Law school time span debated

By Jamie Kerlee
Co-Editor-in-Chief

Some law students across the country can now earn their law degree in 24 calendar months. The American Bar Association (ABA) recently lowered the six semester minimum to a five semester minimum. While the change is relatively new, some schools are already working the new option into their law degree programs.

The University of Dayton School of Law is an Ohio school providing students with the Five-Semester Study Option. Starting in 2006, Dayton will allow entering students to pursue the accelerated course of study. The curriculum carries the same total requirements but at a much faster and more rigorous pace.

Dayton also gives students the option of starting law school in the summer as opposed to the fall. See DAYTON, page 4

Class action suit filed against BAR/BRI

By Adam Davis

Think you’re paying too much for your bar review course? You’re not alone. BAR/BRI, the nation’s largest bar review company and self-proclaimed provider of “everything you need to pass the bar,” is the defendant in a recent class action lawsuit in which the plaintiffs seek more than $300 million in damages for what they allege to be “national price fixing and anti-competitive business practices” by BAR/BRI.

The two plaintiffs, both former law students, claim that since 1997, BAR/BRI has operated an illegal monopoly of the bar review market in violation of U.S. Antitrust laws and that BAR/BRI’s unlawful acquisition of competitors has resulted in customers being overcharged an average of $1000 each—over the course of almost a decade—several hundred million dollars.

The circumstances giving rise to the case began almost a decade ago. In 1995, well-known legal publishing company Thomson created West Bar Review (“West”) to compete with bar review companies like BAR/BRI.

By early 1997, West was available in over 40 states and held approximately 20 percent of the bar review market. By late 1997, however, things began to get suspicious, at least according to the plaintiff’s complaint.

It’s alleged that in early August of that same year, representatives from Kaplan, the largest test prep company in the United States and a main rival of BAR/BRI, agreed to terms by which it would purchase West from Thomson Company.

As more states turn to ballot initiatives aimed at prohibiting smoking in public places, the Gavel looks at the various arguments for and against a smoking ban in Ohio.

The Gavel scores an exclusive interview with one law student whose blog brought her prominence.

Professor Jennifer Gordon from Fordham University School of Law spoke Feb. 9, 2006, in the moot court room about past and present legal strategies for labor lawyers.

The myths and rumors about Cleveland-Marshall College of Law’s “C” curve are not entirely true. According to the Fall 2005 grade postings, the majority of C-M professors stuck to either the standard grading curve or were relatively within the range-permitted percentages in distributing grades.

Part of the reason for the discrepancy is the grading curve. C-M’s grading curve has to do with the standards of C-M’s admissions and the credentials of in-coming students. See CURVE, page 3

States’ overall 2005 bar passage rate for first-time takers

<table>
<thead>
<tr>
<th>State</th>
<th>Average Bar Passage Rate</th>
</tr>
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<tbody>
<tr>
<td>California (lowest)</td>
<td>60%</td>
</tr>
<tr>
<td>Illinois</td>
<td>84%</td>
</tr>
<tr>
<td>Indiana</td>
<td>79%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>79%</td>
</tr>
<tr>
<td>Mississippi (tied highest)</td>
<td>79%</td>
</tr>
<tr>
<td>New York</td>
<td>92%</td>
</tr>
<tr>
<td>Ohio</td>
<td>75%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>76%</td>
</tr>
<tr>
<td>Utah (tied highest)</td>
<td>72%</td>
</tr>
</tbody>
</table>

Source: The National Jurist

C-M defends use of grading curve

Despite discrepancies, grading curve protects school’s bar passage rate

By Morgan Keramati

The myths and rumors about Cleveland-Marshall College of Law’s “C” curve are not entirely true. While the standard curve set by the Academics Standards Committee allows professors of first-year courses to give 52 percent of students a grade of C+ or lower, the upper-division standard curve decreases the number of C+ or lower grades to 31 percent.

According to the Fall 2005 grade postings, the majority of C-M professors stuck to either the standard grading curve or were relatively within the range-permitted percentages in distributing grades. Part of the reason for the discrepancy is the grading curve. C-M’s grading curve has to do with the standards of C-M’s admissions and the credentials of in-coming students.

Some students with lower LSAT scores, who demonstrate other strengths, are admitted because the admissions committee sees other indicia of potential success. Professor Stephen J. Werber, Chair of the Academics Standards Committee, “C-M in part has a mission to create an opportunity for students to attend law school, however there are also limits within the opportunity we offer.” C-M’s part-time evening program and the LCOP program attract students who come into law school with constraints that can be academic or constraints that are created because a student works full-time and attends classes in the evenings, said Werber.

