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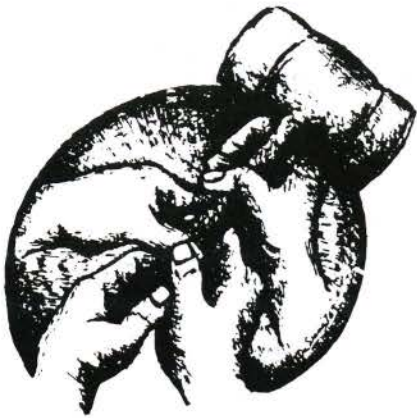
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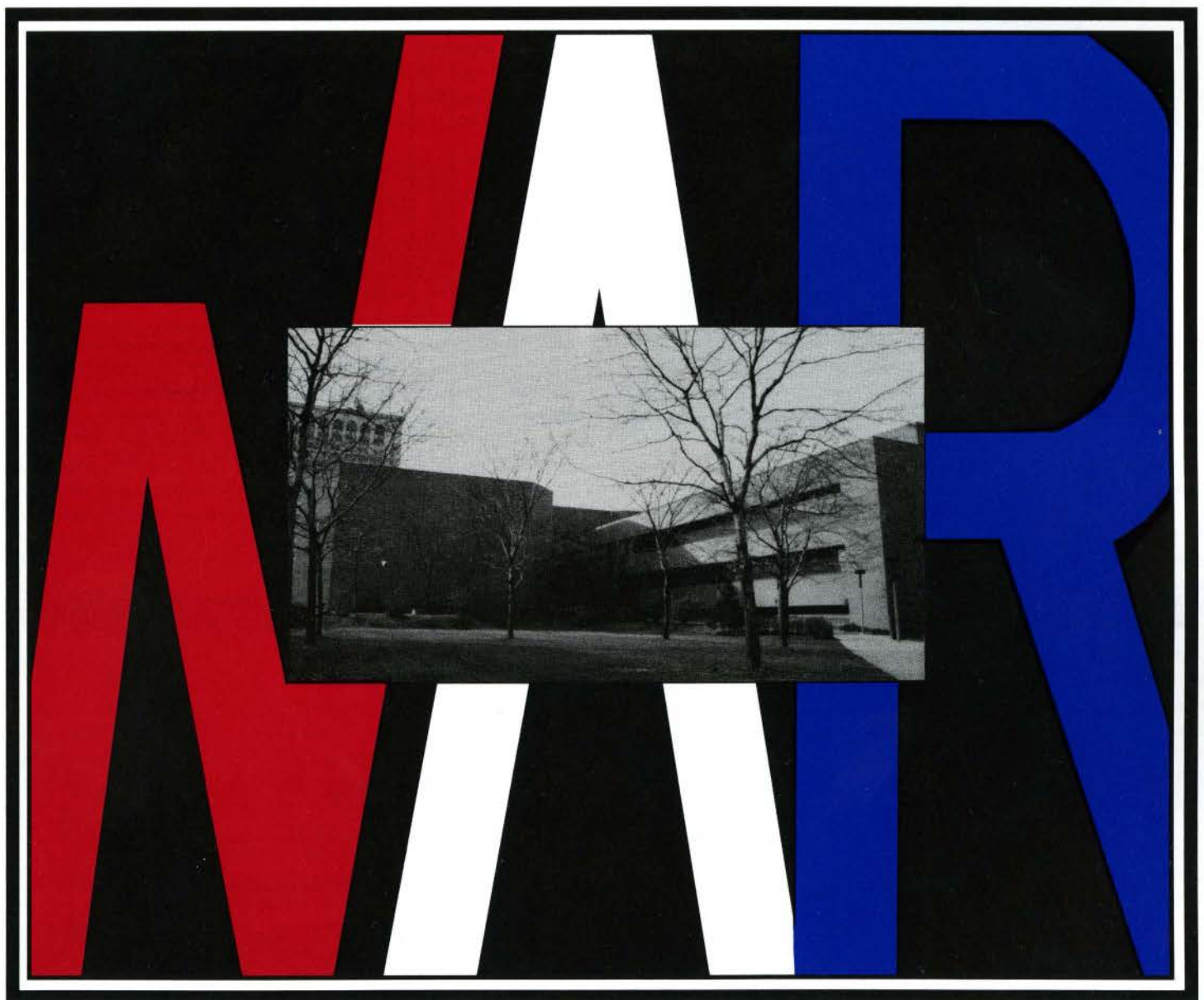


# THE GAVEL

Volume 39, Issue 4

Cleveland-Marshall College of Law

February, 1991



## Editor's Note

The Gavel would like to dedicate this issue to those whose lives are being threatened by the War in the Gulf. Although this war has made a disturbing mark on many of us at C-M, it is none-the-less in the background of our minds as we go about our busy work/school day. Let us remember that there are those in this country and abroad who are facing this crisis in the foreground of their lives every waking moment. Its good to keep in mind when we get too uptight or when our perspective becomes short-sighted.

## Next GAVEL Deadline...

...is Friday  
March 8, 1991

## The GAVEL

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## Letters:

To the Editors of the Gavel:

This letter is to address the grievous problem that occurred last semester when a student took her father's Labor Law class for a letter grade. Cleveland-Marshall does not have an official policy regarding a student enrolling in a course taught by an immediate family member and unfortunately last semester the problem was not resolved. As a result, this semester the same student enrolled for her father's Arbitration Class. Being an SBA senator and enrolled in the same Labor Law class, many concerned students confronted me about this ethical violation. In turn, I discussed this with a member of the administration and was shocked to hear that the student enrolled in her father's Labor Law class after a dean told the professor that she should not. Supposedly, the professor did not grade his daughter's exam. Even if this

were true, the exam lost its anonymity when another professor was asked to grade it. His daughter was also the recipient of special privileges when she was the only student in the Labor Law class who was never called upon to recite a case.

The very same semester that this fiasco was occurring, another student audited her husband's Remedies class. I talked with that professor about this and he was quite frank. He said the only way that his wife would enroll in his course is for her to have to audit it. (A student who audits a course get neither credit nor a grade.) He also stated that she was told that she had to prepare for every class as if she was in fact enrolled for it. While this professor clearly avoided any appearance of impropriety, the previous professor failed to do so. I am not stating that an impropriety had in fact occurred, only that there was the appearance of one.

The SBA has undertaken to act on the issue of students taking classes which are taught by an immediate family member. A special committee of three members, two senators and one officer will write a proposal. The

administration and faculty itself need to address the same issue. This questionable practice has happened before last semester, and it needs to be stopped. Simply put, the administration owes it to all Cleveland-Marshall students to stop this impropriety.



