REAGAN'S FIRST YEAR
The last issue of *The Gavel* has proved once more that it is easier to raise brows than to raise consciousness. This regrettable fact became most apparent when some C-M students displayed their maturity and ability to confront a difference of opinion in print, by placing several issues of the Gavel in urinals. Presumably, these clever students were no less trying to "piss-off" the Gavel staff. One can only admire the craftiness and ingenuity of these students who honor the First Amendment by pissing on a free press — Bravo!

*The Gavel* — a law school publication, not a "newspaper" — is a forum for expressing thoughts and reasoned arguments on controversial issues. Notwithstanding the impossibility of dealing with these complex issues within the confines of a few pages hurriedly written between classes and work, *The Gavel* has in the past aspired to present a balanced viewpoint. Too often, however, *The Gavel* has been unsuccessful in its solicitation of articles which would advocate a different opinion from those held by *The Gavel* editors and staff members. For this, you should thank the apathetic C-M student. It is not surprising that those who bitch the most offer the least. C-M students find it much easier to demand a balanced view in *The Gavel* rather than help present one. They find it easier to criticize the Deans, the law school curriculum and other bureaucratic policies, etc., during some desultory talk over coffee, rather than try to bring a meaningful change. Of course, if you ask these apathetic students to get involved with the SBA, the various law school committees, or *The Gavel*, they waste no time in telling you that they are in law school, they are looking for jobs, or they'd rather not confront these problems in the open for fear of reprisals from the dean or other professors. These apathetic, self-proclaimed "concerned students" are nothing more than parasites who only demand for the fruit without providing any labor.

*The Gavel* will continue to present issues of controversy and concern to the general law student. As in the past, *The Gavel* will continue to solicit and welcome articles and letters from students.
Continuing Crisis

By John Reynolds

A byproduct of the Polish military crackdown, according to the American Jewish Committee, is a revival of anti-Semitic propaganda. Almost immediately after the takeover, the tightly controlled government radio broadcast a lengthy interview with a certain Professor Kossecki charging that Solidarity was being misled by Jews and Free Masons and that Jewish groups were manipulating Catholic Church and liberal Communist leaders. Communists pretended they were above such crude appeals to national hatreds; Karl Marx himself once called anti-Semitism the "socialism of fools." But rule in Poland is after the takeover, the tightly controlled crackdown, according to the American interview with a certain Professor Kossecki. The argument thus encompasses considerations of both utility and justice.

The Affirmative Action Argument, on the other hand, tells us that preferential treatment for worse-off groups in the allocation of places on journals is justified because it compensates for inequalities produced by past injustice. And even if preferential treatment is not strictly entailed by compensatory justice, the argument insists that it, too, can advance considerations of utility: increasing the overall benefit to the welfare and stability of an academic institution by assigning to deprived groups a reasonable share of the rewards of journal participation.

What standards should one apply in allocating the limited resource of journal positions?

The trouble, we think, is in the question itself. By casting the issue as a problem of distribution, the question invites only distributive answers.

Th shortcoming of the distributive orientation common to both the Meritocratic Argument and the Affirmative Action one is that it fails to situate the controversy in proper context: against the backdrop of the prevailing curricular framework of legal education, Langedellism. Principles of Distribution, the standards by which rewards and opportunities are to be assigned in an educational institution, are rooted in the structure governing the educational process itself.

The Meritocratic Argument tells us that positions on journals should be filled only in accordance with the criteria relevant to the optimum performance of the job. Inclusion of criteria beyond the restricted ones of GPA and legal writing sample sacrifices, it is said, both the quality of the journal and the rights of the academically qualified who are turned away to make room for others admitted under broader standards. The argument thus encompasses considerations of both utility and justice.

The Meritocratic Argument, like the Affirmative Action Argument, advocates that positions on law school journals should be filled by anyone and everyone willing to join, regardless of ability to write or to analyze legal literature. While this approach to filling journal positions would eliminate the need for preferential treatment to those groups that find it difficult to earn membership under the meritocratic approach, it does not promote optimum quality.

The goal of any law school journal is to solicit, edit and publish legal articles, which will, hopefully, enhance the academic credibility of the law school. Generally, the more prestigious the law school, the more profound the articles published. Legal scholars, who, like law students, thirst for academic recognition, wish their articles to be published by the most prestigious journals, which supposedly have the most qualified editorial staffs. The sad truth is, however, that many of these legal scholars are unable to communicate their erudition. The fact of the matter is that many of these articles, while adequate in substance, lack clarity and are horrendously written. The editors must clean up and rewrite entire articles without destroying or distorting the legal argument being advanced. Such editorial tasks can only be accomplished by able writers.

The Open Journal Argument, like the Affirmative Action Argument, promotes mediocrity at best. How is it possible for someone with poor writing skills to edit articles? One must assume that he is a competent writer before he can assume that he is qualified to edit.

The Open Journal Argument must fail when put to the test. Making journal positions available to all students would create administrative problems.

Continued on page 15

Harvard v. Berkeley

Harvard and Berkeley are two schools with Affirmative Action Plan experience. Their plans varied so much that at one school controversy abounded while at the other peace prevailed. The West Coast wins.

Harvard Law Review President Mark Helm explained the Plan that provoked too much trouble. Instead of using the traditional plan of 20 grade-ons and 20 write-ons, they adopted a plan of 16 grade-ons, 16 write-ons and for the last 8 positions, they selected on a combined basis of grades, writing competition and an optional addendum statement concerning the student's disadvantaged background. This fairly well matched Harvard's admissions policy which is also aimed at increasing diversity.

By Michael G. Karnavas

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Continued on page 15
SPEAKERS:

Shirley Mount Hufstedler, Visiting Professor of Law at Stanford and partner in the law firm of Hufstedler, Miller, Carlson & Beardsley in L.A., was C-M’s twenty-third visiting scholar. On January 25th, she shared her vast knowledge with Professor Gard’s Constitutional Law class and met informally with faculty and students. After meeting with the Contracts classes on the 26th, she gave her formal lecture entitled, “Is America Over-Lawyered?”

Hufstedler graduated from Stanford Law School and began a diverse career as attorney, judge, educator and writer. Carter appointed her to be the first Secretary of Education in 1979. She has written a book and many articles on policy issues and improving the judiciary, and has received honorary doctorates of law from several universities.

The Visiting Scholars Program is a component of the C-M Fund Enrichment Program established by the university trustees. The Visiting Scholars Committee chooses the speakers with input from the college and suggestions from former speakers. The committee, chaired by Professor Goshien, includes Professor Curry; Guttenberg; Steinglass; two students from Law Review; Deborah Kamat, and Janis Reynolds; and Barbara Sper, ex-officio member and administrative secretary.

The speakers sign a commitment that they will publish their lectures or some form of their speech in C-M’s Law Review at the option of the student-run Review.

The current budget is $16,500 to bring three visiting scholars to C-M for two-day sessions during the 1982-83 school year. They have committed two of the three speakers for next year, but have not released their names.

Each speaker’s lecture has been given at noon this year. During the past four years, lectures were given at 5:00 p.m. This lecture failed to draw many night students, lost day school crowds and caused administrative hassles.

The next visiting scholar will be the Hon. A. Leon Higginbotham, Jr., Circuit Judge, United States Court of Appeals for the Third Circuit, on April 1st and 2nd. Higginbotham received the American Bar Association Silver Gavel Award for his book *In the Matter of Color: Race and the American Legal Process: The Colonial Period*. His lecture “Race and the American Legal Process” will be presented at noon on April 2nd.

“... Too many people work to make money to have fun. These people are never happy. Your work should be your fun,” was the opening message that Jean-Michel Cousteau gave to a packed house in the UC auditorium last December 4th. The distinguished son of Jacques Cousteau delighted the audience with a two-hour presentation that touched on all facets of his work as director and vice president of the Cousteau Society.

Cousteau’s lecture was centered on his work as an architect and an oceanographer. He used several films along with a slide show to present natural and man-made designs which one encounters in the underwater world.

Cousteau did his architectural studies with the vision of becoming the first architect to build cities under the ocean. However, he has come to the conclusion that “We’re stuck here on our little planet of which only 30% is land.” Therefore, we must manage our finite resources appropriately as the quality of that 70% of our environment which is water will define the quality of our lives — was the heart of Cousteau’s message to all of us. His architectural and underwater engineering expertise has been put to great use in over three decades of diving exploration. Cousteau presented several levels of underwater habitats in which divers have lived and worked for extended periods of time as part of the Cousteau Society’s exploration work. The most recent was the “Continental Shelf III” in which six people lived for 27 days at a depth of 332 feet. Unfortunately for his earlier dreams, Cousteau concluded this section of his talk with the realistic fact that underwater living is too expensive; and that, “For other than specific research, mining, leisure activities, we are not going to live underwater.”

The other major portion of the lecture traced the historical development of SCUBA equipment and the exploration work of the Society as detailed in the journeys of the main vessel — the Calypso, which was donated to the Society in 1959. The next project for the Calypso was an expedition up the Amazon River led by the 71-year-old Jacques Cousteau, who will direct 40 scientists on a 13-month study of Amazon animal and plant life. The major goals of the adventure will be: the filming of animal and plant life, the investigation of the ecological relationship between the Amazon forest and the ocean into which the river empties, and the effects of the area on the world’s oxygen and fresh water supplies (the forests generate up to 25% of the world’s oxygen). Cousteau spoke of the irreversible

On a snowy Saturday morning last November, Professor Hymen Cohen gave several hours of his time to lecture on the “do’s and don’t’s” of taking law school exams. Speaking to a full house in the Moot Court room, Professor Cohen covered every possible aspect of examinations at C-M as well as presenting a practice exam question and answering students’ questions. The presentation was sponsored by Phi Alpha Delta and appeared to be religiously attended by first year students almost exclusively.