“The student body is a diverse body because of the constrains that lead to choosing a part-time program.”

See DAYTON, page 4

The Opinionista speaks out

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“The student body is a diverse body because of the constrains that lead to choosing a part-time program.”

See DAYTON, page 4

POLITICS, PAGE 5

Executive power gone awry?

President Bush has defended his use of wire taps without a warrant.

Gavel columnists debate whether President Bush broke the law or exercised a valid constitutional power.
Equal access to educational opportunities: Our proud past and future challenges

By Geoffrey Mearns

February is Black History Month. Therefore, it is an appropriate time to reflect upon our history – and consider future challenges.

As a law school that cherishes its heritage as a "school of opportunity", it is incumbent upon all of us to continue working to break down barriers.

Charles V. Carr ('26) was one such patriot. Mr. Carr was General Counsel of the Future Outlook League, a legendary organization for Cleveland's African-Americans. Another veteran was Lawrence Payne ('22), Cleveland's first black Assistant Prosecutor.

The life and career of Norman Selmy Minor ('27), for whom the local African-American bar association is named, has assumed almost iconic proportions. Prior to World War II, the trial courtrooms in Cleveland were not welcoming to black attorneys. As an Assistant County Prosecutor, Mr. Minor was a star, shattering demeaning stereotypes by his successful prosecution of over 5,000 felony cases, including 13 prosecutions for first-degree murder. For African-American lawyers, Mr. Minor was a role model and a mentor.

There were also many trailblazers among our African-American women graduates. Louise Johnson Pringle ('22) was Cleveland's first black woman lawyer. She formed her own firm and had a successful practice.

Other women, such as Hazel Mountain Walker ('19) and Jane Edna Hunter ('25), put their law degrees to work advancing teaching and social service careers. Ms. Walker was the city's first black woman school principal; during the civil rights movement, she emerged as a militant voice for equal educational opportunity.

Ms. Hunter, an extraordinary community pioneer, founded the Working Girls Association, an organization initially active on behalf of domestic workers and later on behalf of African-American children and families.

Lillian W. Burke ('51) became Ohio's first African-American woman judge, and Patricia A. Blackmun ('75) became the first African-American woman to win a seat on the Ohio Eighth District Court of Appeals.

Louis Stokes ('53) and his brother, Carl B. Stokes ('56), are among the first-year study groups tended to give way to the first-year study groups tended to give way to the first-year study groups tended to give way to the first-year study groups tended to give way to

It is my hope that these efforts will bear fruit for our law school and for the legal profession.

Indeed, in recent years, the number of African-Americans who have enrolled in law school in this country has remained flat. This lack of progress is disturbing. It suggests that there are still obstacles that impede access for minorities to a legal education in this country.

As a law school that cherishes its heritage as a "school of opportunity," it is incumbent upon all of us to continue working to break down those barriers.

We are actively engaged in those efforts. Through our Legal Career Opportunities Program, we are assisting students who are achieving academic potential but might not be readily apparent based simply on a review of traditional admissions criteria.

Under the leadership of Assistant Dean Gary Williams and Professor Patricia Patterson, the F.O.U.L. has developed a number of "pipeline" programs, which are intended to increase the number of minority students who will be prepared to and interested in attending law school in the future.

It is my hope that these efforts will bear fruit for our law school and for the legal profession.

As members of this community, we are rightfully proud of our law school's legacy. I hope our successors will be equally proud of the work we are doing to advance the causes of equal access and equal justice.

BAR/BRI: Bar course defendant in class action

Continued from page 1--

Marc D. Rossen, a C-M alumnum ('94) is the director of the National Bar Review program, a national bar review course based in Cleveland, Ohio. He views the lawsuit as an opportunity to delivery "higher quality benefit students."

"Hopefully, this lawsuit will make C-M students appreciate the importance of having competition in the Ohio bar review market place," Rossen said. "Not only does competition give students more choices, but it also forces everyone in the bar review industry to work harder to earn their business."

Rossen added, "Bar applicants in most states do not have a meaningful choice of bar programs. Therefore, I encourage every student to explore all of his or her bar review options and choose the course that is right for them."

BAR/BRI representatives at C-M did not respond to repeated attempts by The Gavel to reach them for comment.

Corrections

• On page 1 of the Dec. 2005 issue, the FYI box contained data as reported in the Nov. 2005 issue of the National Jurist about law firm attrition rates. The National Jurist issued a retraction for the story citing sloppy data gathering and inadequate factual verification. Therefore, The Gavel must retract the data as provided in the last issue about law firm attrition rates.