Sen. John Fitzmaurice

John Fitzmaurice

To the Editors of the Gavel:

It's not as if we didn't like her; she was simply, "One of those . . ." You know the type--the ones who come to law school the first day with a hornbook, sit in the front row, and immediately start asking intelligent questions at the time you're trying to figure out who was the plaintiff.

She was Professor Cohen's safety valve. When we'd all performed intricate dances all around the correct answer, he would shake his head with an exasperated sigh and simply say, "Ms. Zavelson . . . ?"

After watching from a distance, I actually met Nancy Zavelson quite by chance. Because I didn't appear on the computer printout for our Legal Writing class, Debbie Klein tacked me on the end of the alphabet. When the class was split up to do a mock oral argument, Nancy Zavelson and I wound up assigned in a group together. Since that time, we have enjoyed a long and enduring friendship. To say Nancy wasn't as intelligent as she seemed is incorrect--she was. And yet after time I discovered she sat in the front row of the room because she didn't care for heights, owned the appropriate hornbooks because, like everyone else, was paranoid they contained some sacred knowledge, and asked questions because she was extremely unsure of herself.

After our first year, Nancy Zavelson became Debbie Klein's research assistant--asked, no doubt in part, because she received the high "A," I might add, because while I for one spent my Sunday mornings playing touch football, Nancy was redoing her assignment, and redoing her assignment, and redoing her assignment over again.

It was only through Nancy that I wound up in the Legal Writing "Department" at all. After my second year of law school, as I was contemplating a career in show business, or a career in philosophy, or a career in staying in school forever, Debbie invited me to be one of her research assistants, but only if Nancy would consent to giving up some of her hours.

"Sure," Nancy said. She needed the extra time for studying anyway, she told us.

Nancy studied, and I spent my time trying to figure out how I could turn the research problems into something suitable for Mad Magazine, or, at the very least, entertaining. Revamping what was being taught became somewhat of an obsession with me, and ultimately I wound up the sole research assistant while Nancy pursued other things such as law review and a judicial clerkship.

And yet, although Nancy was technically no longer on the payroll, she was still very much a part of our effort to make things work. Not only was she around to make sure my copies didn't get locked in the xerox room overnight, but countless times I began advice to students with, "The person you really need to talk to is Nancy Zavelson . . .," and, "Let me tell you about Nancy Zavelson . . ." Often she has walked into my office only for me to say, "Let me show you this citation, and you tell me if it looks right."

It's a rare privilege to be able to look up from your work and receive either reassurance or an instantaneous correction from the other person standing in the room (It sure saves a lot of work in the library!), and when Nancy Zavelson leaves here to take the bar exam, unfortunately, I will lose that.

But I will lose something else, too . . . For the last four years, Debbie, Nancy, and I have developed a chemistry that has combined not only a professional relationship, but also a friendship. If it has been a rare privilege to turn to the other person in the room and receive professional advice, it has been a rarer privilege to be able to put down your pen for a moment, share a joke, break up the monotony of deep thought by asking, "So what color are you going to paint your kitchen?" or perhaps just say, "I'm having the most incredibly bad day . . ."

I will miss that--the day to day humor, laughter, concern, trust--all the things that put life into proper perspective. But I've been lucky . . . And I hope every person entering law school will leave having found such a friend as I have.

Karen Mika



# The War in the Gulf

## C-M Community Reacts

By Desmond Griswold

Law school reaction to the Persian Gulf war seems to be generally supportive, though most students and faculty members say they have reservations about using force to drive Iraqi troops out of Kuwait.

Mark Stefan, a second year student from Lakewood, said the U.S.-led coalition was forced to move militarily against Saddam Hussein because the Iraqi leader showed no signs of withdrawing from the oil-rich emirate. "Saddam Hussein was given many opportunities to make amends for his invasion of Kuwait, but he scoffed at them all," Stefan said.

The United States would have faced a more serious threat from Hussein in the future had it not moved militarily against the dictator on January 16th, according to the 24-year old. Stefan added that choosing sanctions over weapons would have given Hussein "more time to fortify his military strengths."

Stefan was one of 15 students and professors asked in straw-poll interviews last month whether they supported President George Bush's decision to send U.S. soldiers into combat. Most of those interviewed said the allies were forced by Hussein into waging war, although some said the allies acted too quickly in resorting to military means.

Dean Steven Smith, who opposed the Vietnam War as a college student, said he supports forcing Iraq out of Kuwait for a variety

of reasons, including protecting the world's oil supply and standing up against human rights violators. "I think it is a justified war," Smith said. "It's seldom that you see the kind of

absolute naked aggression Iraq displayed." Smith, 44, said he feared Iraq would have invaded other Middle East countries if Hussein wasn't confronted immediately. Smith also said that giving Hussein more time to pull out of Kuwait could have allowed Iraq to develop a nuclear weapon or at least a more sophisticated missile delivery system.

Asked how the Vietnam War he opposed was different from the Persian Gulf crisis, Smith responded, "The Vietnam War was arguably more of a civil war than a clear-cut case of external invasion. Secondly, the United Nations had not given its blessing to the U.S. during Vietnam, and when we were in Vietnam



*It's more potentially dangerous than anything in my life, except for maybe the Cuban Missile Crisis.*  
-Sheldon Gelman

we were not dealing with people who were going around using poison gas and the like."

Mark Gibbons, a first-year student from Euclid, said he has mixed feelings about Operation Desert Storm. "I do believe that Saddam Hussein is a bad man, but I think there are a lot of other bad men in the world that have to be stopped," he said.

Gibbons, 30, said the war against Iraq would be easier for him to accept if the Western alliance moved just as quickly against government crackdowns in the Soviet Union, China, and parts of Africa. He theorized that the reason the U.S. is not getting involved in these regions of the world is because they contain little oil. What Gibbons said troubles him even more is the idea of "supporting a monarchy like Kuwait that imports slave labor."

Like Gibbons, Assistant Dean for Academic Affairs, Melody Stewart said it concerns her that the U.S. is using its military and economic might to thwart Iraqi aggression while it is doing very little to protest human rights violations in other parts of the world.