Continued on page 13
By Michael G. Karnavas

On November 22, 1981, the SBA Senators by a 33 to 1 vote accepted the SBA 1981-82 budget submitted by SBA President Mark Mastrangelo.

Every year, the University through the Department of Student Group Services, allocates a substantial amount of money to the SBA. The majority of these funds serve as operating costs for various SBA programs, including $12,588 in fixed administrative costs. After the SBA operating budget is determined, the SBA Appropriation Committee recommends to the Senate the allocation of any remaining funds to various law school organizations. Approval of the SBA budget and the recommendations made by the Appropriations Committee rests with the SBA Senate.

Despite the overwhelming approval of the SBA budget, some student organizations were very unhappy with the recommendations made by the Appropriations Committee. Some organizations, mostly the International Law Society and Phi Alpha Delta, felt that they had been singled out and capriciously denied of the funds they requested.

According to the chairman of the Appropriations Committee, SBA Treasurer Michael Wypasek, hearings were held with every organization requesting funds. These organizations were required to submit itemized budgets with requests which conformed to University policies. University student handbooks were distributed to these organizations to inform them of CSU's rules on fiscal guidelines. Subsequent to these hearings, and after the SBA budget had been determined by the SBA president, the Appropriations Committee made its recommendation for the allocation of funds to these organizations.

After the SBA meeting, Dale Jeffrey Rengel, chairman of the International Law Society, complained to Wypasek for stating during the meeting that the budget submitted by ILS was fraught with major discrepancies. According to Wypasek, several computation errors existed in the ILS budget, and from a "reasonable reading the ILS seemed to be asking $50 for print costs which had previously been forwarded to ILS from the International Relations Club" -- an undergraduate organization. The ILS had also asked for travel funds which were not consistent with the fiscal guidelines of the University.

Phi Alpha Delta (PAD), the oldest student organization on campus, feels that they were singled out by the Appropriations Committee. According to one of the PAD officers, "PAD continues to incur the wrath

Continued on page 13

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**Funds Allocated by Appropriations Committee**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Funds Requested</th>
<th>Funds Allocated</th>
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<tbody>
<tr>
<td>International Law Society</td>
<td>$5,128.50</td>
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<td>Women's Caucus</td>
<td>2,050.00</td>
<td>1,900.00</td>
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<tr>
<td>DTP</td>
<td>425.00</td>
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<tr>
<td>PAD</td>
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<tr>
<td>BALSA</td>
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<td>National Lawyer's Guild</td>
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**CLEVELAND-MARSHALL STUDENT BAR ASSOCIATION 1981-1982 BUDGET**

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<td>Stipends</td>
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<td>40*</td>
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<tr>
<td>Bands</td>
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<td>500*</td>
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<td>3000</td>
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<td>500*</td>
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<tr>
<td>Lab Supplies</td>
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<td>Theatrical Supplies</td>
<td>—</td>
<td>35</td>
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<tr>
<td>Travel</td>
<td>1225</td>
<td>1300*</td>
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<tr>
<td>Conference &amp; Meals</td>
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<td>1701**</td>
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<td>3171*</td>
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<td>100</td>
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<td>200</td>
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</tr>
<tr>
<td>Misc.?</td>
<td>222</td>
<td>800</td>
</tr>
</tbody>
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* Fixed SBA costs.

CSU Policy, this amount is encumbered. Required by State of Ohio.

For dinner dance and follies. Required by State of Ohio.

For Legal Traditions Program (1000) and/or for pro-life/pro-choice debate and other.

$100 for orientation.

IMS Microphone setups and follies soundboard charge.


Food service charges for orientation.

SBA study aid purchase program.

$100 spent for orientation letters from SBA and for upperclass mailers and Senate info. Amount necessary for Student Directory.

$280 encumbered for fixed charges.

$186.50 spent for orientation and upperclass mailers.

Amounts for mailing labels, mailboxes, direct elections.

$280 encumbered for contract repair and remainder for approx. 10 repairs at $17 each. Rent for offices for all groups.

Costs for all university events.

Locksmith charges.

Rental of film for follies.

SBA Graduation Picture Program full cost approx. $1100.

Total: $20,669 $19,877
The Night Before Goshien's Midterm

'Twas the night before midterm
And all through the land
First-year students were contemplating
the morrow’s exam.
With coffee-laced breath
Each offered a prayer
that during the test
a Jurist’s Muse would be there
To tuck detrimental reliance
in its Procrustean Bed
when visions of promissory estoppel
danced in their heads;
And that Goshien with his knowledge
and the students with their lack
Would have a meeting of the minds
in the hopes of keeping the grades on track.
We memorized the general rules
with our confidence aglowing
as we embraced the misconception
there was nothing else worth knowing.
And then from Cardozo, there came such a
clutter
that we listened with our eyeballs
to see what was the matter.
And we learned he wasn’t seeking
Lady Lucy’s favor
when he found instinctual obligation
in her own agent’s behavior;
And would another judge pronounce
the father bound to pay
because daughter and her intended
didn’t recind their wedding date?

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And then he denied Aecoustics’ claim
that forebearance is detrimental reliance
but still found defendant Holder guilty
of statutory noncompliance.
And from this we came to realize
there may be a head-on collision
in trying to reconcile Traynor’s thoughts
with a Cardozo decision.
So we cast aside the general rules
and what else should appear
but decision after decision
whose meanings were not clear.
More rapid than eagles
the cases all came
as we struggled to remember
the facts and the names.
On Noble v. Williams,
Boston Ice v. Potter;
On Jackson v. Seymour
and Sherwood v. Walker.
On Goodman v. Dicker,
Winterbottom v. Wright;
on Hawkins v. M’Ghee
on Shaeen v. Knight.
And then adding the Restatements
and the UCC
the formation of a contract
and its divisibility;
And looking at each element
simply brought more questions —
Was the promise meant to be relied on
or was it a mere suggestion?
And if the contract was not in writing
and instead, merely oral,
was the writing a necessity
or just a mere memorial?
And if it is in writing
doesn’t it seem rather odd
that courts don’t always seek compliance
with the Statute of Frauds?
When is an offer binding?
Of that there is no doubt
when a foolhardy offerer
leaves his liability hanging out.
Except, of course, for advertisements
which are offers to make offers

Continued on page 13

PAGE 6
Moot Court Team

In November, 1981, the National Moot Court teams consisting of Petitioners, Craig Cobb, Stephanie Meckler and Keith Weiner, and Respondents, Suzanne Nigro, Sally Richards and Ralph Streza, participated in the Regional rounds of the National Competition in Columbus, Ohio. The National Competition involves a problem dealing with constitutional issues or federal questions. The teams were scored cumulatively on their ability as advocates and as brief-writers.

In the Regional rounds, twenty-five teams represented thirteen law schools from Ohio and Michigan. Out of these teams, the Petitioner team ranked ninth in the overall competition, having argued two preliminary rounds and a run-off round. The Respondent team advanced to the semi-final round, arguing five rounds in total. In addition, the Respondents' brief placed first in the Regional competition. This position entitled Respondents to enter the Final rounds of the National Competition in New York.

On January 11, after two months of further oral preparation, Nigro, Richards and Streza checked into the Sheraton Centre Hotel in New York City ready for the Final rounds. Twenty-nine teams representing regions from across the country participated in

Continued on page 15
Comparable Worth

By John H. Reynolds

On Tuesday, November 17, 1981 Ms. Karen Nussbaum, Executive Director of Working Women, delivered a diatribe to the Harvard Business School Club of Cleveland at Swingos at the Statler. It is customary for speakers to announce their topic to a group's program director before giving a speech. In setting the tone for the evening, Ms. Nussbaum had refused to do so.

She could have walked into the lion's den and bravely outlined a course of action for her cause. Instead, all that was offered was cowardice and high comedy.

Ms. Nussbaum started by briefly endorsing the theory of comparable worth. That such a doctrine is inherently repressive and suboptimal to society as a whole did not disturb her. As justification of comparable worth Nussbaum complained of clerks being so low paid that they collected food stamps and that low clerical pay was due to the predominance of women as clerks. The food stamps example was really not germane because recipients, until recently, could have incomes as high as $15-20,000.

The solution of comparable worth is the weighing of jobs by the government. Their method would probably be to rank the jobs according to their views of the skills required and responsibility involved. Ms. Nussbaum, who attended this dinner and was appalled by the speech, is a consultant in the compensation field and does job rankings for a living. The difference between her method is that of almost all industry and the one probably to be used by the government is the employment of relative supply and demand for the job being ranked. More about clerical supply and demand later.

Nussbaum's example was a person in shipping and receiving whose main skill was strength earning more than an office clerk whose main skill was typing and some creativity in handling correspondence. "Not fair!" she claimed. "Women are typists and men are dock workers and that is the reason for the disparity.

A vice president in the back of the room asked why a football or baseball player makes more than he does. Being a vice president takes more education and training and entails more responsibility. Nussbaum's answer was that entertainment is different from management, but such differences cannot be used in the workplace. Her Marxist mindset against management was beginning to show.

