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Cleveland-Marshall College of Law

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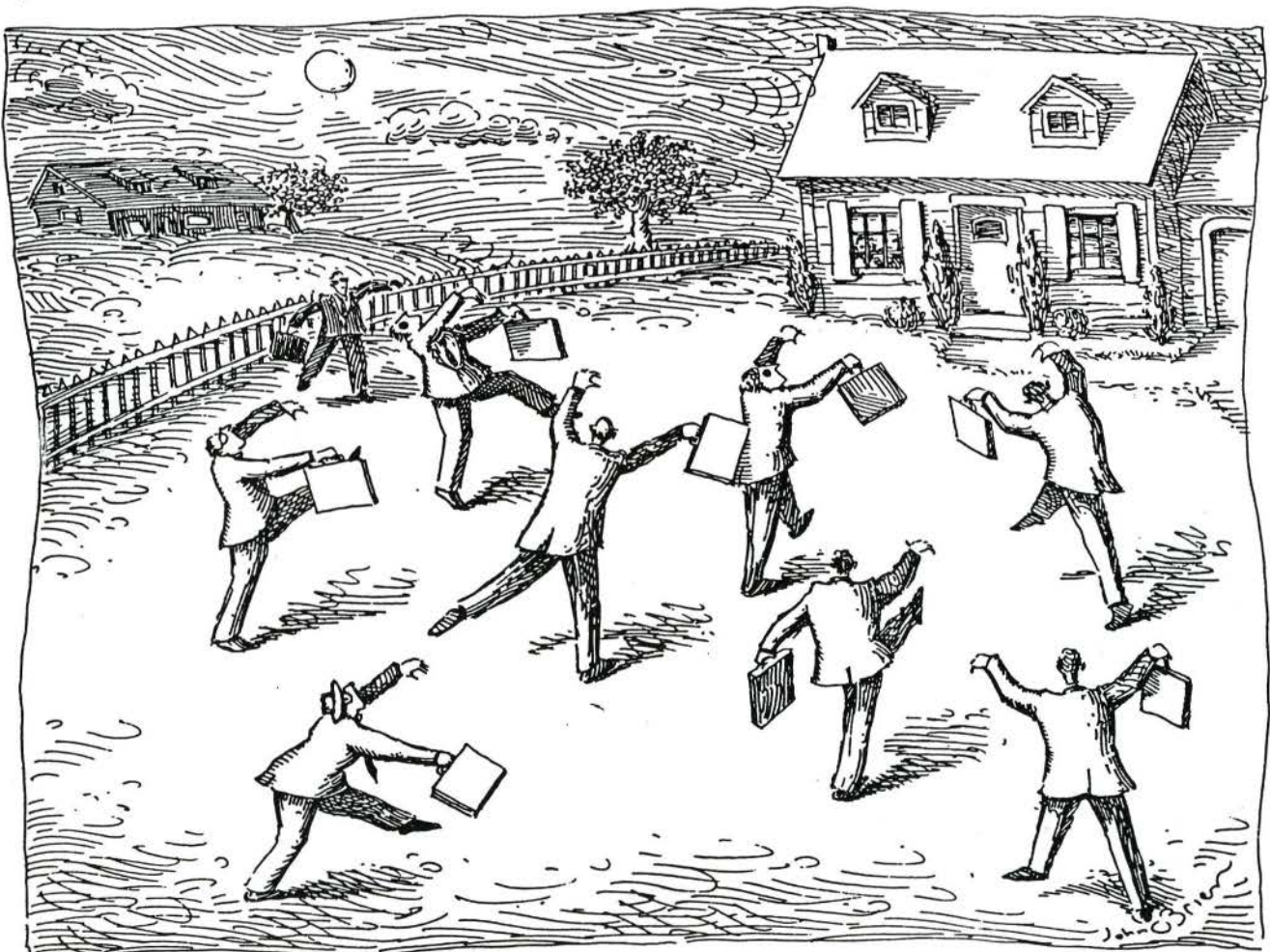
THE GAVEL

Volume 40, Issue 2

Cleveland-Marshall College of Law

Nov./Dec., 1991

NIGHT OF THE LIVING WILL



The GAVEL

Editor's Note

The Gavel is always seeking interested students to participate in the writing, typing, or photographic aspects of producing the newsmagazine. All you need to do is stop by the office, LB 23, or call 687-4533 for more information.

We need reporters, photographers, editorialists, cartoonists, and those who are proficient with a word processor.

Students become staff members after having had two articles or equivalent contributions printed in the newsmagazine. Staff members qualify to participate in editorship elections at the end of the year. Three editors are elected, each receiving a full tuition waiver.

So if you are motivated by a need to be creative, or a need to be fulfilled financially, The Gavel can be an excellent vehicle for meeting those needs. After all, you can't spend every waking moment studying, can you?

Next GAVEL

Deadline ...

... is Tuesday,
February 11, 1992

cover:

The cover of The Gavel was extracted from The New Yorker magazine.

The GAVEL

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Any interested students, including first-year students, are encouraged to become involved. The Gavel office is located in room 23, near classroom 12. Stop by, someone is usually in the office - if not, put a note in the envelope on the door.

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Infra.

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Letters:

To the Editors of The Gavel:

As a second year law student at Cleveland-Marshall, I consider myself fortunate to be in law school. I know that every year application rates are up, and it gets more and more difficult to get accepted into the program.

I've attended several universities around the country, and they all are pretty much the same when it comes to administration and policy. However, I must admit that I've never had as difficult a time parking my car as I have here at Cleveland State. I know that the parking situation is not the fault of the law school and that it really is a problem for CSU. But I can't understand how a student can be accepted into a graduate program, be given the privilege to buy a parking permit, and then never be able to use that permit to park. The way I understand CSU's argument is that "there are ample parking spots for everyone".

Well if this is true, why is it so difficult to park every morning? I guess if I want to park, I have to go to East 24th Street. Those students from Cleveland State that have classes near East 24th can park in the lot near the law school. (This makes a lot of sense to me). After observing the situation, a logical solution would be to designate a separate lot for the law school. This would keep the law students near the law school, and would free up those displaced parking spots on East 24th for the undergraduate students. This would also alleviate the danger involved for women law students who have to walk to their cars late at night. (Generally, law students stay on campus later). I think this is a good idea. I'd like whoever is in charge of parking to consider it.