• On page 1 of the Dec. 2005 issue, the photo credit is incorrectly attributed to Paul Castillos, and it should be credited to Scott Kuboff.

• On page 2 of the Dec. 2005 issue, the same person was referred to as Scott Kuboff and Scotty Kuboff, it should be one or the other depending on your personal preference.
Prominent lawyer, C-M alumnus dies

By Jacqueline O'Brien

GAVEL CONTRIBUTOR

On January 2, 2006, Michael V. Kelley, a prominent Cleveland trial attorney and alumnus of C-M, passed away at age 54. Even though his career ended far too early, Kelley made an indelible impact on the legal community through his passionate advocacy of blue-collar workers, impressive legal victories, and unique style of lawyering.

Born and raised in Cleveland, Michael Kelley grew up the oldest son in an Irish Catholic family. His father was a local firefighter, and his mother worked at the family’s parish.

At a young age, Kelley demonstrated a strong work ethic reflective of the hard-working middleclass families in his community. While in school, Kelley earned money shoveling snow, working at a local dairy, and driving a delivery truck during his spare time.

After graduating with degrees in political science and history from Case Western Reserve University, Kelley pursued his long-time dream of becoming a lawyer. He enrolled in night classes at C-M where he met his wife, Lynn Arko Kelley.

In 1977, Kelley founded the law firm Kelley & Ferraro, LLP, one of the largest plaintiffs’ firms in the country, located in downtown Cleveland. Kelley & Ferraro’s practice areas include asbestos, silica, and welding rod litigation, as well as workers compensation and personal injury.

Kelley was noted for his fierce honesty and tenacious advocacy while at the bargaining table. He has been described as a corporate executive who kept evading Kelley’s attempts at serving him with a subpoena. In spirit of the holiday season, Kelley hired a professional Santa Claus to visit the exca’s office under the guise of delivering a present. But instead of delivering a fruitcake, Santa slapped the exec with a subpoena along with a jolly “Merry Christmas!”

Despite Kelley’s financial success, he never forgot where he came from. The Kel- lery generously donated to their alma maters and established fully funded scholarships to both St. Ignatius and C-M.

In honor of a multimillion dollar donation, Gilmore Academy named their middle school after the Kelley family.

In a 2003 interview with Inside Business magazine, Kelley commented about his expectations for his firm, “This is my company. This is my name on the door. I want to make sure it continues beyond me.” The best way is that the philosophy and culture that I establish continues to grow every day.”

Last summer, I was hired by Michael Kelley as a law clerk. Over the past six months, I have had the pleasure of working with the extraordinarily charismatic, sharp, and energetic attorneys at staff at Kelley & Ferraro.

Kelley’s legacy reminds me that I am privileged to work at his firm and humbled to help his clients and their families.

Grading curve: Allows school to give opportunities to students

Continued from page 1--

to poor performance?” Werber added.

A student’s academic perfor- mance is also directly correlated to successful bar passage, where students who maintained a G.P.A. of 2.5 or less, a C+ or lower average, passed the bar at a 25 percent rate in July of 2005.

C-M’s grading policy does not mandate that a professor give out any grade lower than a C, however, the guidelines do permit professors to give lower grades to students who do not perform well, which in turn may lead to some students not being able to graduate, said Werber.

“If the grading curve was not set up the way it is, think of how many more students C-M would have not passing the bar,” said Werber.

Concerns do arise, however, when professors teaching the same course, with the same number of students can have different distri- butions of grades, said 3L Joseph Patituce.

However, don’t complain about the curve when a professor distributes a higher number of A and B grades against the standards set by the course, noted Werber.

At the end of each semester, the office of the dean reviews the grade distributions before they are posted onto the student’s hompage on C-M’s Web site and contacts professors, where appropriate, to review his/her grade distributions.

“If a professor is off the guide- lines, he’s off the guidelines,” said Werber.

If a professor thinks that the performance of a class does not warrant the grade distribution of C-M’s curve, it is within the dis- cretion of the professor to give the grades the student deserves, added Werber. “If there’s a consistent pattern with a professor, then there’s something wrong.”

In looking at the grade postings for Fall 2005, some inconsistencies did exist among the courses taught by different professors.

For example, in contracts, a required first-year course, between 39 and 45 percent of students re- ceived a C+ or lower in three of the four sections, but in one section, 61 percent of students received a C+ or lower.