Nussbaum then engaged in broken-field twaddle with the issue of safety in the office. She spoke of poisons in the office due to poor ventilation. Also mentioned were carcinogens disguised as paper coatings, lethal xeron toner, deadly asbestos fibers in the insulation and VDTs (CRTs is the usual name) which caused back problems and radiation damages.
**Student Loans**

By Karen Kilbane

National Defense Student Loans were enacted in 1958 to provide assistance to low-income students. The Sputnik had gone up and students were encouraged to study science and technology. In 1965, Guaranteed Student Loans (GSL) began as part of the Higher Education Act. GSL was supposed to provide incentives to private lenders to make loans of convenience to students from middle-class families.

Insured against default and subsidized at below-market interest rates, GSL became the primary source of aid for students. Loan volume increased tremendously after 1978 when Congress made them available to students regardless of family income. The federal payments that subsidized current and past borrowing increased from $700 million in 1978 to almost $3 billion in 1981. To reduce federal costs and alleged abuses, the Reagan administration passed the budget-cutting Omnibus Reconciliation Act. Two changes have occurred in the GSL program: the amount that students with family income over $30,000 can borrow is limited by their documented financial need, and a 5% origination fee is charged to students and deducted from the face value of all new student loans.

The Omnibus Reconciliation Act also affected National Direct Student Loans (NDSL), formerly called National Defense Student Loans. The interest rate on NDSL has increased to 5%. During the 1980-81 school year, approximately 180,000 students received loans through NDSL. This year, only 145 students are receiving NDSL assistance. Because of the cuts, only money to cover full tuition was allocated to each student. In previous years, money for living expenses had been included in the loan. NDSL borrowers must provide their own living expenses through a job or GSL.

Continued on page 14

**Legal Services**

By Kathleen Ende

An essential element of the popular maxim 'equal justice for all' now hangs perilously, awaiting Congressional determination. Federally funded legal aid to the poor is under heavy fire in the Congress and from the President.

The indigent have always faced major obstacles in seeking legal services. High court costs, court fees, and attorney fees often stand between them and the just resolution of their pressing legal problems.

Congress recognized the unaddressed needs for equal access to the justice system and quality legal assistance for those unable to afford it. They made these considerations their avowed purpose in enacting the Legal Services Corporation Act of 1974. This act created the Legal Services Corporation (LSC), a private not-for-profit corporation which channels federal funds to local legal aid groups, known as "recipients." The recipients, not the LSC, provide actual legal advice and representation to eligible clients.

This indirect Federal funding permits maximum efficiency. The LSC, by sound administrative practices, sends 93% of its funding to local programs and of that only 2% goes to local overhead. Thus 91% of the federal funds represent 83% of the money spent by the recipients.

Then what is the problem in the legislature? The Legal Services Act of 1974 requires itself to be re-authorized every three years. Found at 43 U.S.C. Sec. 2996, the Act authorized appropriations for the LSC in three-year fiscal periods. The LSC's charter expired in 1980. In February 1980, as previously, a bill was introduced to Congress seeking an extension of the Charter for the next three years. It proposed no substantive or technical changes in existing law. It sought a $321.3 million budget for fiscal year (FY) 1981.

Continued on page 14

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**Foreign Policy**

By Michael G. Karnavas

A year ago, President Reagan inherited a foreign policy fraught with ignorance and inconsistency. It ranged from an absurd qualitative human rights policy to the dismal arms control negotiations from a standpoint of weakness which epitomized nothing less than supreme idiocy. Although President Reagan has not followed Carter's imbecilic course, his foreign policy after a year in office still lacks the clarity and consistency it needs.

A foreign policy requires a comprehensive and coherent central concept; without it, the policy making process becomes episodic knee-jerking, i.e., short-term tactical reactions replace long-term calculated considerations. A coherent and consistent foreign policy is undoubtedly the primary goal of any administration, serving to put the Atlantic Alliance and the Soviets on notice as to how the U.S. will employ its diplomatic and military power. This type of foreign policy eliminates the need for short-term tactical reactions which could only lead to brinkmanship.

With respect to President Reagan's foreign policy or lack thereof, some observations are in order:

**East-West Relations**

President Reagan is firmly committed to President Truman's doctrine of containing Soviet aggression. This requires a military buildup which enables the U.S. to discontinue Carter's retreat from challenging Soviet aggression, as well as preventing further Soviet exploitation of U.S. unilateral restraint on arms buildup — currently the strategic arms reduction talks (START) are taking place from a standpoint of strength. Furthermore, the "zero-option" proposal (the elimination of existing Soviet missiles in Europe in return for no additional NATO deployment of missiles) has served to silence the European anti-nukes, while shifting the spotlight to the intransigent Soviets who refuse to remove their SS-20 missiles which currently provides them with superiority of 6 to 1 medium range missiles in Europe.

However, aside from upgrading the U.S. military capability, President Reagan has yet to make a determination as to how far detente extends with the Soviets. Unnecessary rhetoric has replaced a realistic approach in handing the current Polish crisis. Rather than declare a moratorium on high-level contacts with the Soviets and institute a complete boycott (not just grain) until martial law in Poland is lifted, President Reagan has chosen the "business-as-usual" policy. Unfortunately, Lenin was quite right when he predicted that the capitalist will fight over the privilege of selling the rope they will be hanged with.
By R. Mironovich

As President Reagan's first year in office was coming to a close, environmentalists were charging that the Reagan administration was about to put the Environmental Protection Agency (EPA) into a deep freeze. "This means the end of the agency," said William Drayton, EPA's budget officer in the Carter administration. "They have set out to tear EPA apart and get it off the backs of business."

The current figures reveal that EPA's Washington staff of 5,298 right after Reagan's inauguration has dropped to 4,385 (primarily caused by attrition three times the rate during the Carter administration). Combine that figure with the loss of 800 to 1,300 positions under the reorganization plan of EPA chief Anne Gorsuch, and the result appears to be a streamlined EPA by the spring of this year. Can we expect this action to have significant effects on our economy and our environment? Are there other aspects of the overall Reagan environmental package that must be scrutinized before we scream "environmental homicide."

To get a realistic idea of where we are headed environmentally we must critically appraise Reagan's entire environmental program. The Gavel interviewed Professor Barry Kellman who teaches environmental and energy-related courses at C-M - for the purpose of evaluating Reagan's first year and to gaze into the environmental crystal ball.

"The Reagan administration has put most of the environmental assets, personnel and dollars, to what are publicly perceived as critical environmental problems - for example, hazardous waste disposal is at the top of the list," said Professor Kellman. It is also important to view the changes in the EPA offices in terms of the key positions that are being vacated, not as a numbers game which the EPA will lose. After looking at the priorities that this administration has developed Professor Kellman sees three important factors impacting on our environment directly under the Reagan

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**EPA**

*Continued on page 17*

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**Constitutional Mythology**

By John Deenvir

Professor of Law

University of San Francisco

School of Law

The so-called Constitutional experts are eagerly awaiting the United States Supreme Court's Fall term in order to find out whether or not Sandra O'Connor will fulfill President Reagan's pledge to appoint a Supreme Court justice who will "enforce, not make the law."

She won't, remember, you read it here first.

At first glance, Reagan's comments seem more a truism than a pledge; of course legislators, not judges, should make the law. In truth, this doctrine (often called "strict construction") is anything but a truism. If followed, it would work a radical transformation of the American political system.

For instance, the Supreme Court recently ruled that the Fifth Amendment to the U.S. Constitution does not prevent Congress from requiring young men, but not young women, from registering for the draft. The Court found this a "hard case." three Justices dissented. Yet, under a regime of "strict construction," this would be an easy case. The only question the Court would ask itself is "Did the drafters of the Fifth Amendment "intend" to prevent Congress from classifying on the basis of sex in legislating a draft? The answer is clearly "no." Sex discrimination is a 20th Century concept, unavailable to the Eighteenth Century drafters of the Bill of Rights. If limited to "intent," almost all current constitutional controversies would elicit the same quick negative.

In contemporary constitutional practice, the most important texts are the Due Process and Equal Protection Clauses of the Fourteenth Amendment. They account for well over half of the Supreme Court's caseload. This proportion would quickly change if we limited their contemporary content to the intent of the Amendment's drafters. The Fourteenth Amendment was drafted in order to give a constitutional base for the Civil Rights Act of 1866 which outlawed the infamous Black Codes passed by Southern States immediately after the Civil War. That appears to have been the sole "intent."

If we limited the Equal Protection and Due Process clauses to this specific "intent," most of current constitutional doctrine would disappear. Not only would controversial decisions, like those requiring busing and granting the right to choose an abortion be reversed, but many less controversial decisions, like those applying the rights of free speech and free exercise of religion to the States, would suffer a similar

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**APPOINTEES**

By Karen Kilbane

By the start of May, Reagan announced candidates to fill some 400 jobs subject to Senate confirmation. These include cabinet positions, subcabinet posts and top jobs in independent agencies. Of the appointees subject to Senate confirmation, 18 were women; 5 were blacks, and 7 were Hispanics.