If anyone out there has any comments, directions, or suggestions concerning this matter, I would be happy to hear them. I think it is important that if the law school is to operate properly, there be ample parking for the faculty and students. Something should be done.

William LaMarca

P.S. In Re: Smoking Policy at C-M

I heard it through the grapevine that smoking will be completely abolished in the law school next semester. But remember, this is only hearsay and is inadmissible in court. Any suggestions are welcome.

* * * * *

To the Editors of The Gavel:

William LaMarca, you have a friend and compatriot. Oh how I waited and wanted to come to idyllic Cleveland-Marshall, where the floors were paved with gold and lollipops grew out of every desk and table, where the instructors were less like professors and more like long-lost grade school friends, dancing and laughing into our carefree, workfree student lives. I too had to scrimp and save, barely scraping by at subsistence levels just to afford the application fee. But after a long, anxious wait I got my letter - I would be going to a new exciting place where rainbows never end. Most of all, I looked forward to the air. That Cleveland-Marshall air brimming with oxygen and sweet with the smell of lilacs in the spring. Oh how the glorious purity of a closed ventilation, forced air system teased my brain as I anticipated my arrival. I spent many a night sleepless with excitement and dreaming of the future. Looking at pictures of the downtown Cleveland campus and browsing through the brochures, everything looked so clean, so pure, so right! And the non-smoking policy. I must have read it a hundred times. Here, there was justice. Here, in the health-filled setting of Downtown Cleveland, there was oxygen filled bliss. Those smokers who had tormented my past would have no place here. They would be forced into servient roles of carrying my books, offering lunch money and course outlines just to sit amongst the chosen. The rights of smokers would fall, crushed beneath the whims of the clean. Here, I would belong.

But woe to those who believed. Brothers in battle, we are under siege. We are being bullied and bantered by demonic, smoke belching dragons who are dead set on slowly killing us with their baited, foul-smelling poison. They have already fully taken over an entire corner of the lunch room lobby. They have, of course, chosen the darkest, most cramped corner of the building from which to plot their evil schemes. The impure shy from the light and hover together in

To the Editors of The Gavel:

In a rather good article in the last issue of **THE GAVEL**, Mr. String points out the importance to most of our students of preparing for the bar examination while in law school. However, while there surely is general agreement that preparation for bar examinations is important and that students should be aware of their nature and contents well before graduation, also, surely few accept the idea that bar examinations and preparation for them should be the only concern of law faculty and students. There are other concerns.

their desire to push us all from the path. They have become so blatant in their attack that when seated a full ten feet away from their lair you can almost smell the filth. Just close your eyes and concentrate. Can't you smell it too? I'm almost positive I can.

As such, I am forced to be ostracized from the very place I long for. William, I too cannot afford the luxurious, fine lunch restaurants which adorn the campus area. My only choice is to prepare my own meal and carry it along with me to school. Sure, in the summer I didn't mind breathing the fresh outdoors of Downtown Cleveland. Today, however, as I was eating my lard and bread sandwich in the rain, I finally broke down. I cried at how I had been misled, wept at the cruel injustice of it all, and bawled at how the glorious and true non-smoking policy had been trampled underfoot. Constructively denied a legal education, I saw no way out. There was no solution but to walk into the woods, never to return to the dreamland of fresh air from which I had been outcast.

As chance would have it, at that very moment a copy of the September/October 1991 **GAVEL** blew into my lap. It was a little soggy, but I could still make out the words on page three opened in front of me. As William LaMarca-Concerned Law Student wrote on, inspiration clawed its way into my heart and pushed the smokey depression from my soul. Courage replaced self-pity. I knew from that moment that there were others. Others who believed as I do. Others who longed for the promised land of pure and pristine forced-air ventilation.

There are others, and we have found a leader. Someone to honor, trust, respect, and admire. Read his wisdom in **THE GAVEL**. Praise his intelligent reasoning. Revere his thorough research and duty to the cause. Now is the time to stand and be counted. Lead us, William LaMarca-Concerned Law Student. We await your sign. Your Brother in Arms and Concerned Law Student,

Stephen B. Doucette, non-smoker

There are skills to be developed which may or may not be helpful in bar examination taking. There are specialized areas of law which are not and probably should not be bar examination tested. With Ohio in mind, one thinks of advanced and/or specialized areas of taxation, environmental law, law and medicine, labor law, and international law as examples.

Of course we should not neglect preparation for bar examinations, but we must not let the bar examinations become an excuse for neglecting nearly everything else.

Dean Carroll Sierk

Ohio's Living Will Statute

By Todd Bartimole

Ohio recently addressed a person's right to refuse life sustaining treatment by adopting Amended Substitute Senate Bill 1, which creates statutory guidelines for writing a living will, or "declaration," and also creates a framework in which life sustaining treatment may be removed when a patient has not made a declaration. The measure also made changes in existing law governing the durable power of attorney for health care.

Creators of Amended Substitute Senate Bill 1 had to take into account the concerns and desires of both right to life and right to die groups. They had to balance patient rights of privacy, the right to give and withhold informed consent for treatment, and the state's interest in preserving life. The compromises have resulted in an extremely complex law, with possibly unconstitutional provisions, which will undoubtedly create problems for health care professionals, patients, and their families.

The Living Will, or Declaration

Up until now, there has been no living will statute in Ohio. A living will, or declaration, governs the continuation, withholding, or withdrawal of life sustaining treatment. O.R.C. sect. 2133.02(A)(1). It also contains provisions for the removal or withholding of artificially administered food and hydration. A person may decide under what circumstances they would like treatment withheld, or they may decide they never want treatment withheld. In most cases, people executing living wills will be doing so to limit treatment.

Many law students have heard that the most critical part of any statute is its definitions, and there is no exception here. Four terms, and their respective definitions, which are of critical importance in the new law are:

1) "Life sustaining treatment," which the law defines as "any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying." O.R.C. sect. 2133.01(Q)

2) "Permanently unconscious state," which is defined as "a state of permanent unconsciousness in a declarant or other patient that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant's or other patient's attending physician and one other

physician who has examined the declarant or other patient, is characterized by both of the following:

1) the declarant or other patient is irreversibly unaware of himself [or herself] and his [or her] environment; and

2) there is a total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering." O.R.C. sect. 2133.01(U)

3) "Terminal condition," meaning "an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, both of the following apply:

1) there can be no recovery.

