public safety are just not true, at every stage in the criminal case. We’re creating more repeat offenders because we’re not giving people resources, we’re pushing them into the system.

What are your views on the Cuyahoga County Jail?

Ahn: I’ve testified numerous times in front of county council about this Garfield Heights site, including my concern about separating the jail from the rest of the justice center. It will lead to a number of logistical issues and ongoing costs that have not been addressed by county government. A replacement jail should remain downtown. If we need 130-140 vehicles for transporting inmates, that is an ongoing cost of millions of dollars a year. O’Malley: It’s rare anymore that jails are connected to courthouses. I would prefer it stayed that way, but we have to provide a better environment for the detainees. We can’t rip a facility down and construct it on the same site.

What do you view as the role of the Conviction Integrity Unit?¹

O’Malley: We’ll always have a conviction integrity unit, but compared to what we do on a daily basis... we have 11-12,000 criminal cases a year, 3000 juvenile cases a year, 2000 tax foreclosure cases a year... If we have 10 wrongful conviction applications a year... There was a surge at the beginning, but you’re slowly starting to see a decrease. Many of

the claims were based on Brady violations, and with open discovery, you’re just not seeing those anymore. Ahn: We need to restore and strengthen that unit. We need to make sure the unit is functioning well. A number of these cases have been sitting in front of the unit for a while. We’ve also seen the prosecutor overrule the decision of that unit. If that’s going to be the way it works, it’s not functioning. We have a long history of prosecutorial misconduct, particularly Brady violations. One of the barriers is that folks who are incarcerated simply don’t have the resources to obtain their file, and that should not be the barrier to getting things right. At least one person on that external board should be a formerly incarcerated person.

Pretrial Detention:

Ahn: This is where the prosecutor’s office has the most input in the day-to-day administration of the jail because a lot of this is set by the bail and bond decision made at arraignment. Cuyahoga County is still using an outdated cash bail system that has nothing to do with public safety. We have dozens of people in the county jail who cannot afford a very low bond amount. I’ve committed to stop asking for cash bail entirely. Either someone is a threat to the community and a flight risk, or they’re not, and they should be released with whatever conditions can ensure the safety of the community. O’Malley: I enacted a policy that unless there is a flight risk or risk to the victim, we never object to the bond commissioner’s [bond] recommendation for the defendant.

For more information: <https://www.voteomalley.com/> <https://www.matthew-ahn.com/>

¹ <https://www.ideastream.org/news/government-politics/2022-11-21/cuyahoga-county-prosecutors-conviction-integrity-unit-community-members-quit-in-protest>

Legislating Artificial Intelligence: A Regulation Race Against Unprecedented Innovations

Mary Rose Faulkner
Gavel Contributor

We have all been exposed to AI in some form or another over the past year, whether it be asking ChatGPT for an easy recipe, accidentally opening up “My AI” on Snapchat, or discovering the Lexis AI launch. Though there are many positives attributed to artificial intelligence, the negatives are rapidly unfolding, and lawmakers have struggled to keep up. In October 2022, the White House Office of Science and Technology Policy published a “Blueprint for an AI Bill of Rights”, an attempt to formulate guidelines to combat the threat of artificial intelligence to our rights. Though this is merely a blueprint, it demonstrates that the White House is cognizant of the impending dangers that artificial intelligence represents to our society. Following the blueprint, on October 30, 2023, President Biden issued an executive order on the “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”. The executive order mandates that artificial intelligence developers share their findings with the U.S. government if their systems could pose a threat to national security. In 2023, 25 states introduced artificial intelligence bills, and 18 of those states were able to adopt and enact legislation. Ohio has been a bit slow to the AI regulation game in comparison to our neighboring states, with Pennsylvania at nine pending bills and Michigan with one enacted bill and one pending bill. Still, Ohio was one of the first states to introduce a comprehensive bill which would, among other things: (1) Impose a civil penalty up to \$10,000 for the removal of a watermark on an AI image, (2) Prohibit artificially simulated child pornography, and (3) Prohibit identity fraud using a replica of a person. Artificial intelligence regulation enjoys strong bipartisan support. However, because the technology is developing so quickly, with

unprecedented issues arising daily, we have barely scratched the surface of effective regulations. “Revenge porn,” or non-consensual pornography, offers an example. Beginning in April 2025 (prior to the widespread introduction of AI), legislators across the country sought to crack down on revenge porn. At the end of 2023, 48 states had implemented statutes regulating revenge porn, holding distributors of nonconsensual pornography criminally liable. In 2024, however, this begs the question: do revenge porn laws apply to deepfakes and artificially digitalized images? Beginning in December 2023, pop-singer Taylor Swift’s facial features were manipulated by various AI developers to depict inappropriate sexual images of her that rapidly circulated social media. The manipulation of these synthetic images poses a genuine threat to every individual in society, not just celebrities. These deepfake images can be viewed as a form of harassment, extortion, invasion of privacy, and intentional infliction of emotional distress. While Swift has not ruled out legal action, there have so far been no repercussions for these crude images due to the legal uncertainty surrounding AI. While AI brings unique challenges, these challenges are not entirely unprecedented. Though it may feel as though the modern world is heading towards impending doom, we as a society have encountered and successfully regulated technology booms since the establishment of the United States. From the birth of the internet to self-driving Teslas, the U.S. has remained diligent in regulating technological advancements that may infringe on citizens’ rights. We created AI, so we have the power to regulate it. “AI reflects the principles of the people who build it, the people who use it, and the data upon which it is built” - President Joe Biden.