In criminal procedure, a bar- preparation course, between 72 and 74 percent of students re- ceived a B or better in two dif- ferent classes, where in the third, 62 percent of students received a B or better. And, in evidence, a course required for graduation, in one class, 71 percent of students received a B or better, where as in the other, 53 percent received a B or better.

Student concerns also arise regarding employment opportu- nities and competition with law students from other law schools, especially Case Western Reserve University, where Case’s grading curve allows for 20 percent of grades to be at a C+ or lower. Additionally, Case does not have a formal ranking system, according to Case’s Web site.

The office of career planning does make an effort to inform employers regarding the strict curve followed at C-M, including sending letters to employers, said Jayne Geneva, director of the office of career planning. “If employers aren’t aware of the curve, however, students should be the ones to inform prospective employers.”

The grading curve is one rea- son why OCP encourages students to place their class rankings on their resume, Geneva added.

“Case students have an ad- vantage over C-M in two areas: national rankings and bar pas- sage,” said Patituce. “I think C-M students that finish in the top of their class are competitive with Case students, but because Case has no official curve, those not in the top half of a C-M class are at a disadvantage against Case students.”

A student at Case with a 3.33 in the bottom of his class prob- ably looks better on paper than a student at C-M with a 3.2 in the top third of his or her class,” Patituce added.

Grading curves by law schools

By percentage

<table>
<thead>
<tr>
<th>Case Standard</th>
<th>C-M First Year Standard Range</th>
<th>C-M Upper Division Standard Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B+</td>
<td>B</td>
</tr>
<tr>
<td>10</td>
<td>17</td>
<td>23</td>
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<td>A</td>
<td>15</td>
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</tr>
<tr>
<td>B</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>C</td>
<td>14</td>
<td>18</td>
</tr>
</tbody>
</table>

*From through F accounts for 5 percent
Sources: www.law.cwru.edu and www.case.edu
**Attendance policy needed for first years**

By Karen Mika

Legal Writing Processors

When are the professors take attendance? Aren't the students old enough here to decide whether they want to attend class or not? From a pedagogical viewpoint, there are numerous reasons why professors might make attendance compulsory. For instance, the American Bar Association requires that students attend classes with "substantial regularity." How else to monitor that other than taking attendance? Also, some professors take attendance to reward students who do show up for class.

It can be extremely unnerving to attend all of your classes and get a lower grade on your final exam for a person who never showed up. There should be some reward for diligence, yes?

Also, and this may be hard for the more mature and responsible students to believe, but sometimes it’s arrive here and not quite being out of the college mode of skipping classes on the day that they have a big assignment due in one of the classes.

If we’re attempting to teach people, we have to work on breaking that cycle. As near as I can tell, most students “get” it by the end of the first year, and usually don’t obey the same type of lesson in the following years.

Frankly, there are a lot of things that go on in the first year for the “students’ own good” that aren’t appreciated until many years later. And, of course, some institutional decisions (like many parental decisions) are never appreciated in time.

I personally, do not take attendance although no student of mine could ever say that I don’t notice. (One student, who shall remain anonymous, even got an email from me in the middle of class asking about his whereabouts.)

I don’t appreciate it when I hear that my students are skipping other classes on the day one of my assignments is due, and I certainly don’t appreciate it when students skip my class when they have something like a quiz going on in another class.

The biggest pet peeve I probably have is being asked about what went on in class when a student did not attend, and I didn’t receive prior notice. If you turn out to be one of these people, don’t expect the borderline “B” to turn into a “C.” By the way, I notice.

But in the real world, you will work with all kinds of bosses. … Those who take attendance to make sure that you arrive at 3 a.m., and those who care only that you get your work done.

Just consider your law school professors as a series of bosses in the long line that you bosses will have you until such time that you become your own boss.

**Labor lawyer achieves change or owns terms**

By Kathleen Locke

Co-Editor-In-Chief

Jennifer Gordon, associate professor of law at Fordham University, visited C-M on Feb. 9, 2006, to discuss the changing role of law in organized labor and her own experiences working in this area.

Gordon’s work in this field sheds light on a different strategy for lawyers, which places an emphasis on using grassroots work and organizing to achieve change rather than using traditional lawyering techniques such as filing lawsuits.

Gordon has spent the majority of her career as an advocate for low-wage workers, said professor Mary Lou Dayton.

In 1992, Gordon founded the Workplace Project, a non-profit, grassroots workers center for low-wage Latino immigrants in Long Island, N.Y.