2) death is likely to occur within a relatively short period of time if life sustaining treatment is not administered." O.R.C. sect. 2133.01(AA)

4) "Comfort care," is defined as meaning "any of the following:

1) nutrition when administered to diminish pain or discomfort of a declarant or other patient, not to postpone his [or her] death;

2) hydration when administered to diminish pain or discomfort of a declarant or other patient, not to postpone his [or her] death;

3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish pain or discomfort of a declarant or other patient, not to postpone his [or her] death." O.R.C. sect. 2133.01(C).

The definitions are important in understanding the law because they determine what treatments and procedures can be removed and under what circumstances. A doctor may not remove comfort care to a patient. O.R.C. sect. 2133.12(E). However, that does not mean life sustaining treatment may never be removed. Stated in simple terms, life sustaining treatment may be removed only when it does not constitute comfort care, and a procedure or treatment is not comfort care when its principle purpose is to postpone the death of a person in a permanently unconscious state, or in a terminal condition.

For instance, a patient in a persistent vegetative state has a functioning brain stem, but no cortical functioning. This condition allows the patient's heart and lungs to function normally (controlled by the brain stem), but leaves the patient totally unaware of him or herself and his or her

surroundings, and unable to experience pain or suffering (because of lack of cortical functioning). A person could live many, many years in this state, if supplied with nutrition, hydration, and basic protection against infection and skin breakdown. If a person in this state has executed a living will under the Ohio law, administration of food and hydration would not be considered comfort care in this case because the provision of such would only serve to "postpone death." Statutory Requirements for a Living Will

Any competent person over 18 can execute a declaration. It must either be witnessed by two witnesses, or acknowledged by a notary public. A witness cannot be: 1) a relative by marriage, blood, or adoption; or 2) an administrator of the nursing home in which the person resides; or 3) the attending physician. O.R.C. sect. 2133.02(B)(1).

The living will can provide for the withdrawal or continuation of life sustaining treatment when the declarant is in either a permanent unconscious state, or terminal condition, or both. If the declarant wishes food and hydration to be withheld or withdrawn when in a permanent unconscious state, a specially initialed paragraph, written in capital letters must also be executed. No elaborate conditions are required for removal or withdrawal of artificially administered food and hydration when a declarant is in a terminal condition.

If the patient is pregnant, life sustaining treatment may not be withheld or removed unless the fetus would not be born alive. 2133.06(B).

The law also provides that a declarant may revoke a living will at any time, in any manner, verbal or written. O.R.C. sect. 2133.04(A).

The attending physician who is furnished with a copy of a living will must make it part of the patient's medical record. O.R.C. sect. 2133.02(C). If the attending physician and another physician determine that a patient is in a terminal condition, or permanent unconscious state (for a permanent unconscious state the second physician must be a specialist), and there is no reasonable possibility that the declarant will regain consciousness, then the living will becomes operative. sect. 2133.03(A)(1),(2). The physician then has the duty to contact people designated by law or by the living will, and give them an opportunity to object to the doctor's finding, or the decision to withhold life sustaining treatment. sect. 2133.05 (A)(2)(a).

The declarant may include one or more persons

See Living Will / p.10

Justice Mission Hits C-M

More than sixty law scholars from across the country visited the Cleveland-Marshall College of Law at Cleveland State University from Wednesday, October 30 through Friday, November 1, for a conference on "The Justice Mission of American Law Schools." Among those who attended was Talbot "Sandy" D'Alemberte, president of the American Bar Association.

The purpose of the 51st Cleveland-Marshall Fund Event was to assert that law schools and law faculty are obligated to understand the nature of social justice and to seek to advance conditions of justice, said Professor David Barnhizer, conference coordinator.

The event was dedicated to the memory of Robert B. McKay, the eighth Cleveland-Marshall Fund Visiting Scholar.

In addition to the CSU College of Law, co-sponsors included American University, Washington College of Law, CUNY Law School at Queens College; New York University School of Law; Thurgood Marshall School of Law, Texas Southern University; and Tulane University School of Law.

Robert B. McKay was former dean of New York University Law School. Barnhizer called McKay "a man of extraordinary decency, integrity and compassion, who in his teaching, writing and public service activities, sought to improve the quality of social justice and provided a compelling role model for students, law faculty and practicing lawyers."

comment

It was another time during my first few weeks of law school that I almost quit. The professor was trying to make it clear to the class that we were in "law" school, not "justice" school, and abridging any altruism might be in our best interest. We were already in the maze of voluminous, obscure, and often inconsistent holdings on whatever topic it happened to be. While we may have suspended judgement on how this would all add up, the passage of time, exams, and new courses left us disappointed, maybe angry and held at bay.

What I saw as a survival technique, or what I'd like to call "replacement", was competition: rank, grade point average, interviews with big

firms. Instead of enthusiasm in the classroom, we stalled professors and waited for the dreaded "Mr. ____" or "Ms. ____". Law Review was not the platform for inspired students as much as an absolute for getting a job in a depressed market. All of this was further irritated on a return flight from a recent meeting when I spoke with a medical student who informed me that most medical schools are now pass/fail. They found the competition counter-productive.

Professor David Barnhizer and the law school administration must be praised and applauded for the Justice Mission held at the end of October at this school. We should be proud. For three days, scores of professors and scholars converged in our halls to listen, examine, and debate justice issues from many different angles and perspectives. The speakers were not paid. I cannot believe it was mere notoriety that brought them here. I want to believe that they hungered for more than just the law.

This Justice Mission must continue. Professors on the teaching treadmill need to be re-inspired. Any reform in law school curriculum, teaching methodology, or bar qualifications will be futile unless the "zeal" of Canon 7, principles of justice, and humanitarian empathy replace the trade school mentality. This, then, must scoop up the students and compel men and women who want to be more than rich to champion a cause.

