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2006 Vol. 54 No. 4

Cleveland-Marshall College of Law

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.

POLITICS, PAGE 5

Personal rights up in smoke?

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.

OPINION, PAGE 7

The Opinionista speaks out

More lawyers are starting blogs to vent about their daily frustrations. The Gavel scores an exclusive interview with one lawyer whose blog brought her prominence.

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THE GAVEL

VOLUME 54, ISSUE 4 FEBRUARY 2006

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

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

See **DAYTON**, page 4

Photo by Kathleen Locke

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.

Turn to page 4 for more about Professor Gordon

C-M defends use of grading curve

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

By Margan Keramati
STAFF WRITER

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.

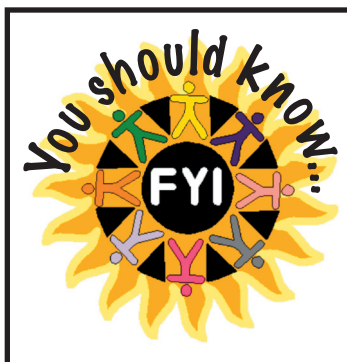
Part of the reason for the design of C-M's grading curve has to do with the standards of C-M's admissions and the credentials of in-coming students.

Some students with lower LSAT scores, but who demonstrate other strengths, are admitted because the admissions committee sees other indicia of potential success, said 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.

"Am I supposed to raise grades because of the constraints that lead

See **CURVE**, page 3



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

State	Average Bar Passage Rate
California (lowest)	60%
Illinois	84%
Indiana	79%
Kentucky	79%
Mississippi (tied highest)	92%
New York	75%
Ohio	**79%**
Pennsylvania	76%
Utah (tied highest)	92%
West Virginia	72%

Source: The National Jurist

Class action suit filed against BAR/BRI

By Adam Davis
GAVEL CONTRIBUTOR

Think you're paying to 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. Anti-Trust laws and that BAR/BRI's unlawful acquisition of competitors has resulted in customers being overcharged an average of $1000 each – or 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. However, shortly thereafter, high ranking representatives from BAR/BRI allegedly approached representatives from Kaplan and, in a secret meeting, reached an agreement whereby Kaplan would refrain from acquiring West, while BAR/BRI would, in turn, stay out of the LSAT prep market.

At the time of the agreement, Kaplan controlled more than 50 percent of the LSAT market. BAR/BRI currently offers no LSAT prep course, while Kaplan doesn't offer bar exam review.

Besides the secret agreement with Kaplan in 1997, the complaint also mentions a laundry list of alleged anti-trust violations including using non-compete agreements with its teachers, paying off law school administrators to control physical access to classrooms, preventing competitors from getting physical access

See **BAR/BRI**, page 3

THE GAVEL
Law
February 2006

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.

C-M was one of the first law schools in Ohio to accept African-Americans. Our law school was only four years old when, in 1902, William Clifford graduated. Mr. Clifford is the first African-American alumnus we have been able to identify. He had a distinguished career as a two-term member of the Ohio General Assembly.

The Dean's Column

The years following World War I were significant ones in the history of African-Americans. Many emigrated from the South, seeking better jobs in the foundries and factories of the North. Others returned from the battlefields of Europe and began to claim the same rights for themselves that they had fought to preserve for others.

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 Selby 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 Pridgeon ('22) was Cleveland's first black woman lawyer. She formed her own firm and had a successful federal 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 best known of our black alumni. In 1967, the year President Johnson appointed Thurgood Marshall to the U.S. Supreme Court, Carl Stokes was elected the first black mayor of a major American city. A year later, Louis Stokes was elected to the U.S. Congress; he was Ohio's first black U.S. Representative.

In the 1980s, President Jimmy Carter appointed George W. White ('55) to the U.S. District Court for the Northern District of Ohio; in 1995, Judge White became that court's first black Chief Judge.