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COMPLEXITIES

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trafficking? Mouncey explains that human trafficking requires three ingredients that do not exist within a vacuum: a vulnerable person, an exploiter, and a demand. A vulnerable person can be characterized as someone who has experienced abuse or neglect or has had prior engagement with children services, family dysfunction, poverty, or a disability; an exploiter is self-explanatory; and demand is for sex, labor, or both.

Ohio currently ranks 5th in the nation for human trafficking due to our multiple major highways, rural communities with large temporary populations, the substance use epidemic, and proximity to the Canadian border. Each of these factors increases the ease of mobility and control over a person being trafficked. Simek posed an interesting question: why is it good that Ohio is ranked so highly? The answer is resources. Because of the high national ranking, Ohio is able to bring more awareness, more resources, more billboard campaigns – more tools to combat human trafficking than other states. These tools collectively make trafficked persons more comfortable with reaching out for help.

Simek alluded to three typical prongs to fighting hu-

man trafficking: prevention, protection, and prosecution. She then added a fourth: partnership. One such partnership among a vast array of organizations and entities is with the Cuyahoga County Sheriff’s Department through Detective John Morgan. Detective Morgan is a 24-year veteran of the Sheriff’s Department and is a Department of Homeland Security Investigations Task Force Officer assigned to the Ohio Attorney General’s Northeast Ohio Human Trafficking Task Force. He previously investigated violent crimes within Human Trafficking Investigations for the Federal Bureau of Investigations. Detective Morgan is also a military veteran, having completed active-duty combat tours with the United States Marine Corps and the Ohio National Guard.

Within his 24-years as Sheriff’s Detective and 16-years combatting human trafficking, Detective Morgan is an expert within all prongs in the fight against human trafficking. He has seen the world of human trafficking become the fastest growing criminal industry in the world. Where \$99 billion of \$150 billion associated with sex trafficking. Detective Morgan noted that this is due to the diversifying nature of drug traffickers into sex trafficking – a renewable resource. As of January 2024, a trafficked person would

generate \$1,500 per day for their trafficker with only two days off per month. Based on this information, traffickers are making over \$500,000 a year; \$42,000 per month.

Detective Morgan provided a framework for today’s recruitment process. The “who” being runaways, “throwaways,” persons with no purpose/direction or with a void in their life. Persons of low self-esteem, lower IQ, and history of mental disabilities were also included. The “where” being everywhere. Trafficked persons were taken from schools, group homes, bus stations, malls, or other teen hang-out spots. Lastly, the “how” being through the rise in technology – texting, social media, and dating apps. The average age of a trafficked person is 14 with the youngest that Detective Morgan has seen being 11 years old, and the oldest being 66 years old. Over 25% of trafficked persons are recruited as juveniles with life expectancy after becoming a prostitute being a startlingly low 7 years. This information is regularly proffered from arrested traffickers themselves.

Detective Morgan shared the story of a time when a man went to a Starbucks to purchase a 16-year-old girl. He noted hurdles of addiction, mental health, trauma, and our own unconscious bias. Mental Health Professional Dr. Brain Le Clair

spoke from Los Angeles, California, on the economic vulnerability of victims like immigration status and traffickers using calls to “I.C.E.” as a means of compliance.

So, how can we help when trafficking seems like an impossible criminal industry to take down, when even coffee shops become a normal venue to meet, proposition, and sell people? Detective Morgan pointed to a simple solution – if you see something, say something. If you suspect something, say something. Call the Cuyahoga County Human Trafficking Task Force hotline at 216-443-6085 where they will respond within twenty (20) minutes.

Human trafficking is now venturing into a completely online venue through cam sites. These sites provide a space where victims do not have to physically interact with Johns. These virtual platforms can provide traffickers with even more continued control over victims for exploitation through full dependency. Dr. Le Clair explained how a psychological manipulation and grooming process causes groomed victims to believe they are making their own choice to engage in commercial sex. These further highlight how traffickers can run their shows – literally and figuratively – from anywhere in the world. Or, anywhere in Ohio, whether

that is in the Heights, Downtown Cleveland, the East-side, the West-side, Gates Mills, or Moreland Hills. So, if you suspect something, say something. Call the Cuyahoga County Human Trafficking Task Force hotline at 216-443-6085.