The most visible minority candidates were Jeane Kirkpatrick, Ambassador to the United Nations; Anne M. Gorsuch, Administrator of the Environmental Protection Agency; Samuel Pierce, Secretary of Housing and Urban Development (HUD); and Michael Cardenas, Administrator of the Small Business Administration. Reagan's appointees are concentrated in a few departments such as Health and Human Services, HUD and Education. Few hold positions in Defense, Interior, State or Labor departments.

The late William O. Walker, a leader of the Black Advisory Committee to the 1980 Reagan-Bush campaign said in May, "Appointments of blacks are moving at a slow pace, if at all."

Gloria Toote, a prominent black Republican and close friend of Reagan's asserted that during the campaign Reagan assured her and other blacks that he would appoint substantial numbers of women and minorities to top jobs - a commitment she regards as unfulfilled.

The Chairwoman of the National Women's Political Caucus, Iris Morgang, said the nomination of Sandra O'Connor to the Supreme Court will not compensate for the Reagan administration's attitude toward women. She called the nomination of the Arizona judge "a smart political move," but it "does not make up for the lack of women in meaningful positions in the administration, the budget that impacts heavily on women or the fact that there has been little outreach to women by the Reagan administration."

By August, Reagan had nominated twelve white men to twelve federal judge-ship positions. He has federal court vacancies to fill among the hundreds of jobs still requiring presidential appointments. E. Pendleton James, White House personnel chief, has hired three recruiters, one for blacks, Hispanics and women to fill the remaining posts with minorities and stifle Reagan's critics.

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**kakistocracy**

(kak' i stok' rē sē) n.

government by the worst men in the state
Cleveland Crime

By John Keys

Her body had been decomposing for nearly a month in a srag yard on the East side when the police found her in 1980. When they attempted to lift her body she severed head fell to the ground. The Coroner's office later found nearly 40 stab wounds on her corpse. She was only 24 years old.

Another killing in a seemingly endless string of Cleveland homicides, yet her case is unusual in at least two respects. First, most murders are not as perverted and grisly. Many victims die from a single gunshot or stab wound. Secondly, the Homicide Bureau of the Cleveland Police Department has yet to arrest the killer. Because of outstanding detective work, most homicides are solved within a month and many within a week.

Cleveland can be considered one of the most dangerous places in America. While killings do not escalate here as they do in New York, Chicago or Los Angeles, yet our beloved Cleveland, the "best location in the nation," has a very high per capita murder rate. We are in the same league with other violence-plagued cities like Miami, Atlanta and Detroit.

There is risk involved in living in such a dangerous place, not only for life-long residents, but for temporary citizens as well. Violent crime is an everyday reality here and there is a need to be on guard, keeping ones eyes and ears open. But while there is a risk, there is also opportunity to cut the risk considerably by avoiding dangerous places, situations and persons.

It is fact that many violent crimes resulting in injury or death occur in "safe" places and in apparently "safe" situations by "unsuspecting" persons, but this is the exception. The rule is that injury or death occurs when victims are either placed or put themselves in dangerous situations. It should be evident that engaging in certain occupations or being found in certain situations brings a risk of death. Conversely, those who avoid danger have a much greater chance of being safe. This is not always true, however, as there are exceptions to every rule.

One potentially dangerous situation is cruising in an automobile late at night in high crime areas. Greg, for example, had told his wife he would attend a union meeting downtown. About the time he should have safely returned home he was found in the front seat of his car with his pants pulled down, his wallet missing and a bullet in his head on Lakeside Avenue.

Another situation to avoid is stepping into a tavern where the patrons are totally or predominantly of a different race. Last year Fred walked into a west side bar and sat down at the bar and ordered a drink. Fred, a black man in his 30's, took some verbal abuse from a man at the other end of the bar. The bartender ordered the men to take it outside. The victim managed to shoot the racist troublemaker in the thigh, but he died in the tavern parking lot from two bullet wounds.

Ted was cruising Prospect Avenue last year late one night when he stopped a black man on the street and asked where he could find some action. The stranger became a rider and took him to a black after-hours spot on the east side. The rider later testified that Ted, a white man in his 30's, was friendly and generous to all, buying several rounds of drinks. But trouble started when a woman indicated she wanted to leave the bar with Ted, and her boyfriend became upset. Ted sensed trouble and got up to leave, moving toward the back door and fire escape with his rider following. The boyfriend also followed and pushed Ted down the flight of steps onto the concrete below. He then kicked Ted in the head enough times to kill him, but for good measure he obtained a sledgehammer and crushed the victim's head. Ted's body was found in the trunk of his car several miles away three days later.

Employment or association with organized crime is one of the most dangerous situations to be found in, for the mob so often convicts and carries out sentence without the formalities of arrest, indictment and trial.

Don King, now famous for promoting world-class boxers, worked for a faction of the mob when he was a young man growing up in Cleveland. He made the mistake of bragging that he had taken a shot at kingpin Shonder Birns, and soon thereafter took a shotgun blast to the head.

Joe Bonarrigo was not nearly as lucky as King. Joe was convicted of the murder of Henry Grecco, a mob associate, in 1978. Grecco had been shot several times in the head at close range while sitting in his car and then beaten with a tire iron.

Grecco's body was found 30 days later in some underbrush in Summit County, badly decomposed. Bonarrigo posted an appeal bond after his conviction. Before a decision could be made on the appeal Joe was shot to death and his home set on fire. His body was found in a trash bag several days later.

The late Danny Greene was subject to numerous murder attempts. Greene was jogging one day when a mobster named Frato took a shot at him. But Greene pulled a gun and shot him dead. His act was ruled self-defense. Greene's home was blown up once while he slept with his girlfriend, and both survived. Greene and his automobile were blown to pieces eventually.

Shonder Birns was blown up when he started his car after leaving a restaurant on the west side. Teamster official John Nardi was also blown up in his car. But sometimes the bomber and even innocents have been destroyed by dynamite.

Continued on page 17
Given the sour disposition of taxpayers, Gilliam projected that decreases in federal grants, coupled with increases in operating and maintenance costs, will result in comparable fare hikes and/or cutbacks in "unproductive services," defined as any vehicle picking up "twelve or fewer passengers per hour." He further emphasized that RTA wished to remain cost competitive with the gasoline pump, intimating that future drops in operating revenue will probably result in service cutbacks before fare increases.

For the year 1981, RTA received approximately $13.5 million from the federal government, $6 million from the state, and $58 million from the county wide approximately $13.5 million from the total RTA budget, and drop to 7.8% for 1983.

Gilliam identified bus break-downs and vandalism as serious problems confronting the system. In an intensified tone of voice, he stated that "vandalism is definitely on the rise," costing RTA in the order of "a couple of million per year." Gilliam attributes the sharp increase to "a lack of sufficient yellow school bus busing," or the perpetration of court ordered busing via RTA.

When asked about the purchase of buses with faulty air conditioning and uncatchable windows, (remember the beads of sweat that formed on your forehead, flowed into your eyes, slithered down your nose, and cascaded onto your newspaper, while the less fortunate passenger standing next to you fainted and fell in your lap?) Gilliam winced and admitted that such "a purchase was a bad business decision made by the people downstairs"—presumably the board of trustees. He explained that the air conditioning in such buses were not designed to endure routes with frequent stops, and are in the process of being rerouted to more suitable flyer routes. Gilliam further admitted that none of these buses are up for window redesigning, and, in short, RTA is stuck with them.

A decrease of 3.8% or $4.5 million in RTA's total operating budget can hardly be characterized as devastating, especially when almost half of that decrease could be effectively nullified if vandalism were to stop. Of course, we all know that chickens can't fly, and vandalism is not likely to subside, but if some passengers can find the time to incite two million dollars worth of waste, they, or their parents, can find the time to earn the extra money needed to pay the increased fares. Mass transit is a service, customarily provided by the private sector, that governance in the past has found prudent and practicable to encourage; it is not an entitlement. RTA is already a heavily subsidized transit system. The time has come for those who use or abuse RTA to foot a greater amount of the bill.

Individual rights, judges cannot defer to the legislature which passed the law challenged since this in effect would allow the legislature to be the judge in its own case. So the mythology of strict construction lives even though it has little or no effect on Constitutional practice. Its primary use is for public relations purposes, a slogan which permits judges to pick and choose the cases in which they will read the Constitution expansively. Recently, they discovered that the framers of the Fourteenth Amendment "intended" to protect the rights of corporations like Exxon to make campaign expenditures to defeat political referenda the corporation disapproves of. A "good" decision? Maybe or maybe not, but certainly not one merely "enforcing" the law.

In the draft registration case, the Court was faced with a claim of violation of individual rights, actually two claims. Young men said their right to be treated as equals was violated in that a duty was imposed on them from which equally capable women were exempted. Young women claimed that they were not being treated as equals in that they were being classified on the basis of a stereotype which stigmatized them as being inferior to young men, a stereotype which prevents them from fleeing (in Justice Brennan's phrase) "the gilded cage" society has prepared for them. Three Justices agreed with these claims; six did not.

The majority ruled that the right to be free from stereotypical sex classifications must be construed narrowly, at least, in cases involving (however tangentially) national security. This choice of a narrow conception of individual rights is a controversial one, one which we should judge on its moral merits, not on the basis of a slogan. In choosing it, the majority did not any more than the dissenters "enforce" rather than "make" the law. Like the dissenters, they did both. For judges, there is no other choice.

Remember, you read it here first.