Today, our graduates – irrespective of race, sex, or national origin – continue to become leaders in law, business, and public service. But the legal profession still does not adequately reflect the diversity of our country.

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 admit students whose academic potential might not be readily apparent based simply on a review of traditional admissions criteria.

Under the leadership of Assistant Dean Gary Williams and Professor Pamela Daiker-Middaugh, we also participate in 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.

Are study groups beneficial?

By Shawn Romer
STAFF WRITER

Many students enter law school with a few preconceived notions. Law school will be hard. It will be time consuming. And it will be competitive. Accordingly, many students start their law school experience desperate to find a study group to join.

Many 1Ls envision study groups as they are depicted in the movies – a small group of students meeting in the corner of the library, sipping coffee, staying up all night engulfed in fascinating Constitutional debates, using big words, and generally sounding smart and "lawerly."

Unless told otherwise, joining a study group seems to 1Ls as inevitable of a law school activity as being stumped at least once in class by a probing contracts professor. But in reality, joining a study group is not mandatory to make law review, though it may help.

According to Daniel Dropko, the program manager of Academic Excellence at C-M, the most compelling reason to join a study group is that "they work." In forming a study group, Dropko recommends you find fellow students who are not only diverse from you who can bring different perspectives and understandings to the material, but also those who are not necessarily your friends.

This makes it easier to focus on the material and less likely to trade gossip about your fellow section members. In addition, if a group meets periodically, the group should assign one or two discussion leaders each meeting.

"Assigning leadership is key in designating someone to focus the group and keep it on track," Dropko said. Also, students should prepare for the study group, just like they would prepare for a class. Assign a topic of discussion for the group and get ready to talk about it. Entering a study session without a designated discussion leader and without preparation often proves to be a waste of time, every law student's most valuable resource.

Another effective method is to work through old exams as a group and discuss the answers collectively. Eric Allain, a 3L at C-M, affirms the effectiveness of study groups. Allain joined a study group his first year.

As with most students, the group members did not take all the same classes together in subsequent years so continuation of the formal group was impossible. However, Allain explained that if the members were in the same class, they would informally meet periodically in a less organized forum.

Most students asked agreed that the formal structure of first-year study groups tended to give way in the following years towards the more informal method of studying with a friend or two. According to Allain, the greatest benefit of a study group is that it forces the students to vocalize their understandings of the material.

Oftentimes, it is not until students try to explain the subject matter that they realize whether they truly grasp it or not. In addition, students sometimes figure out material as they try to explain it, although the muddled result may seem less than clear to the fellow members and may require a second attempt. However, Dropko did note that study groups are not for everyone.

"There are always people who just learn better on their own at their own pace," said Dropko. "But even for them, the thoughtful input of others can be of great value and should not be overlooked. Don't be afraid to try something new."

BAR/BRI: Bar course defendant in class action

Continued from page 1--

to classrooms, offering ABA-branded "scholarships" to price discriminate in favor of students who are considering review courses offered by competitors, tearing down advertising of competitors, and buying out competitors in New York and Louisiana, only to increase prices shortly thereafter.

Currently, BAR/BRI does not have a standard, nationwide price for its bar review course, but instead charges varying prices depending on the state in which the course is being offered.

Few law students at C-M are unfamiliar with BAR/BRI. The test prep giant claims to have prepared over 900,000 students for various state bar exams and, according to its Web site, prepares more than 95 percent of students who sit for the bar exam every year.

With most review courses costing several thousand dollars, it's easy to see that "bar review," in the words of Stanley D. Chess, a former top executive at BAR/BRI, "is a very profitable business."

It's no wonder then that the case has already garnered so much attention within the legal community, particularly with other companies offering their own bar review courses.

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

"Hopefully, this lawsuit will make C-M students appreciate the importance of having competition in the Ohio bar review marketplace," 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 review 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 Castillo, 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.

During his legal career, Kelley concentrated on achieving social justice by representing working and middle class families against major corporations.