Timely discussions like these are made possible to us as students by the dedication and hard work of Andrew Heffron, the Continuing Education Coordinator at CASAL, and Dr. Laura Hoffman, Assistant Professor of Law and Co-Director of the Center for Health Law and Policy at CSU Law. They have worked extensively to host these seminars in ways that allow practitioners to obtain CE/CLE credits, but also for students to attend free of charge. Additionally, Co-Directors Jonathan Witmer-Rich and Robert Triozzi of the Criminal Justice Center and Jill Natran, Manager of Administrative Operations, have been instrumental in bringing these opportunities to CSU Law. Last, but certainly not least, the astounding IT team at CSU Law are always working diligently to ensure that every conference, symposium, or program goes off without a hitch. Thank you all for enriching this educational journey for your students and professional networks alike.

Allison K Younger
Gavel Contributor

Cleveland is known for having some funky food scenes and plenty to celebrate in the culinary world. To highlight what Cleveland has to offer, thirty-seven restaurants, bars, and breweries participated in Cleveland Pierogi Week from January 29th through February 4th 2024 was Pierogi Week. Each location was able to put their own spin on the pierogi, or just highlight the overall deliciousness of this Polish favorite.

My personal favorite is at Gunselman’s Tavern (located at 21490 Lorain Road in Fairview Park), a local

Cleveland Pierogi Week 2024: An A-Dough-Rable Experience!



Pierogi Melt at Gunselman’s Tavern

establishment serving up incredible eats year-round which has created a new spin on the classic pierogi. You can find scrumptious eats like the Pierogi Melt (two oversized Pierogi Lady pierogi as the bun + grilled onions + provolone + a side of grilled peppers & onions tossed with sauerkraut + side of smoky sour cream) on the menu year-round. During pierogi week you can find two special dishes. The first is a simple classic: The Pierogi Lady, a potato & cheese pierogi served

with grilled onions and sour cream. The next option is Cheeseburger Pierogi, with ground beef, potato, cheddar, onion and pickle in a Pierogi Lady pierogi served with a side of signature Gunny burger sauce.

Other establishments to highlight are Beerhead Bar & Eatery in the Flats offering BBQ Beef Pierogi, Nano Brew in Ohio City serving up a firecracker pierogi, and Schnitz Ale Brewery in Parma offering a smothered pierogi with their signature bier cheese. No matter where you go for your pierogi fix in the Cleveland area you are sure to be met with something delicious and sometimes out of the box.

The Gavel welcomes all readers to reflect on our Paper’s former stories within future issues! Former issues of The Gavel can be read at: <https://www.theclevelandstatgavel.org>

LEARN LAW. LIVE JUSTICE. RELIVE THE PAST.

It Depends: A Dialogue on Individual Paths, Perspectives, and Possibilities

Mickey Isakoff
Gavel Contributor

“What are your thoughts on study groups? What major should I pursue in undergrad? Should I go right through to law school? Is it competitive? What’s the hardest book you have read in law school?” The answers to these questions? You can probably guess.

Earlier this year, four CSU Law Students—1L Charlie Volz, 2LE Alex Nardo, and 3Ls Jacob Bourquin and Mickey Isakoff—engaged with Rob Rivera’s Solon High School class on Law

law school the same way. And that is perfectly okay.

While a sense of camaraderie prevails with the notion of “we are all in this together,” it is crucial to acknowledge the diversity within the law school experience. Some thrive in study groups, while others find solace in solitary study. The pursuit of a “High-A” in a course drives some, while others take a more comprehensive approach to defining success in a course. Fondness for specific courses such as contracts, property, or torts varies widely. Equally diverse are the paths that lead to law

school the same way. And that is perfectly okay. word was a challenge, and each admitted that that word may change depending on the day. Ultimately, as we navigate through law school, it is essential to recognize, embrace, and reflect on our unique experiences—educationally and socially. Amidst the mixture of backgrounds, challenges, interests, and motivations, the common goal remains: striving to be the best version of ourselves. What does that look like? Well. . . It depends.

Mistakes are inevitable and serve as invaluable, sometimes harsh, lessons. The question of whether



and Policy, an elective that attracts seniors and juniors with an interest in the legal system and aspirations for a legal career. In responding to the above questions, our classmates introduced the inquiring high school students to one of the most common utterances heard throughout the hallways and classrooms of law schools across the country: it depends.

The high school class, initiated by Rivera—himself an Ohio State University Moritz College of Law graduate—was comprised of approximately 20 students whose thought-provoking questions revealed a genuine curiosity about the legal field. This unique collaboration not only allowed the CSU Law students to reflect on various facets of their law school journeys, but also underscored a fundamental truth—no two individuals experience

school—some arrive straight from undergrad, while others transition from entirely different careers. And this is not just ok, but desirable. Law school, at least here at CSU Law, is not a one size fits all. And that is the way it should be, because life is anything but a one size fits all.

Beyond the academic substance, law school imparts the vital lesson that perspectives can differ, even among the brightest legal minds. A single term can spark debates, demonstrating the richness of distinct, and hopefully respectful, viewpoints. And this diversity extends beyond legal opinions shared in the classroom. When asked to describe law school in one word, each CSU student offered a different perspective: routine, regimented, stimulating, and demanding. For each student, synthesizing the law school experience into one

the time and effort invested in law school will be worth it boils down to how each individual measures not only the experience of attaining a law degree, but what they can do with it.