(The preceding article first appeared in the national newsmagazine, In These Times, 1509 N. Milwaukee Ave., Chicago, IL 60622, and is reprinted with their permission.)
Cousteau from page 4

environmental damage that we are inflicting on our ecosystems. “Each year, we cut down millions of acres of land, killing thousands of species of plants and animals... in the Amazon region, each year an area the size of Indiana is cut down and turns into a desert wasteland.” Thus what is happening ecologically is that we are paying the price for thoughtless decisions of the last 15 to 30 years, but according to Cousteau we are also, “Writing blank checks for future generations saying—Kids, you pay for it, let me have my fun.”

Cousteau also presented the beauty of the underwater world that has been his second home since the age of seven, in an un-narrated film entitled “Within the Coral Ledge.” Although he is educated as an architect his campaigns to protect endangered species are fundamental to his life’s work. He previewed a part of a film on the endangered humpback whales, and spoke of his work to save the species from extinction. The audience was also delighted by seeing films of the lighter side of life as an explorer on board the Calypso, along with a film of how not to “drive” a hovercraft up the St. Lawrence River. From Jean-Michel Cousteau’s lecture one could easily sense that his work is his life and that he enjoys it tremendously. He reminded all present that, “It’s not just the underwater world of Jacques Cousteau—it’s all of ours.” Thus, we should all work towards preserving it because as Cousteau concluded, “When it goes, we all go with it.”

Budget from page 5

of Liz Levett (Vice President of SBA)... it is no great secret that animosity exists between Liz and PAD over a dispute that occurred at a PAD function over a year ago.” Brent Buckley, the president of PAD stated that “PAD was particularly annoyed during this funding fiasco with SBA’s continuous attempts to discredit PAD’s budget requests by insinuating that PAD was in cahoots with another students whom the SBA identifies as a major problem.”

Mark Mastrangelo denied Buckley’s assumption and stated that: “First, the SBA is not a primary source of funding for law school organizations; second, any money that the SBA gives to these organizations is only seed money and that they must raise additional funds on their own; and finally, funding is based on the size of the organization, past and future projects and past accounting integrity.”

Buckley responded to Mastrangelo’s comments by saying, “Mark is dealing with a difficult situation. However, PAD is the second largest, student organization, has plans for projects, and has no accounting history pro or con with SBA. Further, some of the other organizations who receive SBA funding admitted that the funds were their total budget and that they had no plans for fund raising on their own.”

Cohen from page 4

As final exams are about six weeks away, The Gavel would like to remind its readers of some of Professor Cohen’s pearls of wisdom. We consider this not just another student service message, but an investment in retaining our readership:

1) Prepare a thorough outline of your course work, then condense it down to 2-3 pages several weeks before the exam. The summary on these pages should be a trigger of the entire bank of course material.
2) Regardless of the exam question style remember to pace yourself so that you can address all the possible issues presented.
3) Believe that each word and sentence of the question are there for a specific purpose. If you deem some facts irrelevant let the professor know that in your answer. Don’t make assumptions—they’ll make an ass out of you and your examination answer!
4) Identify the legal categories that apply to the facts of the question, and quickly advert to the specific elements of each legal category. Don’t forget to consider and present the relevant defenses and privileges.
5) If you change your mind—be sure to cross out the old answer; and if pressed for time abbreviate your answer, but make sure that it is legible.
6) Like any other serious undertaking, the best preparation is practice... practice, practice, practice writing exam answers to specific problems in approximately 40 to 45 minutes. By doing so you will also gain practice in interpreting questions and reading them carefully.
7) Last, but not least: a) don’t forget to turn in the blue book with your exam answer—not one that you used for outlining or scrap paper, (b) remember your exam number... and best of luck!

Midterm from page 6

with the exception to the exception as was found in Carlin’s cougher.

And how about acceptance?
Can you send it through the mail?
Revoke before delivery?
Leave out a few details?
And what about that issue on which courts can’t seem to agree—
is it unilateral or bilateral?
More manufactured difficulty!
And if the contract is implied in law there’s no way out, says I it’s enforced, though it’s not a contract which all sounds rather quasi!
And even if not implied at all there still may be a recovery through a concept called “promissory estoppel” which is not a new discovery. For it finds its roots in Equity back in the days of yore; Tho’ some critics have politely queried “What the hell do we need that for?” for it stabs at the very heart of bargained-for consideration and leaves the law of contracts without a solid foundation.” Is there anything that’s definite? I wanted to cry out: Tho’ I knew no one else would hear me and my turkey long ago burst out.

So with a mind bombarded with theories I turned off my study light Downed a large glass of not-too-warm milk and slipped out into the night Once around the block I walked and then a few times more As the questions kept abuzzing even after my feet were sore And then, like lightning, it hit me—that one, cohesive thought: “Ut res magis valeat quam perceat.”

—Susan Becker, 12-9-81

PAGE 13
Legal  continued from page 9

This bill expired with the 96th Congress, but funding was continued at the requested level through FY 1981 by the passage of a continuing resolution, circumventing the usual rule that no appropriations be made by Congress for a program unless it has been authorized by Congress.

On January 22, 1981 the LSC submitted a 1982 FY budget request for $399.6 million to the 97th Congress.

On March 10, 1981 President Reagan proposed zero funding for the LSC, rationalizing it on the grounds of his overall attempt to reduce federal spending. President Reagan suggested legal services fit into a social service category, eligible for funding from state block grants. Mr. Reagan felt that this, supplemented by increased pro bono efforts by private attorneys "as part of their professional responsibility," would adequately cover the poor's legal needs.

The Administration's justification for cutting LSC's budget seems strained. Providing legal services through block grants would require the establishment of a separate bureaucracy to administer the program, both on the federal level, and at the state distribution level. Thus, a significantly reduced percentage of funds would go directly to legal services.

The delay in the Senate of the reauthorization/ appropriation bill (H R 4169) and the authorization bill (H R 3480) is related to the addition of several amendments to the Act, restricting the scope mainly or primarily of the legal service lawyers' activities. The amendments restrict the use of federal funds for impact litigation. The most significant restriction will prohibit the federal funding of class actions brought against the federal, state, or local governments.

Why are class actions such a concern of the Administration? It could be in part because of Mr. Reagan's experience as Governor of California. In 1967, a lawsuit by clients of California Rural Legal Assistance (CRLA) forced the state of California to restore $210 million in cutbacks improperly made in the state "medi-Cal" program. (Morris v. Williams, 67 Cal. 2d 733).

This case had political repercussions in that it prevented the then-Governor Reagan from fulfilling a campaign promise to balance the state budget. The antagonism between CRLA and Mr. Reagan continued, and in 1971 he vetoed the funding of the CRLA, citing numerous incidents of alleged misconduct over a four-year period. A three-judge commission reviewed the allegations and found the charges "totally irresponsible and without foundation." Mr. Reagan withdrew his veto.

Should the re-authorization of the LSC pass the Senate, as it seems probable, the administration threatens to veto it.

To further complicate the matter, the appropriations bill for FY 1982 is still pending in the Senate. The LSC now exists by virtue of a stopgap funding bill (H J Res 370) signed on December 12, 1981 by the President. The present $241 million budget is a 25% fund reduction from the 1981 budget of $321 million. H J Res 370 is a part of the State Justice Appropriations Bill, and expires in March 1982. At that time, the LSC will again have to fight for funding.

It is unfortunate that the class-action amendment has become such a bone of contention. As of 1980, only 2/10 of 1% of all cases handled by legal service lawyers were such actions. This type litigation is often the most cost-effective way of settling problems affecting more than one plaintiff.

The other 99.8% of legal aid cases represent single plaintiff suits. As of 1980, 30% of litigation went to family matters (i.e., divorce, custody, support, wills, and guardianship); 18% of litigation involved housing problems (i.e., landlord-tenant disputes); 17% to income maintenance cases (i.e., Social Security disputes, welfare, ADC, and unemployment compensation); 14% to consumer finance matters (such as collection, repossession, garnishments, bankruptcy); and the remaining 21% fell dispersed among employment disputes, immigration, torts and miscellaneous administration matters.

The LSC lobby is resisting the class action restrictions. Another amendment to the reauthorization/appropriation bill will prohibit lobbying (on behalf of the poor) to influence legislation. Even though such a small amount of legal aid litigation is concerned with these types of litigation (2%), the LSC regrets such amendments, fearing the loss of these valuable legal tools for the underprivileged.

At current budget, the LSC is managing to provide two lawyers for every 10,000 poor people. Can our guarantee of equal justice for all countenance less?

OAKS' FIRST PRINCIPLE

OF LAWMAKING:

Law expands in proportion to the resources available for its enforcement.

OAKS' SECOND PRINCIPLE

OF LAWMAKING:

Bad law is more likely to be supplemented than repealed.

OAKS' THIRD PRINCIPLE

OF LAWMAKING:

Social legislation cannot repeal physical laws.
Crisis

continued from page 3

Also fellow student Joseph Tegreene was elected to the Cleveland Board of Education. His platform held that he was uniquely qualified to oversee the bankrupt Cleveland schools because of his experience as Finance Director in presiding over the financial collapse of Cleveland. Similar logic would also hold that Yassir Arafat and Muammar el-Qaddafi were uniquely qualified to speak a eulogy at Moshe Dayan's funeral.

Most Americans under 65 do not intend to stop working completely when they retire. According to a recent poll, 75% want to keep on working at least part-time. 91% of Americans agree that nobody should be forced to retire because of age if he or she wants to continue working and is still able to do a good job.