Kelley was a major player in finding innovative resolutions to asbestos litigation both inside and outside the courtroom.

Deemed "Cleveland's King of Torts" by *Inside Business* magazine, he negotiated settlements in the hundreds of millions of dollars on behalf of his clients with companies including Honeywell Corp. and Halliburton.

In 1997, 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.

Presently, the firm employs over 100 attorneys and support staff and represents over 35,000 clients. Kelley and his partner Jim Ferraro also invested in the Las Vegas Gladiators Arena Football team.

Yet, some might argue that Kelley was most proud of the Kelley & Ferraro softball team's undisputed title as champs of the Lawyers Softball League of the Cleveland Bar Association.

The most striking thing about Michael Kelley was not the level of success he reached or the incredible results he generated for his clients, but rather the way in which he produced such results.

Kelley was notorious for his fierce honesty and tenacious advocacy while at the bargaining table. He also possessed a reputation as a bulldog in the courtroom.

Jim Ferraro recalled the following example of Kelley's innovative approach to practicing law. Several years ago around Christmas time, Kelley was growing frustrated with 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 exec'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 Kelleys 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 and 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 performance 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 distributions 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 curve, 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 home page on C-M's Web site and contacts professors, where appropriate, to review his/her grade distributions.

"If a professor is off the guidelines, 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 discretion 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 do exist among the same courses taught by different professors.

For example, in contracts, a required first-year course, between 39 and 45 percent of students received 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 received a B or better in two different 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 opportunities 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 reason why OCP encourages students to place their class rankings on their resume, Geneva added.

"Case students have an advantage over C-M in two areas: national rankings and bar passage," said Patitutce. "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 probably 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

Case		C-M First Year			C-M Upper Division		
Standard			**Standard**	**Range**		**Standard**	**Range**
A	10	A	12	10 - 14	A	16	12 - 20
A-	15						
B+	17	B+	16	12 - 18	B+	20	16 - 24
B	23	B	20	18 - 22	B	23	18 - 26
B-	15						
C+	10	C+	17	14 - 21	C+	18	14 - 22
C	5	C	20	17 - 23	C	14	10 - 18
C-							
D+		D+	7	2 - 12	D+	3	0 - 8
D	5*	D	5	2 - 8	D	3	0 - 8
D-							
F		F	3	0 - 6	F	3	0 - 5

*C- through F accounts for 5 percent
Sources: www.law.csuohio.edu and www.case.edu

Attendance policy needed for first years

By Karen Mika
Legal Writing Professor

Why do some 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.

Legal Writing

It can be extremely unnerving to attend all of your classes and get a lower grade on your final than the 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 1L's arrive here 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 train people in responsibility, 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 need 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 yes, 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 "B+" when I hand in my final grades.

But in the real world, you will work with all kinds of bosses…. Those who take attendance to make sure that you arrive at 7 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 of bosses you will have until such time that you become your own boss.

Labor lawyer achieves change on own 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 Joan Flynn.

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 workers 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 has 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 as a major underpinning.

But does this fully prepare students for upper-level class work? 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 Werber. "It requires students to prepare adequately and to gain at least a minimal level of comprehension before they enter the room. 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 courts' 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.

It can leave 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 supplanted by hypotheticals and problem sets that students can work 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 the method "certainly isn't what it was."

"In many respects, we might not even be able to call what happens at C-M as Socratic," Mika explained. "It is watered down Socratic. Will it die? Who knows, maybe with technology and distance learning, the land-based university will die entirely."

Mika added, "In the meantime, it will likely stick around in one form or another."

Dayton: Shortens 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 juris doctorate degree.

"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' opportunities to take classes that pertain to their future interests or potential jobs.

On the other hand, the program boasts 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 such financial concerns.