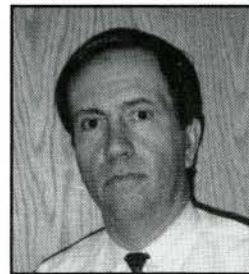


*I didn't think it would ever come to the U.S. initiating offensive maneuvers.*  
-Mark VanRooy

"I didn't see the Iraqi invasion of Kuwait as being like 'Uh, oh, now they're going to invade the whole world and we must stop them because it's naked aggression.'" Stewart said. "I don't see the United States rushing over to the Soviet Union. . . or to South Africa to liberate anyone."

Stewart, who is black, also questioned the proportion of black soldiers serving in Saudi Arabia. While blacks make up about 12% of the U.S. population, more than 30% of Army personnel and 25% of all Desert Storm forces are black.

As a bloody ground campaign nears, Stewart said she is fearful that the number of blacks who will die will exceed the proportion of blacks in American society. This though worries her even more, she said, when she thinks about the high murder rate of black youth.



*You don't blame the troops... They're just cannon fodder for the government.*  
-Thomas Buckley

"It represents to me another way of disproportionately losing Afro-Americans in this country at a young age," Stewart said. "One can perceive it as an attempt, either consciously or unconsciously, to almost annihilate a whole sect of individuals, that is Afro-American males between the ages of 18 and 36."

See War Reactionss / p.11



*I do believe that Saddam Hussein is a bad man, But I think there are a lot of other bad men in the world that have to be stopped.*  
- Mark Gibbons

of reasons, including protecting the world's oil supply and standing up against human rights violators. "I think it is a justified war," Smith said. "It's seldom that you see the kind of



## Of Smart-bombs and Carpet-bombing ...

By Joe Paulozzi

It isn't about supporting the troops. Only a ruthless sociopath would fail to appreciate the fear and pain emanating from the Middle East and not wish the service people a speedy trip home. It isn't really even about oil. The U.S. is far less dependant on oil from the Persian Gulf than other more directly affected countries such as in Western Europe and Japan. And it isn't about the evil of Saddam Hussein. The U.S. has turned a blind eye to more despicable human tragedies and tyrants such as in South Africa and Tianamen Square and not felt compelled to declare war.

So what is it all about? Its what it's been all about since the dawn of civilization. Politics. Plain and simple.

This war was deemed to be the perfect political panacea for the country's growing discontent. It covers all the strategic bases. It makes us forget about the recession and the ever-escalating budget deficit. It addresses the problem of the "Cold War Fire Sale" and allows the Pentagon to show-off a bit to try and

legitimize its huge share of the budget. It follows the classic "good against evil" script, and last but not least, it allows Bush to appease that nagging insecurity about being perceived as a wimp -- which might also get him re-elected to boot. Obviously, sanctions were politically outclassed.

*Regardless how one feels about the rightness or wrongness of this war, it's important to at least be humanly cognizant of what is truly happening in the Middle East.*

So no great shakes, right? Politics has always been the name of the game, and as a result, some people win and some people lose, right?

That's true. But the politics behind the Persian Gulf is exacting a pound of flesh that is far too literally human in composition to be casually discounted. War is a Pandora's box full of death, flashbacks, crippings, continuous pain, and despair. Its not "Hammering the Republican Guard" or "Surgical Air-Strikes" or "Tactical Positioning". War is about two

people shooting at each other, who had they met under different circumstances, would have been buying each other a beer in a bar. What difference does it make if the body-bags have "Made in U.S.A." or "Made in Iraq" stitched on them, but that they're full?

It's so easy to get caught up in the interesting technical strategies of this war and lose sight of the fact that real human lives -be they Iraqis, American etc.- are being distorted and destroyed as a result. When the newscaster says that the Iraqi Republican Guard is being continually pounded, it means human beings who happen to be Iraqi in nationality are being blown to bits by man-made explosives. When we hear that a U.S. soldier was lost in a fight near the border, it means some 24-year-old father of two from Lakewood was sliced in half by machine-gun fire, which is the naked reality his family will have to deal with. Regardless how one feels about the rightness or wrongness of this war, it's important to at least be humanly cognizant of what is truly happening in the Middle East.

Some have said that speaking out against the war at this point is useless and counter-productive; that it will disparage those service-

*See Smart-bombs / p.11*

## Classroom Restraint Advised

By Professor James T. Flaherty

In schools and colleges over the country, there have been attempts to explain the Gulf situation to the students, not only as a learning experience as current events, but also to assist in calming anxiety and fears through knowledge and understanding.

I feel the urge to advise the students of matters not generally discussed in the media as an educational experience that will expand the lower level views discussed in the Media.

For example, I feel the urge to explain that this is not a war of the U.S. vs. Iraq, nor the Iraqi people, but a United Nations war against a tyrannical warlord, whose ambitions go far beyond an obscure Shiekdom, and into the

matter of the right of self-determination; that if the U.N. mission fails, it will leave no one to keep the peace anywhere, as the U.N. will then be a verified paper tiger; that when the U.N. mission fails, it will be a very short time before Hussein will be the local Fuhrer/Kahn, who can then lead Syria, Jordan, Iran, and Arafat against Israel and Lebanon, which will then cease to exist; that there will be no U.N. to keep this certified madman from then turning on Saudi Arabia, Egypt and Turkey, to exact his bloody revenge; nor to keep this certified paranoid from exacting his worldwide carnage revenge by more insane bombings of HIS enemies; this, if the U.N. fails.

For example, the urge to explain that some are born great, others have greatness thrust upon them.

*See Restraint / p.11*

A Pro-bono effort aimed at providing legal services for the families and dependents of those fighting in the Gulf is in the planning stages. Professors Stephen Werber and Fred White as members of the steering committee, and Attorney Gary Maxwell from Cleveland Works are working on a plan that although is in its very early stages, seems to have wide-spread support in the Cleveland-Marshall Community.

The idea is to put volunteer faculty, alumni, and students together to try and address the needs of families from a limited geographical area. The legal problems that will be undertaken will also probably be limited to areas such as landlord/tenant and juvenile law.

As the plan is still in its inception, there are numerous hurdles to be overcome. Administrative as well as financial considerations must be addressed, parameters must be drawn, problems must be dealt with. All of these obstacles are deemed surmountable, however, thanks in no small part to the informal support that has already been garnered from C-M faculty and alumni.

It is easy to imagine how such an effort, which would not take a political stand on the Gulf situation, could benefit those families and dependents affected by the war. It would also be a dynamic experience for students and faculty alike, and would re-emphasize to our fellow members of the legal community that the main job of the law is to serve people --not make money. If the plan comes into fruition, it will be a significant milestone in collecting and channelling the resources of the College into a purely pro-bono, non-academic endeavor.