Meanwhile down on the Potomac, great defenders of the public interest, such as O'Neill, Stokes, and Metzenbaum fight against plans to gradually raise the age for Social Security eligibility over a 15 or 20 year period.

Elsewhere in America, Miss Angela Davis is once again subject to attack by those nighthawks called Capitalists. The felicitous Marxist activist was ordered by a San Diego municipal judge to pay $2,112 on an old student loan contract for the year 1960's. Doubtless the money, when received, will be spent on bombs and White House china.

Recently, a politician attacked "such intolerable phenomenon as the administration bristling with overstaffed and multi-echelon departments, which are crammed with superfluous snarls, numerous deputys and nominal chiefs and bogged down in endless debates and shifts of responsibility, causing very low working efficiency." President Reagan? No, it was China's premier, Zhao Ziyang.

As 1981 ascended with its logic and reason barely intact, one sits back and ponders certain questions. Why, for instance, are gasoline prices lower in December than the previous January when the decontrol of oil occurred in between? Why are oil company profits declining in face of less regulation? Whither the $2.00 per gallon per gas as predicted by Hon. Montebank Metzenbaum.

Katherine Boudin, former Cleveland activist, was recently arrested in connection with the Rob Ford Brinks robbery in which three people were killed. Many of the local radical geeks reminisced about her to the press. Rev. Ray L. Miklethun stated, "It's important for those of us who have led relatively less difficult lives not to condemn her and others for their actions without considering all that's involved." The fact that Rev. Miklethun represents the clergy and excuses three murders is sad. That he believes the ends justify the means exposes the true morals of the '60s.

Dr. Myron Winick of the Institute of Human Nutrition at Columbia University reported in November that our country's major nutrition problem nowadays is excess calories leading to obesity.

Following are his major findings: Blacks are more likely to be obese than whites, women more obese than men, people with low IQs more obese than those with high IQs and obesity is negatively correlated with socioeconomic status. Also Jews are more obese than Catholics, Catholics more obese than Protestants, and among Protestants obesity becomes progressively less prevalent as you go from Baptists to Methodists to Lutherans to Episcopalians.

In sum, the thinnest fellow around is a wealthy, bright, white, male Episcopalian. Whenever a food shortage occurs, don't point your finger in his direction.

Finally, the first homicide in Cleveland occurred as a result of an argument over the grave subject of who knocked over a snowman. Gun control enthusiasts should note that the victim was run through four times by a butcher knife.

selective

continued from page 3

Logistically, most law schools are ill-equipped and ill-funded to enable major increases of journal staffs. Furthermore, the editors would have to allocate their painfully limited time to train and supervise those students who, for whatever reason, are not journal material. This would ultimately lead to mediocrity in quality at marginal quantity.

The Meritocratic Argument must prevail if a law journal intends to promote optimum quality. If a change is necessary in the selection process, let it fall on the side of merit. The most logical change would be to extend positions on law journals solely on students' ability to write. This would serve to deny the automatic selection of those students with high GPAs who lack the necessary writing skills. The fallacy of the Meritocratic Argument as it stands is that it assumes that there is a direct correlation between a high GPA and the ability to write. This assumption is purely nonsense.

Extending positions on journals based solely on writing skills, demonstrated through a writing competition, is by far the most equitable means of assuring optimum quality. If a student cannot meritoriously earn a position, he should be denied membership. If good writing skills create elitism, then so be it.

Open

continued from page 3

In other words, the character of a Distributive Principle, e.g., to each according to GPA or legal writing ability, is explained by the nature of the educational framework, e.g., Langdellism, in which it is embedded. The Merit Principle makes sense only through implicit reference to a system of performance assessment such as grading.

There is a "fit," a correspondence relation between the Merit Principle and Langdellism. Consideration of one implicates the other. When advocates of the Affirmative Action Distributive Principle purpose combining it with the Merit Principle, the peculiarity of the graft, which appears so counter-intuitive, is really a matter of an alien distributive principle not matching up with Langdellism, the educational framework which remains constant.

Attention needs to be directed away from the distributive principle, which is simply a derivative issue, and needs to be focused on the educational principle, which is ultimately the controlling one. The question then is not what distributive standards to apply, but what form the educational process should assume. And who should decide?

We submit that the prevailing educational principle, Langdellism, which animates legal education as we know it today, subordinates legal education to the vocational requirements of the legal profession by being oriented toward practitioners' law. The aim of the educational enterprise thereby becomes the production of useful human commodities to meet the needs of the legal profession, rather than the training of inquiring minds worthy of an institution of higher education.

Langdellism itself is maintained by a regime of domination which keeps the majority of the members of the academic community from controlling their education.

The bottom line is whether the members of the academic community are to set their curricular framework themselves through open and constraint-free dialogue, or whether this framework is to be imposed from the outside and in the service of external interests.

A truly intellectual curricular framework would place the premium on creativity and diversity in thinking rather than on measuring performance according to proficiency in the narrow, practitioner-oriented skills demanded by the legal profession.

The distributive principle for journal positions corresponding to such a new curricular framework would be: to each according to his/her participation. Journals would be open for all to join, because their goal would be to serve the academic interest of fostering intellectual fermentation, instead of the vocational interest of a skilled elite.

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President Reagan's inability to quickly respond with a clear and consistent policy is perhaps attributable to the abysmal state of affairs between Haig, Allen, Weinberger and the neophyte but "quick study" — Clark. Unless a determination is made as to who will be vicar of foreign policy, this administration will continue to react to crisis through pronouncements which amount to nothing more than rhetorical gymnastics.

Western Europe
President Reagan's greatest error with respect to Western Europe has been his decision to base the defense of Western Europe on the deployment of nuclear weapons there. Our allies in Europe are confident that the U.S. has no other choice but to defend their territorial integrity. This explains their lethargy on defense and their resistance to the installation of U.S. missiles on their territories, while at the same time they seek to expand their trade relations with the Soviets. President Reagan has yet to notify the Europeans that unless they are willing to defend themselves ideologically and militarily against the U.S.S.R., the U.S. will not commit itself to their defense.

Middle East
To date, there is no existing policy for this region. Aside from the AWACS sale which was a brilliant move, this administration has been unable to formulate any type of long-term policy which would benefit the U.S. in this region.

Over the past year there have been many misunderstandings between the U.S. and Israel. These misunderstandings could have been avoided if Israel had been forewarned this administration's goals in the region. President Reagan has obviously decided to court the Saudis, who are in the best position to negotiate with the PLO. At the same time however, without prior notices, President Reagan has isolated Israel in response to some of their actions which were detrimental to America's relations with the Arab nations. While it may have been necessary to notify Israel that it should not chew on the hand that feeds it (Israel currently receives approximately $2 billion a year from the U.S. in foreign aid), it would have been perhaps less painful if Israel had prior notice that foreign aid is linked to their behavior. This would have avoided the deterioration of American influence in the Middle East.

Latin America
Again, President Reagan has yet to articulate a policy in this region. This is evident in the administration's hesitancy to combat Cuban and Soviet aggression in Latin America. President Reagan must first make a clear determination as to what his goals are in this region; the appropriate actions will follow naturally.

Developing Nations
At Cancun, President Reagan articulated the values of the free market place system and how it could economically and politically benefit developing nations. However, mere reaffirmation on the benefits to be gained from capitalism is not enough to some of these countries which will turn to the Soviets unless they receive immediate foreign assistance. It is still unclear how President Reagan will help these countries develop their non-existing private sector, when foreign assistance to these countries have been cut.

Overall, President Reagan's foreign policy after his first year in office is marginally adequate at best. While this administration has an exceptional secretary of state, the California troika has undermined his ability to function as the vicar of foreign policy. Furthermore, the administration would best be served if Secretary Weinberger and Mr. Meese did not speak on foreign policy based on a coherent and comprehensive central concept supported by long-term considerations.

A new botanical species found flourishing in the atrium: BUTTUS CIGARETTI.
Marshall's reputation has improved immeasurably because of The Gavel and its contents. The only thing missing in the law school is a "Wall Street Law Clinic." (C) The "problem" then, is not with my opinions (which reflect popular sentiment as opposed to "public opinion") nor even with the "tone" or "tendentiousness" of the polemics as one very charming, witty, and regularly besotted Irish termset and former editor once had the audacity to express. "Taste is always a fool -- the consensus of any moment; contemporary taste is the agreement of different people to quote each other's opinion. It reaffirms with complacency a reputation or cliches which are actually constructed of rumor, laziness, and fear." (Kenneth Rexroth and His Poetry, Donald Hall, NY Times Book Review, Nov. 23, 1980, p. 43; parenthetical phrase added).

The "problem" has nothing to do with "student apathy" as some faculty members and administrators have grumbled. The "problem" is quite simply the humble recognition (among the silent or inarticulate, depending on your point of view) that the factual information presented is irrefutable. Personal attacks such as yours or like the one we received (and published) last year from a Kucinich-groupie also another Liberal and First Amendment Rights purist: she wanted us "edited right out of print" -- reflect the frustration which many individuals (but not a majority) feel when their cliches, their slogans, their "compassion," and their naive sophistry is challenged with irrefutable facts.