In the controlled chaos of law school life, taking a step back—as the four CSU Law students did at Solon High School—to recognize and appreciate others’ unique experiences, diverse backgrounds, and personal ambitions reminds us that embracing individuality enriches our collective journey toward becoming exceptional legal professionals. This recognition provides perspective, which takes us out of a casebook and into the real world where we will have the opportunity to make positive, tangible impacts.

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Mama Matt’s Corner

Ellenia Matthews
Gavel Contributor

Hi there,

My name is Ellenia Matthews, but many of you know me as Mama Matt!

I am a 3LE, non-traditional, part-time evening student, all of forty-something years old with three adult children aged 23, 29, and 30. I’m a former athlete, coach, and sports mom. My admission to then-Cleveland-Marshall College of Law was not easy. I always knew I wanted to go to law school and one day sit on the bench, but I didn’t quite know how I would or could do it. To quote Langston Hughes’ poem Mother to son, “Life for me ain’t been no crystal stair.” I openly share that I applied to this school alone ten times before I was admitted, but the day that I received the call telling me that I was admitted was one of the best days of my life. I whispered to Dean Andelman “thank you” because I couldn’t find my voice. I even asked if she was sure that she meant to call me. My eyes water at that thought of it. You see, it was the day after the anniversary of my grandmother’s passing and I was already emotional, but I knew that she and my grandfather were watching. All I ever wanted to do in life was make my grandparents and my parents proud by never giving up on my dreams.



Ellenia Matthews

This journey hasn’t been easy, but along the way, a lot of you have made this experience special. So, as my way of giving back, I welcome you to Mama Matt’s Corner. Here, you can ask for non-legal advice, see what my perspective is on our school community, ask for a mom-on-the-go recipe, and just ask Mama Matt whatever you wish.

This edition’s message is to my 3L’s: Take it from me, you don’t get a “do over”. This is the last time that you will walk these halls as JD Candidate/law student. Don’t take it for granted. Love on those who love you, embrace those who embrace you. You are the author of your destiny!

I hope to hear from you soon!

Mama Matt
e.matthews1@
cmlaw.csuohio.edu



Mama Matt pictured in the top right

Amidst Debates, Protests, and Lawsuits, Cleveland Struggles with the Extent of Free Speech at Council Meetings

Philipp Corfman
Gavel Contributor

Over the past six months, Cleveland City Council’s public comment rules have been put to the test, leading to a reckoning over the meaning of free speech in our city.

For most of its history, Cleveland City Council did not allow public comment. This had long been a point of contention for many Clevelanders, who felt that barring residents from speaking at meetings limited transparency and insulated councilmembers from their constituents. In early 2021, a coalition of activists formed the “Clevelanders for Public Comment” campaign and pushed for the city to adopt an ordinance allowing residents to speak at meetings. By the end of the summer, 2021, the group succeeded, and the ordinance was adopted.¹ Over the next two years, while public comments were sometimes passionate and pointed, they became an accepted part of Cleveland city governance.

However, comments grew more and more tense in the fall of 2023. Cleveland was fiercely debating Issue 38, a citizen-led initiative to set aside a small portion of the city’s funds for a People’s Budget directly controlled by residents. While advocates believed it would make the city more democratic, the initiative was opposed by most members of City Council, who saw it as infringing on their prerogatives as elected representatives. The fight reached all the way to the State House, which considered a bill (Senate Bill 158) that would have preempted the city from enacting the People’s Budget altogether.²

A particular point of contention was the Council Leadership Fund, a PAC controlled directly by Cleveland City Council President Blaine Griffin.³ Activists had long criticized the fund, arguing it helped funnel corporate money into shielding incumbents and pressuring councilmem-

bers to vote in line with the president. Griffin, a fierce opponent of Issue 38, spent tens of thousands of dollars from the Fund campaigning against the People’s Budget.

At a Council meeting on September 25th, 2023, Cleveland resident Chris Martin took on this issue in his public comments.⁴ Martin began reading out a list of political contributions to councilmembers from the Council Leadership Fund.

“Sir, the rules are that you are not supposed to address individual leaders,” Griffin admonished.⁵

“I am not impugning the character of any councilor, I am just saying who has accepted money from the Council Leadership Fund,” Martin replied.

After Martin continued reading from the list, Griffin ordered the microphone muted and had police escort Martin from the chambers. Shortly after his speech, another resident had her microphone cut off after she began making homophobic and antisemitic remarks. After telling her to leave, Griffin declared: “we are not going to allow this platform to be utilized for people to insult and impugn the characters of people in this body, nor are we going to allow people to impugn race, and gender, and sexual orientation or anything else. Those things will swiftly be eliminated.”⁶

In December, Martin, represented by the Case Western Reserve University First Amendment Clinic, filed a lawsuit with the Ohio Northern District Court, arguing that his First Amendment rights had been violated.⁷ He argued that Council was selectively enforcing the rule in a way that unconstitutionally infringed on his right to free speech in a public forum. Andy Geronimo, director of the clinic, explained the importance of the issue to Ideastream:

“Criticism of government, like petitioning govern-

ment for redress of grievances is directly in the First Amendment,” Geronimo said. “They’re not obligated to maintain this forum, but once they do, they can’t say you’re not allowed to criticize us in this forum.”