The organization was designed to build immigrant workers’ ability to deal with employment issues by informing the immigrants of their rights and providing a legal clinic for the workers, Gordon said.

Before receiving legal aid, the Workplace Project required immigrant workers to take a nine-week class to educate the workers on immigration and labor history, labor law and organizing techniques.

The class taught immigrants that regardless of their status, they were still entitled to fair wages and safe working conditions. This was especially true for undocumented workers, who are even less likely to report poor working conditions for fear of being deported.

“It is very unlikely this country will be able to stop the flow of undocumented workers,” said Patrick Kelley, 2L. “If these work- ers can be productive, then they should be able to learn about their rights and take action against employers who are blatantly abusing them.”

One important tool that the workers learned was the importance of organizing to achieve results. Gordon emphasized the essential role that organizing plays in lobbying the legislature to try and get laws passed, and then in making sure that the law is being followed.

“Just passing a law gets you very little on the ground,” said Gordon. “You have to organize to win law, defend law, enforce law, and get a new law that gets you a little further.”

**The Socratic method: timeless technique or outdated interrogation?**

By Kurt Fawver

Staff Writer

At C-M, as at many other law schools, the Socratic method has become diluted or mutated into a new teaching style. It is no longer viewed in terms of black and white, as good or bad, but as a necessary evil or an imperfect art.

C-M faculty members uniformly agree that certain concepts can only be taught through a Socratic method. The real dispute arises over how much Socratic discussion is necessary and what other methods should be instituted alongside that discussion.

Many professors see first-year courses as the primary focus of Socratic teaching. They only use the method in large foundational classes since it is easier to create an open dialogue in smaller classrooms.

Addressing the issue, C-M professor Dena Davis said, “In a class of 50-plus students, a genuine class discussion may be difficult to achieve.” As a result, most of the core curriculum at C-M is taught using the Socratic method in a more traditional form.

But does this fully prepare students for upper-level classes? Is the Socratic method a stable basis for creating practicing lawyers?

No one denies that the Socratic method is a useful tool.

"Questioning forces a student to understand the question and the answer to it," said professor Stephen Weber. "It encourages students to prepare adequately and to gain at least a minimal level of comprehension before they enter the classroom. It also shows students the importance of questions and aids them in noting just what type of questions a given problem or case may raise."

"Some professors use the phrase [Socratic method] to describe a classroom in which case law is ripped apart and analyzed from a variety of perspectives without drawing any clear conclusions," said professor Susan Becker. “When this type of discussion leaves students completely confused as to what the cases really stand for and the relative validity of various court’s conclusions, I question whether any sound pedagogical goals have been achieved.”

This cry has been heard again and again from both faculty and students across the law school. The Socratic method can do more harm than good, if law students feeling overwhelmed and unsure how to properly apply legal principles. Therefore, it must be wielded properly and supplemented with other teaching styles. Many faculty members have recognized this concern and are reacting favorably.

In upper-level classes, the Socratic method often undergoes a dramatic change. It is supplemented by hypotheticals and problem sets that can not be worked through, as if actually practicing law. And now, lectures also have more prominence, even amongst first year and foundational courses.

As technology develops, professors will have an increasing wealth of options with which to present legal material.

The advent of PowerPoint presentations and downloadable lectures is only the beginning. Perhaps one day the Socratic method will be entirely replaced by a virtual courtroom.

Until then, the teaching style remains, in one form or another, for better or for worse.

Summarizing the Socratic method, legal writing professor Karin Mika said that she “isn’t sure what it is.”

“In many respects, we might not even be able to call what happens at C-M an Socratic.” Mika explained. “It is watered down Socratic, which is a misnomer. Sometimes I think about the role that organizing plays in lobbying the legislature to try and get laws passed, and then in making sure that the law is being followed.”

Mika added, “In the meantime, it will likely stick around in one form or another with that material still “fresh in students’ minds.”

With the accreditation committee’s arrival quickly approaching, the recent processing of the bar passage rate, and the reconstruction plans of the law building continually progressing, C-M hardly has the time to implement a program comparable to that being launched by Dayton in 2006.

It would make sense to track the progress of the Day- ton students for several years, “A more focused, clear view about the possible future of an accelerated program at C-M. If it turns out that their bar passage rate is the bar exam, or fails, it would hardly seem beneficial to implement.”

**Dayton: Shortsens school term**

Continued from page 1--

fall. By starting in the summer, students can then complete the five-semester program and earn their law degree in 24 calendar months. Whether students elect the five-semester program, or the traditional six semester program, students are still afforded the opportunity to take one summer to pursue clerkship or work opportunities.