The majority of students here, in my view, are far too busy (quite properly) with their own lives and careers, their work and their families. They don't have the time to do the research that would be required to argue any of the ideas and substantiating facts presented. However, they know that the forum exists and while only a handful have taken advantage of the opportunity, there is no obstacle to its utilization -- unless some pious, compassionate "progressives" take over with "new" ideas and "guidelines" as to what will or will not be acceptable for publication.

(D) Your nonrefutation also reminded me of a quote I came across in my readings while studying at Oxford University in England -- I thought I'd pompous and immodest for once and throw that in -- to wit: "It will never be known what acts of cowardice have been motivated by the fear of not looking sufficiently progressive." (Peguy, 1910)

I can think of a couple.

Michael Varga-Sinka
Editor Emeritus

P.S. As for the photo of the homo on page 11, to which you referred, I thought it rather humorous.

from page 10

administration: (1) less enforcement dollars available to assure us that industry is doing its share to maintain the environment and clean up after itself; (2) drastic reduction of control of such conduct that does not have immediate horrid effects, and a reduction in the amount of funds available to the private sector to clean up their act in the research and development areas; and (3) the Department of the Interior under Secretary James Watt has taken a completely different stance than it did at the end of the Carter administration -- it is not as concerned about the environment, i.e. leasing of offshore oil tracts and strip mining. "You put these three factors together and it all adds up to a package where, unless it can be established that there is a clear and present danger to the public health and safety, the administration is not taking steps to deal with environmental damage," concluded Professor Kellman.

In evaluating what this means for our local "North Coast" environment, we must be faced with the realities of Reagan's "New Federalism". By cutting spending at the expense of turning every possible program over to the state, President Reagan is facing the reality that there is no money in the state budgets to take care of environmental issues. Therefore, in the next several years local clean up efforts of Lake Erie and our industrial pollution will be at a standstill or worse yet -- going in reverse! "Reagan knows the ballgame he's playing," said Professor Kellman, "and what we're going to see is that the victims of our system, those that are at the bottom end, those that have to live with pollution of live with poverty are going to be hurt. So that Reagan can make a 15% increase to the military budget.

The areas of energy and transportation bring forth a stunning contradiction to Reaganomics in a central area of policy. "Reagan is more than enthusiastic in backing nuclear energy in direct contradiction to his other lines in terms of budget control," noted Professor Kellman. "Strictly speaking, nuclear power is from an economic standpoint an impractical way to get energy." The result of this Reagan policy is very costly. Examples of nuclear power plant costs abound, just consider the problems at the Diablo Canyon facility in California and the $3 billion in construction costs wasted by the Washington Power Supply Program (WPSS) to attempt to build two power plants in the Northwest (the plants were the 29th and 30th cancelled in the U.S. since January of 1979). Despite these glaring facts, the Reagan administration is continuing both research and development subsidies for nuclear power, and in a sense counteracting the very real economics which would in and of themselves preclude the development of nuclear power. At the same time the administration has taken a free market approach to alternative energy sources, i.e. that the private sector should support the research and development of solar, wind, and other alternate forms of energy. The pivotal point as noted by Professor Kellman is, "If Reagan doesn't continue the subsidies for nuclear power, then we would have a possible phasing out of these costly projects, or at minimum no growth in the short term."

Public transportation and the auto industry are two areas of local concern that will have no possible increases in funding over the next several years. They will have to "end for themselves according to Professor Kellman, with the exception of possible decreased auto emissions requirements being passed when the Clean Air Act comes up for revision, so that the auto industry would be stimulated and gas consumption decreased.

In appraising Reagan's first year we can conclude that he has made significant changes in the EPA and the Department of the Interior in order to promote his economic programs. The environment has not been a big issue under this administration, and it will most likely remain in the background. Nonetheless, we should be concerned as to the direction of the administration's programs, and be critical of apparent contradictions. An easy illustration occurred in President Reagan's State of the Union address, as he proclaimed that full employment as well as clean air for all to breathe (in reference to the possible passage of a revised Clean Air Act) are goals within our immediate grasp. Any casual observer will note that with the current economic situation, clean air and full employment aren't possible simultaneously.

Crime

from page 11

Frank Pursio, a neighbor of Al Calabrese, was killed when he tried to move Calabrese's car from his driveway. One member of the mob was blown away when the bomb he was setting on Coventry Road malfunctioned. Eugene Ciasulo, also known as the "Animal," was bombed twice and seriously injured on the second attempt. While Ciasulo was recovering in Florida his vacant home here was blown up, just to make sure he got the message.

Other Cleveland mobsters have disappeared and most likely are not among the living. Curtis Conley and Keith Ritson, both of whom worked narcotics for Danny Greene, have never been found. William Bostik, who also worked for Greene, disappeared long ago. Recently his body was identified as one found in Ashtabula County with hands and head cut off. Charley Carribia was going to a wedding in Youngstown when he disappeared. His car was found the next day in Cleveland, but Charley has never been found. His brother, Ron, was convicted of the Danny Greene murder along with others.

In the second and final installment to appear in these pages next month, I will describe a number of other recent violent crimes. Some of the victims will be shown to have been in dangerous situations, but some of the most bizarre and gruesome crimes are perpetrated on persons in safe places and in supposedly safe situations.
Dear Editors:
I found your most recent issue of The Gavel, Vol. 30, No. 2, and previous issues to be both highly offensive and degrading to women and minorities in general and to myself in particular.

For the most part, I assumed that as editors of a publication that bears the name of Cleveland-Marshall College of Law and as law students, you would have the mental capacity and psychological maturity to deal with issues relating to minorities and women in an objective manner. This assumption, unfortunately, was erroneous.

Your most recent issue seems to dramatically illustrate this point: your cover photo caption drawing reference to Mario's woman was characteristic of archaic sexist views; your "tribute" to Irma Schaeffer definitely indicates that someone on your staff should seek treatment for his juvenile sexual mentality; and your page 11 photo and caption definitely will serve to perpetuate ethnic and racial attitudes which serve only to divide this nation further.

I am fully aware of your first amendment rights, and I believe in those rights. However, I don't think that the presentation of your views in The Gavel is consistent with what a law school publication should represent. A law school community publication should present issues in an OBJECTIVE manner; only then can justice and fundamental fairness be done.

Your current issues have failed to meet that standard. As a CAPTIVE subscriber, I can do little more than object, but object I must because as a law school publication your views are imputed by readers outside of the school onto me and other law students. I personally would suggest that the current staff resign, for although one individual seems to be responsible for using The Gavel to express his perverted views, the others have allowed it to happen.

Unfortunately, this will not happen because the economic considerations involved in the editor positions will prevent those who hold these positions from displaying the courage and fortitude necessary to do what is right.

Someday, The Gavel will have a new staff and perhaps with that staff The Gavel will return to being a publication which reflects more accurately the level of intelligence of the majority of Cleveland-Marshall students and can deal more appropriately with sensitive issues. Only then can Cleveland-Marshall become a school where not only are the concepts of fairness and justice taught but also practiced.

Ed Davila y Luciano

Dear Captive Subscriber:

Thank you for your nonrefutation of the thoroughly researched facts in my polemics (i.e., the information on Martin Luther King, Junior can be found not only in the book reviewed but also in the Congressional Record, Vol. 113, Oct. 4, 1967).

While you did not submit your letter to us directly, we remain true to the tradition of reprinted letters and articles in full without editing. There are several points I wish to draw your attention to and, perhaps, to the attention of other readers.

(A) In the bottom right-hand corner of page two (2), you will find a notice that has been attached to every issue of our estimable little journal since the days when the Nationalized Lawyers Guild and its small contingent of femidisti stormtroopers were in control. At that time, they published "OBJECTIVE" articles which I'm sure you would not find either "offensive or perverse or degrading": i.e., "The Role of the Radical Lawyer and the Radical Prof. of Law: Some Reflections," by Arthur Kinyon, Prof. of Law and communist, Rutgers University (The Gavel, Vol. 23, No. 3, 1974, p. 5) and helpful hints on how to be a spineless, gutless Liberal mandant and make your tax dollars work for poor oppressed law students: "Free Food: Here's How It (Foodstamps) Works" (The Gavel, Vol. 23, No. 7, 1975, p. 6).

(B) In effect, not only has the last year and one-half been "consistent with what a law school publication should represent" but it has taken the extra step which the fascist Liberal ideologues never had the strength of character to do: soliciting opposing views ... which the undersigned did quite regularly during his editorship.

A law school newspaper should reflect the intellectual and creative capacities of its students. If you want a publication which reflects 1200 students and their cranial capacities, be patient and bide your time; it's coming. Mediocrity is the preponderant product of any given age. When it returns, objectivity, justice, and fundamental fairness will be imputed to the school, to the students, and especially to you.

Except for the few opinions such as yours, you may be interested to know that past issues have received compliments from alumni (attorneys and judges: state and federal): non-alumni who are practicing attorneys; and the editors of several newspapers, local and out-of-state. They were conveyed to us personally by phone, by their clerks, and by requests that they be placed on our mailing list.

Ed Davila y Luciano

I am writing concerning an article entitled "High-Priced 'Tack'" which appeared in the November/December 1981 issue of The Gavel. It is disappointing that you did not direct your efforts to the constructive purpose of improving the relationship between C-M and CWRU when you visited our campus to explore the "Cleveland competition." As future lawyers, we would benefit by joint programs such as lectureships, inter-school moot court programs, and other exchanges of information. Such exchanges have rarely occurred in the past but have been successful. An example is the International Negotiation Seminar offered last spring by Jane and Sidney Picker. It is regrettable that we spurn each other's resources because of stereotyped perceptions of each school's student body.