Those who accept the "replacement" and win the competition often find themselves victims of substance abuse, failed relationships, and an empty life beholden to the mega-firm or corporation. The bright-eyed first year students are not always naive. In my opinion, the right of passage through law school should resemble more that of the hero-apprentice than the defiant-inmate. What a challenge to the noble profession of law if people flunked out not because their grade point average was low, but because they did not have the character to fight. There is no adequate "replacement".

A Justice Mission nurtures missionaries. This style of education must infiltrate. The next time the Justice Mission is held here, who knows, maybe a first year student could give the opening address and remind us of what conviction or hope drew us to law.

Gary Gresko

NEWS BRIEFS

West Services, Inc. announced in the beginning of November that it reached an agreement with Cleveland-Marshall to continue its WESTLAW contract for the 1991-92 academic year. Negotiations followed months of speculation whether or not WESTLAW would continue here, in the face of the law library's budgetary constraints. Michele Cold, Academic Representative for West Services, will begin to implement the terms of the agreement, which will include legal research educational programs. WESTLAW plans to celebrate its relationship with Cleveland-Marshall. News of upcoming festivities will be communicated to the students through their mailboxes.

There is frequent discussion on bar passage rates, but little has been said about the application process. There are four sets of forms that need to be completed:

- the graduation application for the school, costing \$20
- the application for the Ohio Supreme Court, costing \$30
- the National Conference of Bar Examiners evaluation, costing \$95
- the Bar Examination application, costing \$125.

During the course of this process, you are asked about every job you have held since high school, and where you have lived since you were 14 years old.

A few local attorneys are allowed to cross-examine you about your life. They can send a report to the Ohio State Bar that can state one of three things:

- approved, having good character and fitness;
- disapproved; or
- approved with condition(s).

Anything other than "approved" could delay your ability to take the bar exam. You may have to get an attorney and attend a hearing to resolve any questions. It is a good idea to start this process as soon as possible. It is recommended that you start after 29 credit hours have been completed. Late filing results in a penalty of \$100.

The Right to Choose

By Andrea F. Rocco

If I hadn't forgotten the eggs at the grocery store I might never have taken the opportunity to attend a "Lawyers for Life" meeting. Stopping at a convenient store I parked the car. As I got out, I noticed a group of people gathering at the other entrance of the lot. I am not sure if it was the "You can still save your soul", "Don't murder your child" and "Have you slept with the devil" comments that were hurled at me or the panicked looks of some high school aged young women in the car next to me that made me realize I had stopped at the convenient store which happened to be located near the Planned Parenthood Clinic. I ignored this group of strangers who felt it was their business to tell me about my soul, bought my eggs, and left as the young girls were fortunately entering the clinic. I remembered seeing similar gatherings at this location on other Saturday mornings, but I just kept driving, shaking my head and wondering how a group of people could be so sure that their beliefs are right and that those beliefs must be imposed on the rest of us.

This time the group was not so easily forgotten. That's why when I received, as did each Cleveland-Marshall student, a notice inviting interested people to a "Lawyers for Life" meeting I didn't immediately pitch it. I attended the meeting because I had never been in contact with a pro-life group that was not radical. I thought this group might be a bit more subdued. I went to the meeting and was pleased to discover that the group was very much unlike the gathering in the parking lot, polite, professional, and absent of grotesque posters and bible passage spewing want to be prophets. However, the same underlying premises I feel are evident with other pro-life organizations exist.

The most prevalent and most troubling premises are the general pro-life opinions that a woman is not capable of making the decision to terminate her pregnancy alone, that she needs to be protected and that upon having an abortion she is wounded. I found it insulting to sit and listen to several speakers--mostly men--explaining that legal efforts are necessary to save children and protect women.

I agree with Mr. Mark S. Lally, the Legislative Vice-president of the Ohio Right To Life Society, Inc., in that abortion is not always good for women. Pro-choice supporters are not attempting to force women to abort unwanted pregnancies. Rather, they believe that this very personal

decision should be left to the pregnant woman. Mr. Lally and Ohio Right To Life seem to know what is the best choice for any pregnant woman regardless of her circumstances which is no choice at all. It is easier to understand why Mr. Lally and members of Lawyers for Life feel comfortable making such comments when one considers that they believe that upon conception a fetus is a human being, thus deserving the basic human rights we all enjoy. To support this belief comments were made aligning the "unborn" with the plight of the Jewish population in Nazi Germany and the Afro-Americans in pre-Civil War times. The differences are, at the least, two-fold. First, oppressed groups such as the Jews and the slaves were living, breathing, and already born. The oppression they undeservingly endured can not be compared to an aborted fetus because we have yet to determine when life begins. The second difference, the belief that life begins at conception, is at most one compelled by religious teachings, and at the least, a personal opinion. Many people can distinguish between aborting a fetus in the third trimester and a fetus two weeks into its development.

Another interesting comment was by an attorney who was reporting on legal issues and adoption. One of the few speakers to make reference to God, he insisted that adoption is the alternative to abortion and that there is something wrong when two million people are waiting to adopt children, yet 1.5 million abortions are performed a year. People die every day with perfectly functioning organs, yet we do not allow laws to force the removal of those organs simply because there are people awaiting organ transplants.

Overall, my thoughts on attending the meeting was that this group, like many pro-life organizations, tends to have a paternalistic--we know what is better for you than you do--attitude. The moments that speakers equated their actions with those taken by Abraham Lincoln and Martin Luther King quite simply angered me.

Pro-life organizations constantly preach on protecting the unborn. Although there tends to be involvement in pre-natal care and adoption services there is never any discussion on family planning services or birth control. It seems that their efforts and those of pro-choice supporters would be better spent on attacking the main problem of unintended pregnancies so that abortion would be less necessary. This can only be done by sex education and availability of contraceptives. It seems obvious that this is not an alternative

the pro-life side supports. Randall Terry of Operation Rescue, which targets abortion clinics has said, "I don't think Christians should use birth control. You consummate your marriage as often as you like and if you have babies, you have babies." One of the activities Lawyers for Life is involved with is representing people who are involved in Operation Rescue. I am not suggesting that to be pro-life or a member of Lawyers for Life necessarily means that one agrees with Mr. Terry's comment. I am only stating that any activity on behalf of family planning and birth control was absent from the group's meeting agenda the day I attended. Representatives at the Lawyers for Life meeting never referred to their opposition as pro-choice but pro-abortion. I suggest that the issues involved with a woman's right to control her reproductive body are not as clear cut as these pro-life supporters suggest. There are many people who are not necessarily for abortion but for choice.

quotable:

...what some Marshall sages are rumored to have said about the law school building...