## GAVEL v. Student Bar Association?

... no war here!

By Kevin L. String

In the latest Gavel, first-year student Stan Hockey identified what he believes is a "running feud" between the Gavel and the SBA. After a brief condemnation of the two organizations for waging a public feud, Mr. Hockey finished with the provocative notion that the Gavel and SBA should employ a moderator to resolve this alleged conflict. This column will attempt to dispel the idea that there



*President Ramos ... Enemy of the Press?*

exists a feud between the two organizations, and in the process will delineate the role of the Gavel as the student's free press.

First, there is no "running feud" between the Gavel and the SBA. The Gavel has taken no stand regarding the need for SBA election reform, a one year senatorship requirement for officers, or any other SBA-related issue raised in these pages. In short, the Gavel does not stand against SBA. Rather, the Gavel has remained neutral and true to its purpose to encourage all students to express their views in this forum. It is the policy of this year's Gavel staff to actively seek out student and faculty participation. This policy has achieved considerable success thus far with one glowing exception; several direct attempts by Gavel staff to obtain SBA participation have been met with complete resistance. Not only did SBA fail to make an entry into our traditional student organization issue, it rebuffed an explicit request to respond to a call for elections reform. Instead, President Ramos chose to print and distribute her response separately. Therefore, I suggest that the conspicuous absence of SBA participation in the Gavel creates the illusion of a feud when all that is going on here is a general disdain by our government for the press.

### The Gavel Tradition

Issues of the Gavel dating back to the early nineteen-seventies can be found in our office files which provide hours of entertaining reading. They show that the Gavel has always been, and hopefully always will be, the forum in which our ideas are freely expressed and sometimes our battles are fought. Old Gavels are rife with criticism as well as support of almost every aspect of life at Cleveland-Marshall, including SBA. There are even several examples of regular monthly columns submitted by past SBA Presidents, a column which would be a welcome addition to this year's publications.

The Gavel invites SBA participation because we hold as our highest objective to carry on the tradition of Gavel's past. That tradition is based upon variety. The Gavel is dedicated to present thought-provoking articles on topical legal issues, informative articles concerning student organizations and events, letters to the editor from a variety of students, faculty et al., and hard-hitting commentary from those individuals who desire to exercise their freedom of speech.

### Don't Shoot the Messenger

Perhaps Mr. Hockey and others have failed to make the distinction between the maker of a message and its messenger. There is no question that I have been SBA's main detractor this year and have done so through the Gavel. But I am not the Gavel. I do not speak for the Gavel unless I make it expressly clear that is the case. Presumably, the Gavel would be publishing my opinion if I were not an editor. Therefore, to understand that there is not a feud, the distinction must be made. But more importantly, the student body must realize that the Gavel is every student's forum for free expression, not a political or moral force that has taken sides.

### Compromising the Press

As for the suggestion that the Gavel and SBA use a moderator to resolve differences, I can only imagine the idea has Madison and Jefferson spinning out of control in their graves. Our Founding Fathers cherished the concept of freedom of the press. A thought from Thomas Jefferson should bring home the point:

"The basis of our government being the opinion of the people the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or a newspaper without government, I should not hesitate a moment to prefer the latter."

Certainly no one would suggest that just because we live in a microcosm at C-M means that certain fundamental rights can be



*Editor String ... Seditious Muckraker?*

compromised. Therefore, the Gavel will not let itself be contained either by a student government that can't take criticism or individuals who deplore open debate. The Gavel is not in the business of censoring opinion or printing only "nice" articles. After all, if we were, who would read it?

## Dean responds ...

You may recall last November each full time student was required to sign forms promising not to work more than 20 hours per week. The school required us to do this as a condition precedent to registration pursuant to ABA Standard 305(a)(iii). After this policy was questioned in the Gavel, Associate Dean Carroll Sierk wrote the following memo: ...The ABA is serious about enforcement of its "20 hour Rule". The "unconscionable" thing might be to jeopardize our accreditation by not requiring an employment statement. Certainly this rationale is more palatable than the one provided on the form. (The protection of student from being exploited by law firms). So now we know that both the school and the students are being held accountable to an unreasonable ABA rule.



## a conversation with stephanie tubbs jones

By Andrea F. Rocco

Boxes partially unpacked, her huge desk stacked with papers and piles of books waiting to be shelved hint that the transition of the new Cuyahoga County Prosecutor is yet complete. It's Monday morning and newly appointed Prosecutor Stephanie Tubbs Jones is planning her week's schedule. The fact that she allotted time to be interviewed reflects the down to earth nature of Tubbs Jones. Articulate, open, and accessible describe the 1974 graduate of Case Western Reserve Law School. Prefacing the interview, Tubbs Jones explained that she was only in her present position for 3 1/2 weeks, previously serving on the Court of Common Pleas since 1983. Prior to serving on this Court she was elected to the Cleveland Municipal Court for a full six year term. Stephanie Tubbs Jones was also a candidate for Justice of the Supreme Court during 1990 and although she didn't win the election she surprised many political observers amassing more than one million three thousand votes and coming within 3 percentage points of victory. Past Employers of the County Prosecutor include the Equal Opportunity Commission, The Cuyahoga County Prosecutor's Office and the Northeast Ohio Regional Sewer District.

As County Prosecutor, Ms. Tubbs Jones is responsible for prosecuting criminal cases that arise in Cuyahoga County and all 60 villages, townships and cities. The different police departments bring reports to her assistants which may be taken to the Grand Jury for prosecution. In addition, cases are brought to her office via bind-over hearings. Generally a case is heard in the municipality it occurs and after a preliminary hearing the judge might determine there is probable cause to bind the case over the Grand Jury. "Most people look upon the County Prosecutor's position as solely involved with the criminal justice area and that is a large part of my responsibility, but in addition I am the legal representative of all Common Pleas judges and many county public agencies, public libraries and all county elected officials which means we have a large responsibility in the civil area as well." Ms. Tubbs Jones' jurisdiction also includes the Child Support Enforcement Agency and some juvenile delinquent cases.

One of the areas she will reassess is the procedure of choosing what cases to prosecute.

"It's my understanding that the history of this position has been that every case brought to this office would be presented to the Grand Jury. I intend to make some determinations about this. One of the areas I am considering beginning is a Diversion Program or First Offender Program. Depending on the offender's offense, their background and other information he or she will serve a certain amount of probation and the case will be dismissed." Ms. Tubbs Jones points out that similar models are now in progress in other cities and serves to lessen judge's dockets. "I am also giving consideration with regard to welfare fraud cases. A number of these cases that come to us have to do with an extra \$300 check. In the course of that we spend more than \$300 obtaining a lawyer for the defendant and processing the paperwork so that we are getting back less money than we are getting in. There are other ways to handle these cases. One is that the person enters into a contract to pay back the money. We will get further ahead this way."