Those protections extend to bigoted speech, Geronimo said.

“Some of these things are really offensive, like slurs, derogatory terms... fall within the scope of the First Amendment and can’t be censored on that basis,” he said.⁸

Three weeks after Martin’s comment, the issue took on far greater significance. After the Israel-Hamas War began in October, Cleveland saw large demonstrations by Palestinians and allies calling for a ceasefire. One of the top priorities of pro-Palestinian advocates was to get Cleveland City Council to pass a resolution calling for a ceasefire, and protesters packed the chambers every week to give public comments supporting such a resolution and criticizing city leaders for expressing support for Israel.

As weeks dragged on, with the death toll in Gaza mounting (as of mid-February, the total stands at over 29,000 Palestinians)⁹ and with other cities (including Chicago, Detroit, Akron, and Toledo) passing ceasefire resolutions while Cleveland refused to budge, tensions rose. Protests grew more boisterous, with pro-Palestinian audience members cheering and leading chants during meetings. Councilmembers began calling for new restrictions on public comment, including limiting comments to issues on that meeting’s agenda (thus effectively banning statements on Gaza and the ceasefire resolution) and banning non-residents from speaking.¹⁰

Ultimately, Chris Martin’s lawsuit may have been what prevented any of those changes from happening. The Northern District issued a temporary restraining order in early January, 2024, which forbade Coun-

cil from enforcing any rules on public comment except limiting remarks to three minutes, setting a limit of ten speakers, and requiring speakers to pre-register.¹¹ A few weeks later, Council permanently revised its public comment rules to remove the ban on addressing individual members of Council,¹² then settled the lawsuit on February 8th.¹³ Instead of restricting speech, Martin and the CWRU First Amendment Clinic helped ensure that Cleveland City Council expanded speech.

While the lawsuit may be settled, the issue of free speech at council meetings is far from settled. While there are no limits on subject matter and residency for public comments, the new rules clarified that disruptions like clapping, yelling, and chanting are grounds for expulsion. Council also passed new rules establishing protocols for meeting disruptions, allowing the Council President to order the chambers cleared and conduct the rest of the meeting behind closed doors.¹⁴ This became a live possibility at the February 12th Council meeting, when dozens of pro-Palestinian protesters chanting “pass the resolution now!” were led out of chambers by police.¹⁵ Griffin did not invoke the new protocols to clear the chambers; however, if these demonstrations continue (activists say they will not stop until Council passes a ceasefire resolution, and Griffin has stated that he does not intend to pass such a resolution), he may well do so, leading to tense standoffs between police and protesters and threatening the principle of open public meetings.¹⁶

The future of free speech in Cleveland will continue to be contested. However, thanks to the relentless efforts of protesters and First Amendment advocates, Cleveland City Hall remains the people’s house.



Chris Martin speaking from 10TV

1 <https://cle4publiccomment.com/>
2 <https://www.legislature.ohio.gov/legislation/135/sb158>
3 <https://signalcleveland.org/what-is-the-council-leadership-fund-the-political-action-committee-opposing-issue-38/>
4 <https://www.youtube.com/watch?v=p0i-KEHxLNc> (19:29-21:30).
5 <https://s3.documentcloud.org/documents/21068475/procedures-for-public-comment.pdf>
6 <https://www.youtube.com/watch?v=p0i-KEHxLNc> (27:50-29:27)
7 <https://case.edu/law/our-school/news/first-amendment-clinic-takes-center-stage-landmark-lawsuit>
8 <https://www.ideastream.org/government-politics/2023-09-29/cleveland-city-councils-public-comment-policy-under-fire-after-cutting-resident-microphones>
9 <https://apnews.com/article/israel-hamas-war-news-02-19-2024-81c2d362340b611a98e4b929b4b5d0a4>
10 <https://spectrumnews1.com/oh/columbus/news/2023/11/14/cleveland-public-comment>
11 <https://www.clevescene.com/news/cleveland-city-council-agrees-to-court-order-prohibiting-it-from-enforcing-most-public-comment-rules-43445271>
12 <https://cityofcleveland.legistar.com/LegislationDetail.aspx?ID=6492447&GUID=B55E40C1-D9D1-4328-A028-C741392E09E1>
13 <https://www.ideastream.org/government-politics/2024-02-08/cleveland-city-council-resident-settle-lawsuit-over-public-comment>
14 <https://www.clevelandcitycouncil.org/sites/default/files/protocols.pdf>
15 <https://www.clevescene.com/news/cleveland-city-council-cuts-meeting-short-as-protesters-once-again-call-for-gaza-ceasefire-resolution-43567347>
16 <https://www.ideastream.org/government-politics/2024-01-25/cleveland-city-council-protesters-dig-in-over-cease-fire-resolution-heres-why>

Read More from Philipp Corfman and all our regular contributors online at thelevelandstategavel.com

Nitrogen Gas Execution: Alabama’s Cruel Choice and Ohio’s Consideration

Allison K. Younger
Gavel Contributor

On January 25, 2024, in the grisly debut of a new form of execution, Kenneth Smith was executed by inhaling nitrogen hypoxia, or pure nitrogen, through a mask until he suffocated. The State of Alabama claimed this would be a painless death, yet witnesses reported seeing Kenneth gasp for air, convulse and writhe in pain for over twenty minutes. That time is an estimate since workers closed the execution curtain before the official time of death was given, leading to further questions surrounding the validity of this execution.