"I think we could somehow incorporate the pain of being waffled by the falling bricks into the Socratic Method"

--Prof. Alan Miles Ruben

"I think the extra ventilation is actually beneficial."

--Dean Steven R. Smith

"Ouch, my head!!!"

--Asst. Dean Carroll Sierk

"You can sue the bishop of Boston for bastarding"

--Prof. David Goshien

"Not one construction worker has even whistled at me yet."

--Marlene Shettel

"What's the problem? You pull out some bricks -- it's just like a giant game of Ker-Plunk!"

--Prof. J. Patrick Browne

Walker Todd Speaks on Banking and S & L Crisis

By Karen Edwards

"When fall the banks of England, England falls." - from the movie "Mary Poppins."

A bandaid approach won't fix the ailing U.S. banking industry. It needs major surgery on both ideology and implementation. But it probably will get the bandaid because politicians and the public fear surgery could bring down the banking system. And the country with it.

Sort of like the what the Banks children learned in the well-known children's tale.

That's the message of banking economist Walker H. Todd, adjunct professor at Cleveland-Marshall Law School who is currently writing a book proposing (not predicting) the demise of our country's central banking system and especially, of the Federal Deposit Insurance Corporation (F.D.I.C.).

Both, he said, have worn out their purpose and their welcome.

The S & L fiasco could and should be "the load that breaks the camel's back" and fosters not only a banking revolution but also a revives a Constitutional debate that dates back to the days of the founding fathers.

For the 40 or so law students that listened to his October 10 lecture, it was a dramatic history lesson. Todd, using true law-professor Socratic style, began by writing across the blackboard, "Alexander Hamilton was right," and then refuting it.

Alexander Hamilton first proposed central, governmentally-chartered banks in the 1790s much to the chagrin of Thomas Jefferson, who pointed out that the Constitution never expressly allowed for federally-chartered central banks.

Boosted by the New York financial community, Todd said, the Hamilton viewpoint prevailed, but it wasn't formalized until the National Bank Act of 1863.

Todd considers himself more of a Jeffersonian but said that the system as it exists today has mutated into something far beyond what even Hamilton foresaw: It has become a government blank check to cover bankers' roulette and a guarantor for the nest eggs of a small rich faction.

It didn't start out this way. The central bank was to instill stability and F.D.I.C. insurance to facilitate payouts from what was left of failed Depression banks, Todd said.

But two fallacies developed--the idea of socializing private bankers' risk-taking and the prevailing doctrine that certain banks are "too

large to fail" and thus deserve extensive Federal Reserve loans.

In the Sept. 16 front-page article of The Nation, Todd called the S & L crisis "the greatest scam since the South Sea Bubble of the early 18th century." Then, wealthy investors in South Sea obligations were rescued by conversion of half of their claims into claims on the Exchequer, similar to the present switch of claims on dead thrift institutions and banks into F.D.I.C. claims which have partial backing by the full faith and credit of the government.

Todd is also worried about a trend by the Bush administration and the Treasury Department to deregulate banks, especially the push by the latter to repeal the Glass-Steagall Act of 1933 (keeping commercial banks out of securities and insurance prospecting) and the Bank Holding Act of 1956 (which prevents ownership or control of banks by other private industries).

But Congress also takes the blame, he said, pointing to the recent bending of a House subcommittee on limiting F.D.I.C. insurance to pressures of the bank lobbies.

The only politician he praised was an unlikely ally--Rep. Joseph P. Kennedy III (D-Mass.)--for refusing to forward the bill to future generations and for his temporary solution of giving bankers only \$20 billion of the \$70 billion F.D.I.C. chairman William Seidman requested.

If the S & L fiasco headlines are making the average taxpayer "mad as hell, not gonna take it anymore," it's justified, Todd said.

For Nobody knows the price tag. Although the \$70 billion from the Treasury and Federal Reserve banks has been used as a rough estimate,

Todd thinks the true figure runs closer to \$230 billion. He bases this on the red ink of the balance sheets of the 160 largest banks while writing down the bad leveraged buyout and Third World loans.

With the median F.D.I.C.-insured account falling between \$3,000 on the East Coast and \$1,500 in the Midwest, South, and West, the bailout costs for the average tax return will be about \$2,000, Todd said. In other words, the

Midwest taxpayer is now liable for more in S & L debt than he or she ever had at risk, a scenario he considers absurd.

What's the alternative?

In the absence of federally-chartered national banks, he said, the money supply could be handled as it was in the early days of this country--by the Treasury Department with some help from private sector organizations such as the old New York Clearinghouse.

Without Federal Reserve bailouts, Todd predicted, the local depositor and businessman would scrutinize his bankers far more closely. And the bankers, fearful of "lynch-like mobs," would behave more prudently.

The Hamilton-Jefferson dichotomy is philosophical as well as economic, he concluded. "It's a matter of whether our money system should be set by the consensus of society or by a small oligarchy of the rich and powerful."

Besides teaching "Law, History and Economics" at the law school, he is currently on leave from his position as assistant legal counsel and economic advisor for the Cleveland Federal Reserve to write the book, for which he received a grant from the Gulliver Foundation, San Francisco.

Todd's lecture was sponsored by the newly-formed campus chapter of the Washington-based Federalist Society, a national political organization which often supports conservative viewpoints. But the local group will concentrate on bringing speakers to campus of widely varied viewpoints, according to this year's president, Kevin Foley.

* * *



Accidents Happen

By Mark J. Bartolotta

In my former life, when I actually had a life to speak of, (an obvious reference to those carefree pre-law school years), I did some hard time working for a couple of major insurance companies. Every now and then, when all of the glamour and excitement of the job just got to be too overbearing, I'd take a look at a paper that had been circulated through the office. It always made me laugh. Maybe it can help to take your mind off of your studies for a minute or two. (Yes, a major assumption has been made here). You might be asking yourself what this has to do with law school. Think of torts. Think of negligence. Think of whether or not you have anything better to do.