As the Prosecutor's office was under John T. Corrigan's reign for 34 years, Ms. Tubbs Jones wants to institute a number of changes. She plans to automatize the office so that it is more efficient. With 200 employees, 140 of them attorneys, she thinks of the office as a large law firm and plans to look at firms to make changes regarding the administration of the office. In terms of training the assistant prosecutors, Ms. Tubbs Jones will stray from the traditional training method of her predecessor which was putting the person through the process of the courtroom and course training. "I intend to spend a lot more time with the training of my employees. I think it will serve the public, the office and the employees better if they feel more confident with the background and training they have had when they walk into the courtroom."

The Prosecutor offers current law students advice to blend classroom legal theory with hands on experience. "Over and above anything [else], students should begin to bolster oral skills, written skills and their analytical ability while in law school." She insists that certain classes such as Civil Procedure and Evidence come together once you see them in operation and reminds students that many trials are open to the public and can serve a useful purpose as well as volunteer legal work and clinics.



*Prosecutor Stephanie Tubbs Jones*

For those students interested in working in the Prosecutor's office, having a strong basic background will lead to success. "A job as an assistant prosecutor has been considered a training ground because of the salary (\$26,000)." But she insists the trial experience is invaluable.

Touching on how important grades are Ms. Tubbs Jones says people should put grades into perspective but be cautious not to burn themselves out. "Decent grades are important but I don't think they are the be all, end all of anybody's career."

One of the differences Ms. Tubbs Jones sees between law graduates of the 70's and those today is a difference of perspective, what graduates are looking for and what they want to do with their degree. "Clearly another thing different than when I graduated are the financial obligations young people are faced with and this unfortunately causes them to look for the money versus looking for the position or experience that they would like to garner." Pointing to the ever growing number of attorneys, Ms. Tubbs Jones says graduates need to be innovative and remember there are unlimited areas to use a law degree. "A law degree allows for a lot of versatility." She went to law school to obtain a skill where she could make a social change only to learn that "the law is the slowest moving area not quick to change."

Agreeing that the election process can be trying, the prosecutor started running for public office in 1981 and insists that she hasn't stopped since. "It is a constant process where I try to stay out meeting people and getting the exposure because if you don't when the next

*See Tubbs Jones / p.12*



## Clerking this Summer ?????

By Stephen S. Vanek

The new Spring semester has begun and within the next few months many of us will be thinking about employment for the summer. Most notably, first year students begin to anticipate that "first job" and perhaps second and third year students either look to change jobs or resume working after taking the school year off.

When one begins to consider the possibilities and all of the options that the working world presents, it seems a little like looking at the forest--you can't see it for the trees. There are many considerations to be made, and, after all, the choice is an important one.

Where to start is the first problem. There are numerous means of making contacts with available positions--the placement office is a good starting point--but perhaps an even better method is to get to know students who are clerking already. Often students "in the field" are the first to hear of new positions, and sometimes clerks are even asked to help locate other available students to fill positions. An added benefit is the fact that a job referred by another student usually comes with additional information about the firm--honest advice from someone on the inside. If you happen to be a first year student, making contacts with second and third year students may have real benefits.

Another consideration to be made is the type of work a person is interested in. There are options outside of the standard law firm practice. So called "non-traditional" legal careers are gaining in popularity. There are internships, judicial clerkships, and all manners of specialized legal work. The important

consideration is to find something that one can enjoy.

For many first year students, "what I enjoy" may be something of a misnomer simply because enough areas have not yet been canvassed to permit an accurate evaluation. At the start, a good idea may be to consider a general practice firm or clerking position so as to gain a broad base of exposure. In addition, a varied type of work usually helps to orient students to law in the real world--which sometimes has little to do with the textbook version. Being able to view the process first hand is invaluable because there are some aspects of the profession that simply cannot be reduced to print. It is safe to say that there are some things that just do not "click" until they are done first hand. Working can bring the loose ends together in ways that no mock exercise ever could.

There is a myth concerning law related jobs that is worth dispelling--namely, the idea that working for a large firm is always the best route. If the only consideration to be made was the salary, then perhaps the large firms would win hands down--but that is far from the only factor to be considered. Take a moment and evaluate why you want to work. Of course, you are a law student, so the chances are that you must work for the money at some level, but that should not be the only consideration. There are notable exceptions to every general statement and what follows is not always true, but large firms tend not to want to spend time working with clerk to help develop their writing and research skills. They tend to hire students from the upper ranks and expect these skills not only to be present, but to be honed as well. The truth is that writing and research in the real world of practice is different than it was in an

experimental legal writing class. Everything here is not self-explanatory.

This is why in some cases a smaller firm is preferable. Generally there is more contact with the attorneys or partners within the firm and therefore the opportunity to work more closely with the people who make use of the writing that clerks do. There is more opportunity for feedback and many times there is more coaching and chances for the development of skills not yet mastered. Again, this is a generalization, and not true in every case, but it bears mentioning. Any job should be considered in light of its potential to educate. A good first job serves this function well--and the result can lead to better work at school.

Meanwhile, it is important to maintain good grades in school. It simply isn't true to say that unless one falls within a given top percentage of the class, that a good job will be impossible to get. The surprising thing is that a good number of firms do not even ask about grades. Often more fundamental considerations are made, such as writing ability, dedication, verbal skills, and personality. Do not underestimate the other qualities you may possess. Do not dwell solely upon the issue of class rank. It's important, but definitely not critical.

It is not within the scope of this article to canvass all of the possible job opportunities or to suggest all of the possible strategies for obtaining meaningful employment. The point here is simply that there are some other considerations to be made when looking for that first (or second or third) law-related job. Don't fall into the trap of thinking that salary is determinative. Consider personal development and ask what can the job do for you, besides line your wallet.

## DNA fingerprinting

By Kim Lloyd

Judge James E. Carr of the Federal District Court in Toledo has broken ground when he ruled in *United States v. Yee* that DNA "fingerprinting" is admissible in a criminal trial. Legal experts expect State and Federal Courts around the country to follow Judge Carr's findings, mostly because of the laborious way the court acted on the fact finding process: 13 of the nations leading experts in molecular biology and population genetics testified on every aspect of the practice and 200 exhibits were introduced during the six week trial.