Critics of the accelerated program raise concerns about bar passage rates, increased workload, and the lack of time to pursue opportunities in the community.

Eric Allain, 3L, is concerned that the accelerated program will jeopardize the future of the jurisprudence.

“If they want to go to a program like that, then they should just go back to the bachelor’s degree of old,” Allain said.

Allain suggests increasing the requirement from five semesters to eight semesters of study with the idea that one of the years could be devoted to a residency program, community service, and a bare minimum of classroom time.

Megan Spanner, 2L, cautions that shortening the program might limit students’ opportuni- ties to take classes that pertain to their future interests or potential job.

On the other hand, the program boosts the opportunity to earn a degree sooner in turn placing students out in the job market sooner. For students that are struggling through school without jobs dependent upon families or student loans, the accelerated program offers a solution to minimize financial concerns.

Spanner has an overall favorable opinion of Dayton’s program, though skeptical about the possible future of an accelerated program at C-M. “If it turns out that their bar passage rate is the bar exam, or fails, it would hardly seem beneficial to implement.”

February 2006
Liberal rebuttal...

It’s notable that you don’t give a citation for Truong v. United States, because it’s a 4th Circuit case from 1980. This doesn’t trump FISA, (especially when it was amended in 1996) to mention the U.S. Constitution.

As for your weak legal arguments, I would direct you to the recent resolution of the American Bar Association:

“[The American Bar Association opposes any future electronic surveillance inside the United States by any U.S. government agency for foreign intelligence purposes that does not comply with the provisions of the Foreign Intelligence Surveillance Act... and urges the President, if he believes that FISA is inadequate to safeguard national security, to seek appropriate amendments or new legislation rather than acting without explicit statutory authorization... that the American Bar Association urges the Congress to affirm that the Authorization for Use of Military Force of September 18, 2001, 115 Stat. 224 (2001) (AUMF), did not provide a statutory exception to the FISA requirements, and that any such exception could be authorized only through affirmative and explicit congressional action;”

The American Bar Association opposes electronic surveillance against a terrorist or anyone else, and urges the appropriate amendments or new legislation rather than acting without explicit statutory authorization.

The Truong court recognized what is even more prevalent in today’s high-tech world of ever changing phone numbers and disposable cell-phones: the need for speedy and stealthy surveillance against a terrorist or anyone else, and urges the appropriate amendments or new legislation rather than acting without explicit statutory authorization.

In the extremely short period of time before news of his capture spreads around the world and those contacts become dead-ends, it is paramount for the NSA to gather as much information as possible. Simply put, there is no time to file legal documents and get a judge’s approval for a tap. Legally put, there is no requirement that such approval be had.

I agree that the Foreign Intelligence Surveillance Act allows wiretapping and the War on Terror... (in context)

Conservative rebuttal...

There you go missing the point again. There are checks on the use of domestic wiretaps. FISA applies to foreign intelligence conducted “within the United States” or “against the United States.” FISA does not apply to international intelligence. The NSA has full legal authority to intercept communications not within the United States and from U.S. persons not intentionally targeted. When monitoring does uncover a U.S. phone number or person communicating with the targeted foreign source, that information is shielded from further disclosure, and the person cannot be targeted without a warrant.

Regardless of our party affiliations or political beliefs, as future lawyers we know all too well the dangers of this course of action. We are taught in criminal procedure, constitutional law, and numerous other classes the importance of the Fourth Amendment and the checks on the president’s authority.

The framers of the Constitution did not trust the president with unbridled power. If the president is allowed to break the laws of our country with impunity during wartime, doesn’t that give him the incentive to always be “at war?”

Question: Was President Bush exercising a valid executive power or breaking the law?

By Mike Lalsazio, Conservative Gavel Columnist

We are at war. We are a nation at war against terrorists who are trying to destroy us.

The Constitution charges the president, in his role as commander in chief, to protect national security. After the September 11 attacks in 2001, Congress authorized the president, through the Authorization for Use of Military Force, to use “all necessary and appropriate force against those nations, organizations, or persons who determined, authorized, committed, or aided the September 11, 2001, terrorists attacks... in order to prevent any future acts of international terrorism against the United States.”

To that end, the president has authorized the National Security Administration to intercept international communications in and out of the United States of persons linked to al-Qaeda or related terrorist organizations. We are not talking about intercepting communications for the purpose of criminal investigation here. What we are talking about is war-time detection and prevention of future terrorist attacks against the United States.