You may recognize the name Kenneth Smith as he made headlines in 2022 when he was set for execution via lethal injection, but it was called off after hours of needle insertions since a suit-

They spent some time conversing until, according to Kenneth Smith, John Parker began beating Mrs. Sennett. During the beating, Kenneth roughed up the house to make it look like a burglary, and he nabbed a few items to take with him. One item he took was a VCR, which later led to his arrest.

While Kenneth agreed initially to be a part of the murder, he noted in his statement to police that John delivered the fatal stab wound, and that he (Kenneth) never touched Mrs. Sennett at all. Once a tip came in, identifying all three men, Kenneth’s house was raided and the VCR was located, leading to his arrest. Kenneth was indicted on allegations that he “intentionally killed Mrs. Sennett by beating her and stabbing her with a knife, for pecuniary consideration of one thousand dollars.” In Novem-

fingerprints, to tie Kenneth to the stab wounds on Mrs. Sennett’s body. Nevertheless, on April 29, 1996, Kenneth was convicted of capital murder. The judge overrode the jury’s 11-1 recommendation of life in prison without the possibility of parole and imposed a sentence of death by electrocution. Today, Alabama law does not allow a judge to override a jury’s death penalty decision.

Kenneth’s legal team made a last-ditch effort to block the execution, calling it an “experimental” punishment that would violate the constitutional ban on “cruel and unusual punishment.” Federal courts rejected this argument, including the U.S. Supreme Court. Justice Sonia Sotomayor wrote a dissenting opinion, joined by two other Justices: “Having failed to kill Smith on its first attempt, Alabama has se-

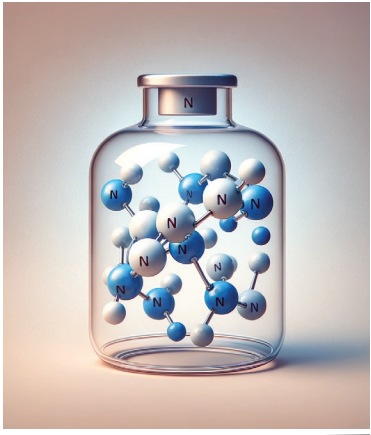
Ohio Department of Rehabilitation and Correction has 118 people on death row. Back in 2020, Governor DeWine declared lethal injection “no longer an option” for the state, since it could cause inmates “severe pain and needless suffering.” Since 2018, there have been no executions in the State of Ohio. Before Governor DeWine’s unofficial pause in executions, since Ohio up until this point only uses lethal injections, there was an issue locating the drugs required for the injections. The ban is referred to as unofficial, since DeWine did not stay executions but rather eliminated the only way the state can legally carry them out.

This has led people like Republican attorney general Dave Yost to push for the use of nitrogen gas executions. Right after Kenneth Smith was put to death Yost wrote on X “perhaps nitrogen – widely available and easy to manufacture – can break the impasse of unavailability of drugs for lethal injection, death row inmates are in greater danger of dying of old age than their sentence.”

Currently there are twenty-seven states with the death penalty, twenty-three without, and six states with a gubernatorial hold on executions, Ohio being one of them. This new method of execution by nitrogen hypoxia has minimal testing. Most states instead opt for a combination of sodium thiopental (a barbiturate to induce anesthesia), pancuronium bromide (a muscle relaxant that paralyzes all the muscles of the body) and potassium chloride (a salt that speeds the heart up until it stops), which has been around since 1977.

With Alabama, Mississippi and Oklahoma already authorizing nitrogen hypoxia as an execution method, Ohio might be next. The outcome of Ohio lawmakers’ push for legalizing execution by nitrogen hypoxia remains to be seen as this story is unfolding. One can hope that Ohio will make the humane

decision and keep this cruel and unusual punishment off our books. If for nothing else other than granting dignity in death, and reflection on the torture Kenneth Smith faced in his final moments.



DIALOGUE

From page 5

It is imperative that we always remain open to both giving and receiving advice. Like law school, career paths, and even life, advice is not a one size fits all. Some advice we receive resonates with us deeply while other advice feels irrelevant and passes us by unnoticed. And that is okay. Sometimes the advice we give will be taken to heart, while other times it will be dismissed. And you know what? That, too, is okay. While it is not necessary to always agree with everyone on every point (contrast is important in life, after all), it is absolutely essential that we strive to understand and respect people and their perspectives. Our unique experiences and different viewpoints are what make for fruitful conversation and well-rounded opinions. In the end, as we forge our way through law school and beyond, remember that while “it depends” may seem like a frustrating answer, it is often the most honest and enlightening one. Embracing the diversity of experiences, opinions, and paths taken not only enriches us individually but also strengthens the legal community as a whole.