DNA, or deoxyribonucleic acid, is the basic building code for our chromosomes which determines the transmission of hereditary

characteristics. To "fingerprint," experts look at a segment of the DNA that differ in each person. These segments can be taken from hair or skin, but the most accurate specimens, and the most frequently used, come from semen and blood. The *Yee* case, for example, involved three members of the Cleveland chapter of the Hell's Angels who were accused of murdering a rival gang member. Blood found at the scene of the crime was matched to the defendants blood by DNA "fingerprinting" experts, thus linking them to the crime.

Although there are some critics of the testing, Judge Carr's opinion recognizes the inaccuracy of the F.B.I.'s lab testing. The ruling generally means that the testing is reliable and acceptable as evidence but whether or not the test is valid in each case will be a jury question. One of the defendant's defense attorneys who is also a law professor, Barry C. Scheck, was quoted as stating, "What is really needed is legislation to set standards for quality assurances of the labs doing the testing..., it's too much to debate in front of a jury."



## cruzan decision sounds death knell for right of privacy

By Kevin String

On December 26, 1990, whatever remained of Nancy Cruzan's life came to a merciful end after surviving nearly eight years in a persistent vegetative state. Her death was preceded by an extensive and highly publicized legal battle between Nancy Cruzan's parents and the State of Missouri. Finally, last December the Cruzans obtained permission from the Jasper County Court to direct the Mount Vernon State Hospital of Missouri to remove Nancy's life-sustaining feeding tubes. However, the ultimate decision to let Nancy die came after a ruling by the U.S. Supreme Court that placed the "right to die" outside the protection of the penumbral right of privacy, thus bringing an appropriate end to an era in which justices actively engaged in perpetrating their own moral philosophy by legislating the law from the bench.

### The Right of Privacy: R.I.P.

In past landmark cases such as Griswold v. Connecticut (1965) and Roe v. Wade (1973) the court determined that the Bill of Rights, through "penumbral emanations", guaranteed as fundamental a right of personal privacy that no statute could abridge without the Court applying the strictest of scrutiny. The right of privacy doctrine as it developed through the 1970's came to protect an individual's autonomy regarding child-rearing, education, family relationship, procreation, marriage, contraception, and abortion. But what could be more personal, more fundamental and more "implicit in the concept of ordered liberty" than a person's right to die, especially under the circumstance of Cruzan? Probably nothing, but the Cruzan Court refused to extend the right of privacy to include the right of a patient or guardian to direct the withdrawal of life-sustaining treatment. The Court did find, however that Nancy Cruzan had a Fourteenth Amendment liberty interest in freedom from unwanted medical treatment, but not before being weighed against Missouri's unqualified interest in the preservation of human life. Therefore, Missouri's clear and convincing evidence requirement to prove it was Nancy Cruzan's desire to have life-sustaining treatment removed if she were ever to become a vegetable was held as being constitutionally permissible.

Justice Brennan for the dissent argued with vain: "Because I believe that Nancy Cruzan has a fundamental right to be free of unwanted

artificial nutrition and hydration which right is not outweighed by any interests of the State, and because I find that the improperly biased procedural obstacles imposed by the Missouri Supreme Court impermissibly burden that right, I respectfully dissent. Nancy Cruzan is entitled to choose to die with dignity." Perhaps he should have said, The right of privacy: may it rest in peace.

*... the new Court is prepared to exercise its obligation to apply the law from the constitutionally principled doctrine of original understanding rather than by legislating law by judicial fiat.*

Now that Justice Brennan is gone and Blackmun and Marshall are close behind, there can be no doubt that the U.S. Supreme Court is emerging on a new era. Led by Justice Scalia and Chief Justice Rehnquist the right of privacy will be reduced to an historical anomaly. As Cruzan exemplifies, the new Court is prepared to exercise its obligation to apply the law from the constitutionally principled doctrine of original understanding rather than by legislating law by judicial fiat.

### The Last Temptation

In his book, The Tempting of America Judge Robert Bork relates a story about a conversation between Judge Learned Hand and Justice O. W. Holmes. Departing after lunch Hand said to Holmes, "Do justice, sir, do justice." Holmes then answered, "That is not my job. It is my job to apply the law." This then is the temptation that Brennan, Blackmun, Douglas, et al. fell prey to in right of privacy cases. Guided by their own moral philosophy rather than constitutional law, the Supreme Court invented the right of privacy doctrine to answer the popular call to do justice. But because the right of privacy was born out of something beside the Constitution, its fabric was weak, its scope undefined, its flaws easily exposed, and its eventual demise only a matter of time.

Perhaps the best indication that the right of privacy stood on infirm and unprincipled grounds rather than the Constitution came when Brennan himself writing for the majority in Eisenstadt v. Baird (1972) said: "If the right of privacy means anything, it is the right of the individual, married

or single, to be free from unwanted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." This certainly tells us a lot about how Brennan personally feels, but the departure from constitutional law is glaring. Granted, the statute at issue in Eisenstadt was offensive, or as Justice Stewart would say, "an uncommonly silly law", but did Brennan strike down the statute after applying the Constitution or did he simply feel the result would be morally and socially just? Close readings of Griswold, Eisenstadt, Roe, and their progeny clearly reveal the latter in that they are result oriented decisions that force the right of privacy into the Constitution rather than pull it out.

By 1973, the United States had a body of unelected government officials who were appointed for life with nobody to answer to politically, deciding for us what fundamental rights we do and do not have beyond those expressly stated in the Constitution. The Supreme Court tossed out the principles of neutrality and constitutional interpretivism and engaged in what would appropriately be called judicial demagoguery. The implications were subtle but far-reaching. Not only did the Supreme Court become illegitimate when it succumbed to the temptation to do justice, it subverted the whole concept of separation of powers. The right of privacy doctrine was used by these justices as a vehicle for making law not applying it. Perhaps Brennan and his cohorts have a great sense for what is just but it is not the province of the Court to do the job of congress.

The "right of privacy" justices are a minority now and we have probably seen the last temptation. After 25 years, the reasoned voice Justice Hugo Black who wrote for the minority

*See Cruzan / p.10*





## THE TRIAL LAWYER'S EDGE

By James Harmath

One often hears comments noting the super-confident, aggressive character of the typical trial lawyer, as opposed to that of the milder non-trial lawyer. According to Dr. James Dabbs, professor of psychology at Georgia State University, Atlanta, the difference may lie in that wily male hormone, testosterone.