Again, we are at war. Let’s be realistic here, none of us want to be spied on or have our conversations listened to. But the point here is that not just anyone is under surveillance. Only known or suspected terrorists with links to terrorist networks are the targets of NSA surveillance.

In the extremely short period of time before news of his capture spreads around the world and those contacts become dead-ends, it is paramount for the NSA to gather as much information as possible. Simply put, there is no time to file legal documents and get a judge’s approval for a tap. Legally put, there is no requirement that such approval be had.

Few would argue that intelligence inadequacies and failures contributed to the success of the September 11 attacks. Those attacks may have been prevented had proper surveillance procedures been in place. In fact, we now know that Nawaf Al-Hazmi and Khalid Al-Midhar, two of the terrorists responsible for flying a jet into the Pentagon, communicated overseas to al-Qaeda members while they were in the United States. Four years later, it is easy to return to the pre-attack mentality and put national security and intelligence gathering ability on the back burner. Only known or suspected terrorists with links to terrorist networks are the targets of NSA surveillance.

But it is paramount to not lose sight of what led to the attacks and put overly burden-some and unnecessary restrictions on our intelligence gathering ability.

By Paul Shipp, Liberal Gavel Columnist

Warrantless wire tapping and the War on Terror

Upon assuming the presidency, Bush took an oath of office required in the U.S. Constitution, Article I, Section 1, in which he swore to take care that the laws would be faithfully executed.

Ours is a government of limited power, defined by the constitutional concept of checks and balances. Those checks and balances do not disappear during wartime.

First, I want to make something clear. The Foreign Intelligence Services Act allows the president to begin wiretaps without a warrant, as long as a warrant is obtained within seventy-two hours after they begin wiretapping. However, information gained from the tapping cannot be used to justify a warrant.

The argument that the argument that the argument that the administration’s warrantless wiretaps would interrupt crucial intelligence gathering is bogus. Since its enactment, the FISA court has granted more than 10,000 national security warrants and only four have been turned down.

The only reason the president would not seek a warrant is because he is abusing domestic wiretaps. Again, wiretapping can begin without a warrant – as long as a warrant is sought within three days.

Nixon used warrantless wiretaps to spy on seventeen journalists and several White House staffers. These actions were a part of his articles of impeachment.

FISA was enacted in 1978 to prevent this kind of abuse from happening again. Violations of FISA are a felony. If there is no check on the president’s ability to use wiretaps, it could be used to spy on political opponents, journalists, and law enforcement officials. While FISA was passed over the vigorous objections of the executive branch not only has superior expertise in the area of foreign intelligence, it is also constitutionally designated as the preeminent authority in foreign affairs.” (Incidentally, it’s not as if the administration has taken an “FDR approach” to security by rounding up Americans who were abusing detainees from prosecution.

The Constitution charges the president, in his role as commander in chief, to protect national security. After the September 11 attacks in 2001, Congress authorized the president, through the Authorization for Use of Military Force, to use “all necessary and appropriate force against those nations, organizations, or persons who determined, authorized, committed, or aided the September 11, 2001, terrorists attacks... in order to prevent any future acts of international terrorism against the United States.”

To that end, the president has authorized the National Security Administration to intercept international communications in and out of the United States of persons linked to al-Qaeda or related terrorist organizations. We are not talking about intercepting communications for the purpose of criminal investigation here. What we are talking about is war-time detection and prevention of future terrorist attacks against the United States.

Again, we are at war. Let’s be realistic here, none of us want to be spied on or have our conversations listened to. But the point here is that not just anyone is under surveillance. Only known or suspected terrorists with links to terrorist networks are the targets of NSA surveillance.

It’s notable that you don’t give a citation for “Those who would sacrifice freedom for security deserve neither” - Benjamin Franklin.
By Nicole DeCaprio

The following is the fourth part in a six-part series following a first-year C-M student's journey to the bar exam. In this installment, the student reflects on his first year of law school and the challenges he faced during that time.

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Lawyer blogger takes on big firm anonymously

By Aaron Mendelsohn

These days, blogs seem to be every-where and about everything. Blogs about politics, sports, entertainment, gossip, and even law school (if you haven't read barely-legibleblogspot.com, do yourself a favor and check it out).

What started out 20 years ago as an Internet bulletin board has morphed into a pop-cul-ture phenomenon and given anyone with a voice an opportunity to be heard (and a shot at fortune and celebrity). It’s the ultimate level playing field, and just last month, one of those voices, Melissa Lafsky, had her life changed when her blog, www.opinionistas.com, became the center a New York tabloid media frenzy.