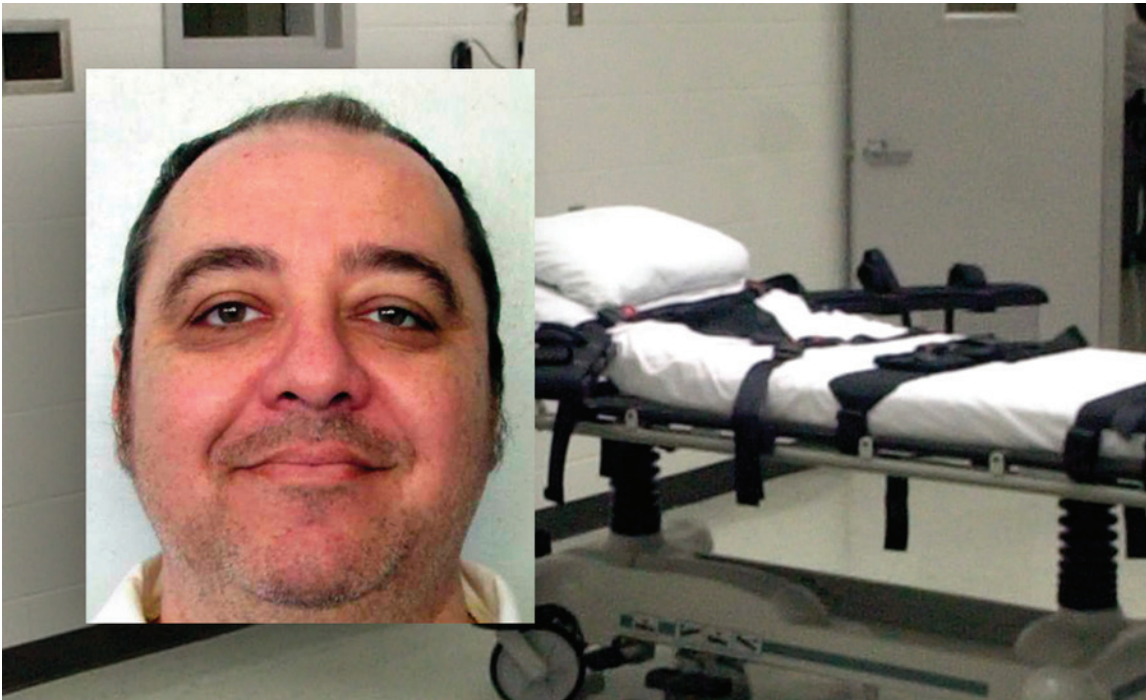


Image from WVGM13.com

able vein was never found. This was the first execution by nitrogen gas in the United States, which looks to set a dangerous precedent in other states like ours for the future.

Back in 1988 Kenneth Smith confessed to being involved in the murder of Elizabeth Sennett. The victim’s husband, Charles Sennett, hired three men to kill his wife while she was at home. Two of the men entered Mrs. Sennett’s home on the pretext of discussing using some of her land to hunt on, since her husband had given them the okay to do so.

ber of 1989 Kenneth was convicted of capital murder and sentenced to death on a 10-2 jury verdict. This conviction and death sentence were overturned in 1992 leading to a 1996 re-trial.

During the re-trial Kenneth’s defense counsel argued that he did knowingly engage in Mrs. Sennett’s assault, but did not intend to kill her. If he did not intentionally kill Mrs. Sennett, then he could not be convicted of capital murder. During this trial the State could not provide any forensic or physical evidence, including blood or

lected him as its ‘guinea pig’ to test a method of execution never attempted before. The world is watching.” The majority issued no opinion.

With nitrogen gas officially legal as a form of execution, Ohio is also considering a bill that would introduce it in our state. State representatives Brian Stewart and Phil Plummer introduced legislation that would allow inmates to choose between nitrogen gas and lethal injection—but would require nitrogen gas if lethal injection drugs could not be sourced.

The latest report from the

Ten Cent Beer Night: Recalling the Most Infamous Event in Cleveland Sports History, 50 Years Later

Reece Barnett
Gavel Contributor

As a city with 3 major sports teams, Cleveland is no stranger to Sports Lore. From the firing of Paul Brown, to Art Modell moving the Browns out Cleveland, to Bottlegate, to former Cavs owner Ted Stepien being such a bad owner that the NBA instituted the “Stepien Rule,” Cleveland has certainly left its mark on sports.

However, the most infamous event in Cleveland sports history is the June 4, 1974, baseball game at Cleveland stadium between the Texas Rangers and the then Cleveland Indians, known as Ten Cent Beer Night—witnessed by CSU Law’s own Professor Ken Kowalski.

Ten Cent Beer Nights were not necessarily new to the MLB. Even after June 4th, other MLB teams hosted the same promotion, including the Rangers themselves. In theory, it was not a totally bad idea; however, the execution of it in Cleveland was completely botched.