"The following are actual statements found on insurance forms where car drivers attempted to summarize the details of an accident in the fewest possible words. These instances of faulty writing serve to confirm that even incompetent writing may be highly entertaining."

- "Coming home I drove into the wrong house and collided with a tree I don't have."

- "The other car collided with mine without giving warning of its intentions."

- "I thought my window was down, but I found out it was up when I put my head through it."

- "I collided with a stationary truck coming the other way."

- "A truck backed through my windshield into my wife's face."

- "A pedestrian hit me and went under my car."

- "The guy was all over the road. I had to swerve a number of times before I hit him."

- "I pulled away from the side of the road, glanced at my mother-in-law, and headed over the embankment."

- "In my attempt to kill a fly, I drove into a telephone pole."

- "I had been shopping for plants all day and was on my way home. As I reached an intersection, a hedge sprang up, obscuring my vision and I did not see the other car."

- "I had been driving for 40 years when I fell asleep at the wheel and had an accident."

- "I was on my way to the doctor with rear end trouble when my universal joint gave way, causing me to have an accident."

- "As I approached the intersection, a sign suddenly appeared in a place where no stop sign had ever appeared before. I was unable to stop in time to avoid the accident."

- "To avoid hitting the bumper of the car in

front, I struck the pedestrian."

- "My car was legally parked as it backed into the other vehicle."

- "An invisible car came out of nowhere, struck my vehicle, and vanished."

- "I told the police that I was not injured, but on removing my hat, I found that I had a fractured skull."

- "I was sure the old fellow would never make it to the other side of the road when I struck him."

- "The pedestrian had no idea what direction to turn, so I ran over him."

- "I saw a slow-moving, sad-faced old gentleman as he bounced off the hood of my car."

- "The indirect cause of the accident was a little guy in a small car with a big mouth."

- "I was thrown from my car as it hit the road. I was later found in a ditch by some stray cows."

- "The telephone pole was approaching. I was attempting to swerve out of its way when it struck my front end."

So the next time you try to swat a fly inside your car or a pedestrian outside your car, make sure your statement tells it like it is.

American Bar Association

The American Bar Association is the largest professional organization for practicing attorneys. The Association is made up of over 385,000 attorneys, which constitutes nearly half of all lawyers. The ABA is divided into five sections: Senior Lawyers Division, Government and Public Sector Lawyers Division, Judicial Administration Division, Young Lawyers Division, and the Law Student Division.

More than 36,000 law students belong to the ABA Law Student Division. Any law student attending an ABA accredited law school is eligible to become a member of this division by simply paying an annual membership fee of \$15. Membership in the Law Student Division informs students about the substantive law in general as well as specialized areas. It also offers economic benefits, provides opportunities for students to develop leadership skills, and creates great networking with practicing attorneys.

The ABA offers many benefits to law students, including:

- A one year subscription to the Student Lawyer and ABA Journal;
- Opportunities to participate in ABA/LSD programs and activities: Annual meetings, competitions, Volunteer Income Tax Assistance (VITA) program, etc.
- Economic benefits: Health insurance, life insurance, Hertz rentals, Preliminary multistate bar review course, MasterCard Program, MCI discounts, and preferred hotel rates.

The Law Student Division and the Young Lawyers Division are sponsoring the 1991-92 Negotiation Competition, Client Counseling Competition, and the National Appellate Advocacy Competition. The topics for these competitions include Real Property and Criminal Law. A maximum of two teams per school may enter. For more information, contact Michelle Joseph or leave a message at the SBA office.

Writing Competitions offer Prizes

To all of you who have completed your first year of law school (that's approximately 700 of you), I strongly urge you to enter the numerous law student writing competitions that are sponsored by various sections of the American Bar Association, select journals and publications, and different legal or law related organizations. These competitions offer cash prizes, (first prize is often around \$5,000.00), national recognition, and publication possibilities. It is also good resume value to have that you are a winner or recipient of one or more of these awards.

Many of these competitions have few entrants thereby increasing the possibility of winning an award. All you need to do is enter. You have to satisfy an upper level writing requirement,

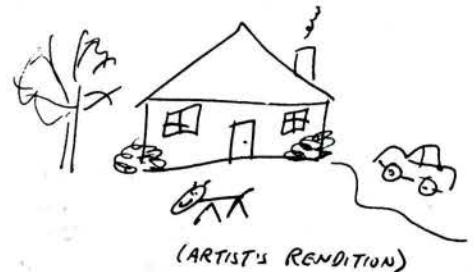
why not kill two birds with one [pen]. Your writings are just as good as -- and often better than -- any written documents submitted by students from other law schools. Trust me.

Information and details on the writing competitions may be obtained from me, Melody Stewart. I, along with the assistance of the faculty, the legal writing department, the student bulletin board and the student organizations, will keep you informed and aware of these competitions. Stop by the office of student affairs or the Gavel office for the latest list of writing competitions. There is nothing to lose, and plenty to gain.

Asst. Dean Melody Stewart

party at Forte's!

(Now that we have your attention) Professor Forte will be on leave from January to July 1992. His home in Lakewood will be available for rent to responsible law students during that time. Interested students should contact him at ext. 2342. (uh, just kidding about the party)



Thomas/Hill Hearings

By Michael J. Spisak

On Saturday, October 12, I woke up early to watch the Clarence Thomas confirmation hearings. The interrogations of Judge Thomas and Professor Anita Hill were quite extensive and were often filled with accusations and graphic descriptions of various types of immoral behavior. The interrogations didn't seem to bother me that much because I majored in Political Science in college. (a.k.a. cynicism). I had built up a tolerance for government muckraking and irresponsible media coverage, or at least I thought that I had.