"The confrontational quality of trial lawyers might be reflected in some biological underpinnings, specifically in testosterone, which in a lot of other animals and people also is related to aggression and dominance," says Dabbs.

To test his theory, Dabbs and senior psychology student Elizabeth Carriere conducted an experiment to test the difference in testosterone levels between trial and non-trial lawyers. One hundred and fifteen lawyers (81 men, 34 women), tested in the Atlanta area, contributed saliva samples to the experiment. Through a clinical chemistry procedure, radioimmunoassay (RIA), the saliva samples were chemically "assayed" to determine the level of testosterone present in each sample.

According to Dabbs, people and animals with high levels of testosterone tend toward anti-social behavior. Criminals with high levels of testosterone are prone to committing personal instead of property crimes. Dabbs points out that higher levels of testosterone can also lead to an entire range of negative behaviors such as alcohol and drug abuse and marital problems. As a whole, he says, it comes across as a negative quality.

Dabbs does not suggest that trial lawyers are likely to engage in criminal behavior or other negative conduct if their testosterone level is high. "I think the main thing is not how aggressive they are by the fact that they manage to channel this into socially quite acceptable directions. It's something that's needed in their work and most of the rest of us in professional kinds of jobs, at least, need to hold down

aggression. It's counterproductive. It interferes with the functioning of the organization. But the (trial) lawyers go out and do single-person combat and it seems to be to their advantage."

The experiment revealed that among the youngest of the men (In their mid 20's), testosterone levels in the trial lawyers was in fact higher than in their non-trial counterparts. The range of difference decreased as age increased. Among the older men in the experiment, the difference between the two groups was slight, if any.

Testosterone levels between the two groups of women lawyers were similar. Testosterone levels may fluctuate in the same individual at different times. A testosterone level change in the same athlete occurs depending on whether he or she is winning or losing at the time of the test. Animals involved in a fight have higher levels of testosterone during the battle. Dabbs hopes to run another test on women lawyers because no one in the group they tested was in her usual job setting. This may have skewed the results.

To chart the fluctuations of testosterone in one lawyer over the course of time, Dabbs is testing periodic deposits of saliva from one aggressive Atlanta trial lawyer. Presumably this will show changes in accord with the trial lawyer's wins and losses. This saliva-contributing attorney laid to rest any doubts Dabbs may have had in selecting him as the archetypal aggressive trial lawyer. He was recently thrown in jail by a Georgia judge for a courtroom infraction.

Dabbs and Carriere have sent their results to the American Psychological Society's psychology forum, to be held in Washington, D.C. this June. The next step in the experiment remains to be seen.

"I don't think there's no difference between trial and non-trial lawyers," says Dabbs. "The lore is simply too strong. Any person you talk to who hangs around court or knows lawyers says that the trial lawyers are a breed apart."

## cruzan

(Continued from p.9)

in Griswold is finally being heard: "The law is every bit as offensive to me as it is to my Brethren... I get nowhere in this case by talk about a constitutional "right of privacy" as an emanation from one or more constitutional provisions. I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision."

The death of the right of privacy is a great victory for the Constitution and a triumph for those justices like Black who withstood the temptation that Judge Bork so eloquently talked about in his book. There is no question however, that statutes that breach our "right of privacy" will unfortunately survive judicial scrutiny from now on. We already have the Bowers v. Hardwick anti-sodomy statute and the Cruzan evidential requirement on the list. But for our system to function properly under the Constitution, we must demand that Congress and state senates, not the Supreme Court, make the laws that reflect our society's moral consciousness. We must call on our lawmakers to do justice, and, let the Supreme Court apply the law.

## Open Forum

At noon and 5:00 p.m. Wednesday, Jan 30th, the first of what Assistant Dean Melody Stewart hopes will be a series of open forums for all students and faculty was held in Room 11. Stewart organized the informal discussion group which she hopes will gain enough support to continue running as long as possible. At the first noon meeting attendance was poor but publicity was minimal. Issues such as grading policy, passing the bar, class scheduling and summer school were discussed. The plan is to continue meeting on Wednesdays. Students who have concerns are encouraged to attend. Members of SBA's newly formed student concern committee are especially encouraged to participate.



Asst. Dean Stewart

## Student Writing Competitions

If you want more out of your term paper than just a grade, then enter it into one of the many annual writing contests and possibly win valuable cash prizes. Each year several law organizations such as the ABA conduct legal writing competitions that offer resume and wallet enhancement.

Topics covering Family Law, Tort Law, Ethics, Law and Medicine, etc. are among the many choices for this year's contests. Most competitions ask for anywhere from 3,000 to 5,000 words. (A mere drop in the bucket). For details contact Asst. Dean Melody Smith or drop by the Gavel Office, LB 23. Don't wait because essays start becoming due this spring.



## War Reactions

(Continued from p.4)

Even though Gibbons and Stewart don't advocate using violence as a way of solving world problems, both said they support U.S. troops now that hostilities have broken out. Both have cousins serving in the Persian Gulf. Stewart added her support will continue when American soldiers finally return home.

Maura Jaite, a third-year student from Rocky River, was among the group that favored waiting longer before moving offensively against Iraq.

"I really don't think they gave sanctions enough time," said Jaite, 25. "I also don't think the U.S. really made any effort towards a peaceful settlement. It seems like we went into negotiations with the attitude that this war was destined to happen."

Yet, Jaite, Like Gibbons and Stewart, said it is time for Americans to stand behind U.S. troops now that soldiers are being killed.

"Now that we're over there fighting, we have to be supportive," said Jaite. "I base my support on Saddam Hussein's actions, the way he has violated people's human rights."

Third-year student Mark VanRooy, 26, agreed with Jaite that economic sanctions should have been given more time to work.

"I didn't think it would ever come to the U.S. initiating offensive maneuvers," said VanRooy, of Fairview Park. "I thought economic sanctions would succeed in driving him out. But now that war has started, we should fight hard and get it over quickly."

Associate Professor Sheldon Gelman said he

is deeply troubled by the consequences of waging war against Iraq. To avoid any further human and environmental casualties, the 44-year old said he would support an immediate cease-fire.

"There are so many ways this can escalate into a war of historic proportions," Gelman said. "It's more potentially dangerous than anything in my life, except for maybe the Cuban missile crises."

While describing Iraq's invasion of Kuwait on August 2 as "hideous," Gelman said he is worried that any future border changes around the world will run the risk of "environmental catastrophe."

"How much it is worth to us to stop him?" Gelman asked. "That's the hard question. I look forward to reading historical accounts of how this whole thing came to be."