You should explore the characteristics of the CWRU curriculum. The particular program which you disparaged — Research Advocacy and Writing — provides an opportunity for third year students to teach basic legal skills to small groups of first year students. As a RAW instructor, I am eager to explain the program to you and welcome constructive suggestions for potential improvements.

We will soon be practicing in the legal community together. The school we each attended will make little difference in the quality of our legal practice. Your article perpetuates misunderstandings and creates barriers preventing us from improving ourselves, our education, and our profession.

Sincerely,
Elizabeth C. Barker
Third Year Law Student
Case Western Reserve University
School of Law

Dear Editors,

The Gavel has fallen under "New Management" which usually means the same old stuff. Since moderation has not been very popular, perhaps you could try a little balance. A right-wing article deserves at least a left-wing reply; a forum for adversaries requires two adverse parties. The referees carry this responsibility, not a vocal or silent audience. There should be some integrity in the publication as a whole. Then more people might read it before throwing it in the trash.

The last skimmer,
Wendy Wills Kmiecik

PAGE 18
An open letter to *The Gavel*:

We at Orange Blossom Press would like to request that *The Gavel* no longer bring us its business. For us, the last issue (Vol. 30, No. 2) has been difficult. The editorial content of the paper has ranged somewhere between fascism and drivel, and we have felt degraded every time we have printed it, even though our task is largely mechanical. Under the assumption that many Marshall students felt equally degraded reading it, we have awaited major changes in the paper. They have not come about, however, and the editor has informed us that he has found successors who will continue the same policies.

The “straw that broke the camel’s back” occurred for us in the last issue (Vol. 30, No. 2). We were asked to typeset a small piece, a “tribute” to *The Gavel’s* typesetter at CSU. Under that guise, the editor informed us that women rarely possess “competence, sensibility, diligence, and reliability.” Never fear, however: a woman’s “obvious physical attributes” constitute her “talent.” No one in our shop — woman or man — could stomach that. We no longer wish to be a party to that contract.

It is our hope that at some point in the future you will return to publishing a paper that, regardless of politics, refrains from degrading large portions of the population. If that happens, we would be delighted to resume our relationship with *The Gavel* of the future. Until then, please count us out, and find a printer with a stronger stomach.

Yours truly,

Mark Corrigan
Lisa Oppenheim
John O’Hara
Joe Geller
Laura Lavelle

Orange Blossom Press, Inc.

An open letter to the Orange Blossom Press:

It is indeed unfortunate that you no longer want our business.

While you have every right to not print material which you do not happen to agree with — a luxury not available to countries which have adopted leftist or fascist governmental policies — it would have been an act of faith in our system and social structure for you to continue the business relationship we have had over these many years.

Our system is predicated upon many fundamental rights of which freedom of expression is one of the cornerstones. It is not an easily defined right with easily defined boundaries. At no point did this publication “degrade” anyone. At the most, it criticized ideas that were superficially attractive but have historically shown themselves to be reactionary and degrading to the human beings who must suffer under it. I am referring of course to fascism, communism, socialism, and contemporary liberalism which, as a political philosophy, leads ineluctably to the aforementioned. I think it was Al Smith, the former Governor of New York, who once stated that “Liberalism leads to Fascism.” He is correct.

As for the specific “tribute,” only the politically irresponsible and deranged could by any stretch of the imagination assume that piece to be anything but “tongue in cheek.” Unfortunately, too many of those who classify themselves as “open-minded,” or “flexible,” or even “liberal” distinguish themselves by taking too many things *much* too seriously. Those of us who, like the undersigned, do not associate with “fringe” political groups or dabble with “fringe” political philosophies, have not developed such an attitude. We’ve been able to maintain our sense of humor. Irma, in point of fact, was not degraded . . . nor any sensible woman with a sense of humor. She is presently in the Homecoming Queen competition. Do you look down on that too?

Finally, I think you ought to understand that in choosing a printer, we chose on the basis of competitive quality, professionalism, and price. This too is a freedom which will not be found in left-wing fascist or socialist countries. *The Gavel* remained with you because of those very obvious attributes and not because of any political or social stance which you espouse (and we knew that you did and are continuing to do so). In effect, you were chosen to print and not to censor.

Sincerely yours,

M. Varga-Sinka
Former Editor, *The Gavel*

P.S.: I don’t know where you received information about our “policies” but the only policy which will be continued is that of an “open forum,” which policy did not exist when your favored editors of five and six years ago were in control. We believe in the First Amendment and the responsibilities which attach to it. No one who has contributed anything with which we disagreed has been censored or edited.*

I do sincerely hope that someday you will realize just how much fun it is to have more than one political view — and that can only be defended and maintained by a strict, classical interpretation of the First Amendment: a conservative view, I’ll have you know!

* Vol. 29, No. 3, Dec. 1980, p. 9, “The Feminine Mystique.” Vol. 29, No. 2, Nov. 1980, p. 2, “Fonda Wants Anderson.” (If the young liberals here were able to refute the information we tendered rather than merely resort to name-calling, there might have been more opposing articles though none that could have refuted the factual information contained therein.)
RES PENDENS

FIRST YEAR STUDENTS
There will be an advising session on Wednesday, February 10th at 2:00 p.m. and Thursday, February 11th at 7:45 p.m. in the Moot Court Room for choosing Spring Quarter electives and planning ahead in selecting courses.

The third annual Bar-Media Forum will be held on Friday, February 19, to address the issue: "Do News Reports Really Bias Juries?"

The moderator will be Hon. J.J.P. Corrigan, retired justice of the Ohio Supreme Court. Panelists include Louis Paisely, Bar Association president; David Hopcraft, executive editor of the Plain Dealer; Gerald Gold, president-elect of the Bar Association; and Hugh Danaeau, news director of WCLV, show host at WVIZ-TV 25, and president of Sigma Delta Chi.

The forum is sponsored by C-M and the Bar Association of Greater Cleveland with the cooperation of Sigma Delta Chi, the professional journalism society. Call 687-2540 for reservations.

When registering for Unfair Trade Practices, use Call No. 4047, not the one listed on the green schedule.

The Prosecutor's Office was awarded a three year grant from the Cleveland Foundation to implement a dispute resolution program. Second a third year law students have been hired as Mediator Intake Counselors. The program will process an estimated 15,000 citizen complaints yearly.

The program seeks to offer Cleveland citizens immediate solutions to their disputes and reduce the volume of cases in Cleveland Municipal Court.

Bradley M. Weiss, Mediation Program Coordinator, worked on a similar program in Columbus. He trains the law students with films, lectures and role-plays. Students are asked to work 12-14 hours per week at $4.75 per hour. The program is conducted from 8 a.m. to 10 p.m. on weekdays. There is a possibility of full-time summer employment. A new training session will take place in March. Interested students should apply to Weiss at the Justice Center.

Spring 1982 course
Taxation: Procedure, Penalties & Prosecutions. LAW 647, Section 31, Call No. 4054. 04 Credit hours will be offered
Spring quarter from 8:00-9:40 p.m. on Monday and Wednesday in LB 208.

The instructor will be Adjunct Lecturer in Law, James C. Lynch, a Cleveland attorney specializing in tax law.

Judge Ann Aldrich, a former C-M professor now on the District Court bench, and Alison Kerester, C-M student, wanted to work together last summer. Since Aldrich did not have the money but Kerester had the interest, the Judicial Externship Program began.

Aldrich talked to the Dean and the faculty was receptive to the program. Students would work full-time and receive 15 credits for the quarter.

Eleven students participated fall quarter. Currently only three students are clerking but Assistant Dean Jean Lifter expects the number to increase in the spring.

Students must submit a resume and writing sample which is reviewed at C-M. A judge can specify any characteristics or coursework that must be completed. C-M sends the student to the judge for the interview. The extern spends the quarter doing legal research, similar to what a regular clerk would do. At the end of the quarter the judge evaluates the extern. The extern must submit a few writing samples to receive the credit.

Both judges and externs have been enthusiastic about the program. The application deadline for spring quarter has passed but students interested in a judicial externship for the summer should apply in early March.

Many of you who enjoy writing, photography or have an artistic bent may be interested in working on your law school newspaper. The paper belongs to each individual here. It is a forum of opinion and not merely a bulletin board. As a member of the staff your time spent studying will not be monopolized by any work for which you may wish to volunteer. As a casual reader, you may wish to express agreement or disagreement on subjects discussed within this humble journal or perhaps bring the students' attention toward issues which you feel merit consideration but which we, in our pursuit of universals, have ignored. Please type your letters or essays; maximum: three double-spaced, typewritten pages.

The offices of The Gavel are found in Rooms 23 and 24. Therein, the Editors will gladly answer any questions you may have as well as dispense relevant information on the school and the attributes of working on The Gavel.

The Gavel will hold an organizational meeting on Tuesday, February 16 at 5:00 p.m. in the Gavel office, room 23. Students interested in writing articles or assisting with the layout/production of the paper should attend. A person interested in being business manager is also needed. All staff members must attend.

FIRST YEAR STUDENTS
The 120-day deadline for filing the application to the Supreme Court of Ohio has been extended until May 28, 1982.

If you file the application by the above date, you will not be charged the $30.00 additional late fee.

Weather Update: North Coast grounding predicts more of the same.