Then I realized exactly what day and time it really was. (law school has a way of distorting time and reality). It was Saturday morning, that glorious time of the week when hundreds of thousands of children across the country wake up early to watch shows like Bugs Bunny and Teenage Mutant Ninja Turtles. However, on that particular Saturday they were treated to a new kind of cartoon; the United States Senate. In their schools the children are taught to revere these "wise and noble" people. They are told that if they study hard, then maybe one

day they might become a Congressman or Congresswoman. Any unlucky little boy or girl who happened to turn on the T.V. set that Saturday morning had their delusions about the "noble" U.S. Government completely obliterated. The Senate's complete lack of protocol and the media's insistence on making the confirmation into a three ring circus have undoubtedly discouraged at least a few unlucky children from thinking about running for political office. Not only did our country's leaders tear up Justice Thomas and Professor Hill, they tore up each other as well as the already battered reputation of the U.S. Government. What lesson is that kind of behavior teaching our children? (aside from a lesson containing a few colorful new words for the kiddies' vocabulary).

Many scholars say that the media is becoming another branch of our country's government. If that's true then I shudder to think of the kind of fungi that will grow from the rotting wood on the symbolic tree of American justice. If our government expects to gain the respect of its citizens, then it must handle sensitive matters with a little decorum and must report them with a little common sense.

10 Marshall Scholars Elected

The Street Law Program here at Cleveland-Marshall is offering a new program to area high school teachers who wish to be proficient in law-related education.

Ten outstanding high school teachers have been selected to participate in the Marshall Plan program. The Marshall Scholars will visit C-M to increase their proficiency by learning legal research skills, building lesson plans, and creating law-related demonstration projects for their school districts. Each scholar receives a \$1500 stipend. The program is directed by Assistant Dean Elisabeth Dreyfuss. It is funded by a grant from the U.S. Department of Education.

Marshall Scholars will have direct contact with attorneys, judges, law students, law professors, and community leaders. According to Sonia Winner, Street Law staff attorney and program coordinator, this contact will not only make participants better teachers, it will also make law professionals and community leaders more sensitive to the needs of education.

Eleven training sessions will provide Marshall Scholars with comprehensive instruction in substantive law; the legislative, executive, and judicial branches of

government; criminal law; civil litigation; and special exposure to tort law, contract law, and the laws governing race and sex discrimination. The teachers will also be instructed in using the law library and computer-assisted research tools.

Scholars will be paired with working attorneys to attend trials, hearings, depositions, and other legal proceedings. Each teacher will also have a peer mentor, a third-year law student who will visit the scholar's high school class and assist in teaching law to the students.

The Marshall Plan is open to public and private school teachers with strong writing skills and a proven commitment to education.

Following are the names and schools of the 1991-92 Marshall Scholars: Allan Abel, South High School; John Bowen, Lakewood High School; Joanne DeMarco, Collinwood High School; Lou Harrison, Warrensville High School; Susan Kargin, Shaker Heights High School; Chuck Robertson, Bay Village High School; Waymond Scott, Law & Public Service Magnet School; Sharon Thompson, Erieview Catholic High School; Deborah Turner, Cleveland Hts/University Hts High Schools; Lori Urogy Eiler, Shaw High School.

Living Will

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to be notified by the physician when the living will becomes operative. sect. 2133.05(A)(2)(a)(i). If there is no person designated, the law provides that the doctor must make diligent efforts to notify the first of the following people in descending order: the guardian, the spouse, the readily available adult children, parents, or adult siblings. sect. 2133.05(A)(2)(a)(ii). The physician must record his efforts in the record. The first two people (or majority of a class of people) on the hierarchy may challenge the decision. sect. 2133.05(B)(1)(b)(i).

A person so recognized by the law who objects to the removal of life sustaining treatment, or objects to the physician's finding, must inform the physician of the objection to the determination or the proposed course of action within 48 hours, and must file a complaint in probate court within the next two business days. If the complainant fails to file within the time period, the complaint is void. O.R.C. sect. 2133.05 (B)(1)(6)(ii). The law requires the complainant to plead specific statutory grounds of objection, which are listed in O.R.C. sect. 2133.05 (B)(2)(c).

These provisions shrewdly bar the ability of outside groups from entering the process by restricting the class of individuals with standing to petition the court for relief. But just to be sure, the law expressly prohibits the commencement or joining of a civil action by outside groups, including the state. O.R.C. sect. 2133.05(3).

Objectors may also plead to have the doctors reevaluate their decision that the patient is in a terminal condition or permanently unconscious state. To invalidate the living will (on grounds that it was executed under duress, for instance), the objector must prove the will is invalid by clear and convincing evidence. O.R.C. sect. 2133.05(4)(d)

Non Declarants

One of the problems with creating a living will statute is that the vast majority of citizens (probably about 85%, see Curry, *Living Will act may fall short*; Akron Beacon Journal, 7-11-91) will never execute one. With those people in mind, Amended Substitute Senate Bill 1 creates a framework for the removal of life sustaining treatment for a non-declarant.

One of the major compromises in the law is that a non-declarant, in a permanently unconscious state may not have food, hydration, or life sustaining treatment removed or withheld unless they have been continuously in a permanent unconscious state for over 12 months--regardless

of previous statements the patient may have made. Persons in a terminal condition may have life sustaining treatment removed with family consent, and are not subject to the 12 month rule, for the obvious reason that the patient normally wouldn't live that long.

In the event that the attending and one other physician determine that a non-declarant is in a terminal condition, or a permanent unconscious state for more than 12 months (for a permanent unconscious state the second physician must be a specialist), and they determine that the patient does not have, nor will regain, decision making capacity, and there is no power of attorney for health care, a person in the first priority class may give written consent to withhold life sustaining treatment. O.R.C. sect. 2133.08(A). The decision must be made in accordance with either the express wishes of the patient, or, if none were expressed, in accordance with wishes implied by the patient's values and lifestyle. O.R.C. sect. 2133.08(D)(3). If the priority class does not make a decision, or is not available, decision making authority descends to the next class. O.R.C. sect. 2133.08(B). In the event of a tie in a class, a decision to remove or refuse treatment may not be made. O.R.C. sect. 2133.08(C). Unlike a declarant's family, any of the top five priority classes may object to the decision once it has been made. O.R.C. sect. 2133.08(E)(1). As with declarants, the objections which may be plead are limited, but are more extensive than those available to objecting to decisions involving a declarant. O.R.C. sect. 2133.08 (E)(2),(3). The burden of proof required depends on the objection.