Of those interviewed, Professor Thomas Buckley was the most vocally opposed to U.S. military involvement. The 53-year old recently participated in an anti-war protest in Washington D.C. In addition, Buckley was among the 56 law school community members who signed a letter to the editor of the Plain Dealer in December opposing the war. The letter has not been published.

Buckley is convinced the war against Iraq is only about oil, something he said is not worth sacrificing American lives over. "You have to have powerful reasons before you start killing people,"

he said.

Gelman said he is worried that if opposition to the war grows, protesters like Buckley "will be branded as disloyal, cruel to the people who are losing their lives."

"That to me makes no sense," Gelman said. "I don't think we (Americans) would regard people protesting against the war over in England, France, or Germany as being disloyal."

According to Buckley, protestors are showing their patriotism and support for U.S. troops by working toward peace. "You don't blame the troops for carrying out the policy," Buckley said. "They're just cannon fodder for the government. You blame the government for its policy."

Most of those interviewed anticipated that Iraq will be able to weather Desert Storm for at least three months, and many predicted the U.S. will be forced to provide a large military presence in the unstable region for years to come. "I don't know much about the Muslim faith, but if this is a jihad, their soldiers will be a lot more motivated than our kids," Gibbons said. "They'll be protecting their home turf."

"I imagine this war will take a lot longer than people think," Gibbons added, "cost more than people think, and the results will be far less than people ever considered."

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## Smart-bombs

(Continued from p.5)

people who are fighting in the Gulf for us back home. I give our service-people more credit than that. They realize that 99.99% of America is hoping and praying for their safety -- and that some are doing it by agreeing with the war and others by speaking out against it. Brave American and Iraqi service people are doing what they believe to be the right thing, and for that they have this writer's utmost respect and support. They are not to blame. We can only hope that we will not disgrace ourselves after this war as we did in Vietnam by further torturing those who have fought by isolating them --immediately as well as long after -they return home.

We are in a war which in the global scheme of international relations will have little or no affect -- witness the repaired relations between recently warring Iran and Iraq. We are in a war which, to paraphrase Abraham Lincoln, we weren't damn-sure was absolutely necessary. We are in a war in which the indomitable patriotic spirit and will of the American people is being taken advantage of and used for political purposes. But perhaps most regrettably, we are in a war in which real-live human beings are being physically, mentally, and spiritually devastated from horrors we may never really be able to fully comprehend, and for that matter appreciate.

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## Restraint

(Continued from p.5)

Unfortunately, under the rule of "noblesse oblige," the duty of world policeman has fallen on the U.S. It was once Greece, then Rome, then France, then England, now U.S. I don't relish it, but it is so. I do not like such "police actions" (ie. war), I hope neither I nor any of my children or family again ends on the short end of Fate's selection. My brother Joseph has already done so.

I feel the urge to explain that a balance of power requires the activity and involvement of Hawks and Doves, and the balance of power of peace, war, and integrity lies in a proper balance between those two. It was ever thus, and will continue to be so. I am neither, as I recognize both as part of the Grand Scheme.

Yes, I would like to do this, but it is not within the scope of my teaching contract, nor within the scope of Academic Freedom to impose my philosophies, albeit middle of the road, on a captive audience, much less Students, who cannot respond. It would be a further breach of the fiduciary duty between a teacher and student. I am restrained and frustrated by my obligations.

I sincerely hope that the Law Faculty, which includes Doves, Hawks, and Middle of the Roaders, feels the same restraints.

Editor's Note: Professor Flaherty's remarks are from a memo to all C-M Faculty. Since the Gavel is dedicating this issue to those affected by the war in the Gulf, we felt it would be appropriate to reprint it in this forum.



#### GRADUATING STUDENTS:

#### NEW RULES INSTITUTED BY PROGRAMS SPONSORING BAR EXAM LOANS (BSL & BEL)-

Effective MARCH 1, 1991 both programs (LAW ACCESS & LAWLOANS) will require the applicants to have received either a Stafford, SLS or LAL/LSL through the respective program at some time during their law school career. Any applicants who have not borrowed through one of these programs in the past must have their bar exam loan applications certified by their law school financial aid office by FEBRUARY 28, 1991.

## Gavel Bangers



Excuse me, sir. Could we stop here?  
My brain is full.

## tubbs jones

(Continued from p. 7)

election comes up the voters will forget about you." Ms. Tubbs Jones attributes the success of this prosecutor's race to the fact that the precinct committee voters were familiar with her background, her experience, and had seen her a number of times before.

Not one to let her job become stale she says you need to know when it is the right time to make a move. "You have to be willing to take a risk--life is a risk. Sometimes you land on your feet and sometimes you don't." The mother of a 7 year old son, she encourages women not to attempt to be a "superwoman". She feels fortunate to have the support of her husband of 15 years and feels he and her family's closeness helps her when opportunity knocks.

An obvious role model to several people, Tubbs Jones says she has decided to do what she thinks is good for her and continue to be Stephanie Tubbs Jones. "In the course of this, then, I became a role model. I've grown and gotten more experience but haven't gotten caught up in myself and people are much more supportive of you and relate to you." Cuyahoga County's first woman Prosecutor and the first black woman to serve on the Court of Common Pleas in the State of Ohio admits that she has encountered some barriers. She attributes most people's prejudice to ignorance and not having exposure. "Therefore I've run into people who don't know how to take me and may be reluctant to accept me until they have a chance to get to know me and to see what kind of job I can do." She says she's learned to go forward and not allow things to get in her way. "When somebody puts a barrier in front of you, you jump over it, you go under it or you go around it." She offers that the alternative is to become paranoid about what people are thinking about you thus hindering your own success. "It takes a lot to be hateful or resentful and I've learned that what goes around comes around. I've tried to do the best I can and give those that are prejudice the opportunity to see I'm no different, maybe as good, or better than people that have been in the position traditionally. I think women and minorities have a tougher time. They have to be better to get the opportunity. I am not naive enough to think I am the first woman or black to be qualified to hold these positions I've held. What I think is, I'm one of the first to be given that opportunity. I say open the doors and give everyone an opportunity and you'll see what they can do!"

Considering Ms. Tubbs Jones is now in a position where she can open doors for people, she concedes that she will open doors by giving people exposure and speaking to women's groups and church groups, etc. "I will also have the ability to offer people opportunities, and jobs but that's not to say all the people I will hire will be blacks or women. The best staff I can have is a diverse staff."

In closing, the Prosecutor encouraged law students to work hard for what they wanted and to not let disappointments stop their drive.

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