The idea was intended to improve attendance by offering low-alcohol beer for just 10 cents, with a limit of six beers per purchase. The first problem was that there was no limit on the number of purchases being made during the game. The second problem was that fans already held animosity towards the Rangers for a bench-clearing brawl that had happened a week prior in Texas. Angry fans combined with cheap beer is a recipe for disaster, and what a disaster it was.

That night, over 25,000 fans flocked to Cleveland

Stadium (which had only increased security to 48 police officers from their usual 32), and early in the game it was clear the type of night it was going to be. After the first inning, one or two men streaked from left field to right field (and managed to evade security); later, a woman entered the playing field and flashed her breasts before trying to kiss the home plate umpire. A man streaked and slid to second base. A father and son duo entered the field and mooned the crowd. At one point someone threw a gallon glass bottle of Thunderbird at Mike Hargrove (who at the time was playing for the Rangers but ended his MLB career with Cleveland). Even firecrackers were set off.

However, what ended up turning the game into a riot was during the ninth inning. The Indians had rallied back to tie the score 5-5 when some fans tried to steal the cap of Texas right fielder Jeff Burroughs. When Burroughs kicked at them, he lost his balance and fell. Unfortunately, Rangers manager, Billy Martin, who was known for fighting and drinking (and had once tried to get a friend to take out a hit on an umpire), thought that the fans had knocked down Burroughs. In true Billy Martin fashion, he led his players onto the field armed with bats.

And that is when things spiraled out of control. Fans, armed with knives, chains, and clubs they had made from stadium seats, started rushing the field trying to attack the Rangers. Cleveland players left their dugout to



The Rangers

try and protect the Rangers from the now angry and drunk fans. Eventually, 12 fans ended up being arrested. As the riot was going on, baseball announcers Joe Tait and Herb Score were able to keep their cool and called the riot live on the radio. Another person who managed to keep calm during the pandemonium? CSU Law’s very own, Professor Ken Kowalski.

Professor Kowalski is a lifelong Cleveland Baseball fan, which makes sense considering he is named after Cleveland Indians All Star third baseman Ken Keltner, most famous for making two great fielding plays that ended Joe DiMaggio’s 56-game hitting streak. So, when asked about Ten Cent Beer Night, he was more than happy to share his experience.

He made it clear to me that first and foremost he is a baseball fan, so he had decided to attend the game because it was a Cleveland baseball game. The Indians, as they were called at the time, were a good team and Texas was also a good team, so he knew it was going to be a good game. And he will

admit the beer was tempting.

At the time he was an elementary school teacher. Because of his job he was able to afford some bleacher seats and went with some friends. The fact that he was in the bleachers is very important. He explained that the old municipal stadium (Cleveland Stadium) was built for old world games back in the 1930s, so it was huge. The bleachers went so far back that there was a space between the fence in the outfield and the bleachers themselves. The fans that ended up on the field had to come from the stands, not the bleachers. The stands were different from the bleachers and a lot closer to the field. This space between the field and bleachers ended up being used to house the beer trucks and Professor Kowalski does recall seeing them. The beer trucks were brought in because management had not expected so many fans to show up, and they were worried that they were going to run out of beer.

Professor Kowalski explained that the number of fans showing up was due in part to Billy Martin running his mouth, saying “they don’t have enough fans in Cleveland to cause a problem.” The media took that as a challenge to show up. Professor Kowalski also remembered that many of the fans that he saw buying beer were underaged and were successfully able to carry their six cups that came with their purchases. He also stated that while he doesn’t recall a specific person running onto the field, he recalls

that there were a lot of people on the field and throwing things onto the field. Some of the things thrown came from the bleachers (though not from Kowalski or any of his friends) and others came from the stands.

I also asked him if he had considered leaving the game early as many families and sober fans left well before the riot started. He said “it always amazes me that people leave a game early, especially when it looks like your team will win. But with everything going on, I can understand a family with kids leaving.” He and his friends, however, stayed, and as the Indians rallied in the ninth inning, he was sure they were going to come back and win. Then, of course, the riot happened. He knew it was about to turn into chaos the second he saw Billy Martin, armed with a bat, leave the Rangers dugout. Regardless, he and his friends stayed in the bleachers and watched.

When I asked if he was surprised about the fans being armed with knives and chains, he said no. He explained that there were no metal detectors around at the time so you could bring in anything, including food and drinks, which is probably where the bottle of Thunderbird that was thrown at Mike Hargrove came from. Professor Kowalski and his friends truly believed that the game was going to continue, so they were extremely disappointed when, after realizing that order would not be restored in timely fashion, umpire Nestor Chylak forfeited the game to the Rangers.

Explained Kowalski, “I was hoping that the Indians would pull out a victory, and had to end the game because of what I considered nutcase fans.” So, while the night and the game didn’t go quite as planned for both Kowalski and the Indians, it became a night forever infamous in sports history. So as June 4, 2024, approaches, we still remember Ten Cent Beer Night 50 years later. And for those of you wondering; no, Kowalski was not one of the 12 people arrested that night.



Professor Kowalski at a 1972 Cleveland Baseball game