Withholding food and hydration from non-declarant have additional requirements. Only those in permanently unconscious states for over 12 months may have nutrition and hydration removed. O.R.C. sect. 2133.09. In addition to the doctors' determination that the nutrition and hydration will no longer provide comfort or alleviate pain, the Probate Court must issue an order to cease nutrition and hydration. O.R.C. sect. 2133.09(A)(6), and notice must be given to all of the top 5 priority classes by the court. The priority class applicant who applies for removal must prove in a probate court hearing, by clear and convincing evidence, the statutory requirements for the removal of food and hydration. O.R.C. sect. 2133.09(C)(2).

Potential Problems

While the new law may give some a sense of relief in knowing that there is a statute that legitimizes the removal of life sustaining treatment, food, and hydration in near death circumstances, many are concerned about the disruption of what has been quietly decided by doctors and family for years, usually without incident. The 12 month waiting period for non-declarants will frustrate commonly accepted practice in many hospitals and nursing homes. It also will clearly negatively affect the cost of health care. Many doctors see no major ethical dilemma in helping patients die when they are in advanced stages of illness

or in conditions which would fall within the definition of a permanently unconscious state. See Altman M.D., More Physicians Broach Forbidden Subject of Euthanasia, New York Times, March 12, 1991 (citing the New England Journal of Medicine). Most doctors will feel overburdened with the law's requirements and complexity, and certainly will resent some of the law's provisions which, in addition to removing some ability to make decisions, insinuate distrust of the medical profession.

The sheer complexity of the law raises concerns for everyone. The living will section is 40 pages long and requires multiple readings for a decent understanding of the provisions. A number of professors here quip about "full employment for lawyers acts," and this surely is one. While the Ohio State Bar Association has printed a model living will which has been approved by the Ohio State Medical Association, it really is advisable for people to see an attorney to explain the practical ramifications of signing such a document.

There is also serious question about the law's constitutionality. The Supreme Court in Cruzan held that a state court could require clear and convincing proof in determining whether a person would want the removal of life-sustaining treatment. It remains to be seen, however, whether a state has a legitimate interest in requiring a person to remain on life support for one year, when the patient's relatives can show by clear and convincing evidence that the patient would want to be allowed to die.

Another concern is that law allows the attending physician and/or the health facility where the patient is residing to refuse to comply with a patient's living will if not able or willing to, on moral or other grounds. This may not inhibit the patient's transfer, however, to a physician or facility that will comply. O.R.C. sect. 2133.03(D).

One of the obvious problems with this provision is that it puts a patient's express wishes on a collision course with doctor's and health facilities' newly established rights. For instance, if a nursing home will not allow the discontinuation of life sustaining treatment, but cannot find a bed in a facility which will comply with the patient's wishes, unwanted treatment can and will be administered, thus essentially battering the patient under the common law.

Clearly, it is not easy for doctors and

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Living Will

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other health care workers to witness someone dying, but a patient's privacy and autonomy interests should outweigh a doctor or a facility's moral interests in the matter. Doctors also are required to give unwanted treatment during the 48 hour period in which people can object to decisions to withdraw life sustaining treatment.

Eventually, this provision may be tempered by the patient self determination act, (42 USC sect. 1395) which will require health care facilities participating in Medicaid and Medicare to tell patients up front about hospital or nursing home policies regarding living wills and the withholding or withdrawal of treatment. The physician also has a responsibility to advise the patient up front about objections to the provisions of a living will, {O.R.C. sect. 2133.02 (D)(2)}, but because there are so many different situations which may arise, a doctor may not be able to effectively convey what situations she could or could not withhold treatment at the time the living will is first seen. O.R.C. sect. 2133.04(D)(2).

Only with time shall we be able to see the full effect of this law on doctors, health care workers, hospitals, nursing homes and especially the people who are patients and residents of them. If the durable health care power of attorney statute (another complex law which had to be revised by Amended Substitute Senate Bill 1), is any indication, revisions to fine tune the living will statute will probably occur in the future.



Some people met friends at the Bash, other people came with their own date.

Halloween Bash a Success

The first-ever SBA-sponsored Booster's Bash was held on November 2, 1991, at Mather Mansion. "The turnout was surprisingly good, especially considering the poor pre-bash ticket sales," said SBA president Elaine Eisner, rumored to have been dressed up in the Dean Smith costume.

Other notable luminaries spied at the bash included three hare krishnas (who later professed to actually espouse the krishna philosophy), assorted professor look-a-likes, not mentioning any names (Kornhauser, Gelman, Geier), as well as flappers, superheroes, and a variety of inanimate objects.

A panel of Celebrity Judges including Judge Perk, and professors Toran, Landsman, and Steinglass judged the costumes in a variety of categories for a costume

contest. Prizes awarded for some ingenious costumes included gift certificates for dinner, theater, and even weekend packages for two at a couple of Cleveland's finer hotels.

A great time was had by everyone present even though beer was one costume freely provided and worn by all. Willy "Spuds" Mather was heard to have slowly turned over in his grave as that gentle, yet pungent odor of spilled beer filled the night air. SBA Secretary Todd Bartimole said he really enjoyed cleaning up and that mopping up beer beat studying anytime.

In the end, the hassle was worth the effort, however, and the SBA should be applauded for their efforts in creating what will hopefully be an annual event at C-M.



This group of partyers wonder why they're in law school and pledge to pool all their money and open up a bar.



Rick Carpinelli and Elana Turoff said they both had a good time despite the fact that they were dressed in their normal street clothes.



Owlman and Batwoman were found exploring the many rooms of the mansion.



The krishnas, the nerd, and the law school pose for a pre-Bash publicity photo.

July, 1991 Ohio Bar Examination

Law School Tabulations

LAW SCHOOL	FIRST TIMER N	FIRST TIMER % PASS	REPEATER N	REPEATER % PASS	ALL TAKERS N	ALL TAKERS % PASS
Capital University	104	75	10	60	114	74
Case Western Reserve University	123	91	14	43	137	86
Cleveland State University	176	82	36	33	212	74
Ohio Northern University	27	89	5	60	32	84
Ohio State University	150	95	4	25	154	93
University of Akron	107	79	20	50	127	75
University of Cincinnati	102	93	5	80	107	93
University of Dayton	69	81	8	63	77	79
University of Toledo	87	90	9	56	96	86

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