In a little less than a year, Lafsky has gone from a 27-year-old Dartmouth and University of Virginia law grad employed at the prestigious Manhattan labor and employment firm, Littler Mendelson, to a cult hero among many fresh-faced associates.

Lafsky wrote about life as a young at-ten-tion-sharing, humorous anecdotes about herself and her friends that were working at some of the city’s top firms. She did so in the truesmiffy anonymity of the Internet, careful not to reveal her or anyone else’s identity, but what transpired in the next year has changed Lafsky’s life forever.

“I started writing the blog in March of 2005,” Lafsky explained via phone from her New York City apartment. “And the reason I started was that I had chronic, miserable insomnia. Sleeping pills did not work, noth-ing worked. Finally, I saw a therapist, who specialized in anxiety, and he told me one of the things that you really need to start doing is writing every night before you go to bed.”

I’ll start writing every night before I go to bed about whatever’s on my mind.”

I’ve taken a lot of the posts old down, but I was sleeping. And it was more therapeutic.”

For the next month, Lafsky toiled in anonymity, writing for what she intended as a select group of friends and family. But to the Internet public, Lafsky was becoming known as Opinionista, a charming, smart observer of all things related to life in the big city law firm.

Careful not to use real names or clients, Lafsky was blogging about what she saw or heard, ensuring her blogging posts about the ridiculous senior partner’s antics, or the lavish, unappreciated parties thrown for summer associates.

It was what consumed her at the time, and it made for thoroughly entertain-ing reading.

“When it all started, I started writing about my job because it was there, and there was stuff to say, and no one was reading the blog,” she says. “Once I knew that people were reading the blog, and a couple other people were reading it, but it wasn’t any kind of big deal.”

So I started writing and it’ll let them know what’s going on in my life. And it’ll serve the dual purpose of allowing me to have an outlet before I go to bed. So I started writing and it was an instant catharsis, stuff was just pouring out. I was writing for a while, almost every night. I’ve taken a lot of the posts old down, but I was sleeping. And it was more therapeutic.”

As a self-proclaimed advo-cate of individual freedom of choice, I tend to be somewhat skeptical when the government attempts to legislate, restrictions or regulations on a private in-dividual in the name of some greater good for society.

However, when California added secondhand smoke to its toxic pollutants list on January 26, 2006, even I began to have second thoughts on whether the State has the right to ban smok-ing in public businesses.

While some view the poten-tial state-wide ban of smoking in public places in Ohio as a progression toward a healthier lifestyle, others see it as a regression to the days of the King’s Law.

This prompted me to start investigating the issue. In an attempt to get a better under-standing of the arguments in the City of Cleveland view the proposed ban, I hit the streets and began asking questions.

Laura Balliett, a 25-year-old non-smoker who has worked in bars in Cleveland for five years, is in favor of the ban. “Smoking” customers don’t care about non-smok-ers,” said Balliett. “I have to inhale secondhand smoke all night and it makes it harder to breathe.”

David, a 48-year-old smok-er, enjoys frequenting non-smoking restaurants, like the Great Lakes Brewing Com-pany, in the Near West Side.

“I’m a smoker, but I don’t like it when I’m trying to eat and someone else lights up next to me,” said David. “For me it’s an addiction, but I respect non-smokers.

When asked about his views on a congressional-imposed ban, David replied, “It should be up to the business owners. It’s all about having a choice. I don’t smoke in bars, but it is my personal choice.”

The Great Lakes Brewing Company (“GLBC”), in Ohio, has been a non-smoking establishment since September, 2005.

“The decision was our per-sonal choice,” said Elizabeth Buck, General Manager. “The response has been overwhelmingly pos-itive and we continue to receive kudos from our customers.

GLBC’s business increased by ten percent by December 2001, and there is no sign of the [bar] going down. In fact, I don’t hear about the staff’s general posi-tion, Ms. Buck replied that the staff overall appreciated a healthier work environment.

“We offered hypnosis ces-sation programs to all staff who were interested and many participated,” Buck said.

Professor David Forte at C-M, a supporter of “smoker’s rights,” shed light on the sub-ject from a legal standpoint. For him, it is a policy issue.

“I opposed the smoking ban in Lakewood, Ohio, for a number of reasons,” said Forte. “No one is forced (with maybe the exception of people who work in bars) to an environment containing smoke. Restaurants which banned smoking entirely have a different clientele and they thrived.”

Ultimately, whether the ban will pass or not, is of course, up to the voters in Ohio. Time will only tell if the decision is a good one.
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