Spanner has an overall favorable opinion of Dayton's program. "A more focused, shorter program has the potential to be a better program," she said. One of the benefits to the accelerated program is taking the bar exam relatively soon after the required courses like property, torts, etc. 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 more sense to track the progress of the Dayton students for several years," said Spanner when asked about the possible future of an accelerated program at C-M. "If it turns out that their bar passage rate remains the same, or falls, it would hardly seem beneficial to implement."

The Political Broadside

Warrantless wire tapping and the War on Terror

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

By Mike Laszlo
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, 115 Stat. 224, to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, 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.

The person authorized to make the choice has determined this is an effective and productive method of gathering intelligence necessary to keep our nation safe. I mean, it's not as if the administration has taken an "FDR approach" to security by rounding up all Middle-Easterners and placing them in internment camps to "protect" them until the war is over, is it?

Our courts have recognized a "foreign intelligence" exception to the warrant requirement citing the compelling needs of the executive in the area of foreign intelligence such as stealth, speed and secrecy. In *Truong v. United States*, the court stated that "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, as this was a Carter-era case, the court's use of "expertise" could only have been a hope for the future of the office.) The court went on to say, "the courts should not require the executive to secure a warrant each time it conducts foreign intelligence surveillance."

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 technologically advanced enemy. When a terrorist is captured in Afghanistan or Iraq, the contacts in his phone and/or computer are precious links to other terrorists in the network.

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 obtained.

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. For instance, 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 on the back burner.

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

By Paul Shipp
LIBERAL GAVEL COLUMNIST

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.

So the argument that the hassle of getting warrants 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.

Bush and the attorney general have argued that Congress' 2001 resolution authorizing the use of military force against al-Qaeda and the Taliban implicitly authorized the president to use domestic wiretaps without warrants. This is clearly not true.

According to Senator Tom Daschle, the former Senate majority leader who negotiated the resolution with the White House, the administration wanted to include language explicitly enlarging the president's war-making powers to include domestic activity.

That language was rejected. Obviously, if the administration felt it already had the power, it would not have tried to insert the language into the resolution.

Under the War Crimes Act of 1996 it is a crime for any U.S. national to order or engage in the murder, torture or inhuman treatment of a detainee. When a detainee death results, the act imposes the death penalty. In addition, anyone in the chain of command who condones the abuse rather than stopping it could also be in violation of the act.

It has become clear that torture of detainees is widespread and systematic. In January 2002, White House counsel Alberto Gonzales advised President Bush in writing that United States mistreatment of detainees might be a violation of the War Crimes Act. Bush authorized an "opt-out" of the Geneva Conventions to try to shield the Americans who were abusing detainees from prosecution.

The pattern for this administration is clear; when the law forbids our behavior, ignore the law. This president has failed miserably in his oath of office to faithfully execute the laws.

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?"

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 1995), not 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:

"[T]he 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 § 2(a) (2001) (AUMF), did **not** provide a statutory exception to the FISA requirements, and that any such exception can be authorized only through affirmative and explicit congressional action;"

It's not like the dangers of this kind of unbridled wiretapping are hypothetical. President Nixon was impeached in part for abusing this power.

"Those who would sacrifice freedom for security deserve neither" - Benjamin Franklin.

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 U.S. persons." 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.

As far as the Framers' trust in the office of the presidency is concerned: The power to protect the nation "ought to exist without limitation ... because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent & variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the case of it is committed." Federalist No. 23. "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished." Federalist No. 70.

Regardless of our party affiliations or political beliefs and as citizens of the greatest nation on Earth, we know all too well the terror that lack of effective leadership and intelligence can bring.

SBA proposes changes in spring schedule

By Brendan Healy
SBA President

This semester, your SBA will concentrate on your academic and social needs, both present and future, by implementing new policies that will enhance your overall academic experience, planning more social events and raising money for the Wolstein Scholarship Fund.

We are proposing a resolution to the Bar Review Committee that will effectively push the spring semester back one week, e.g. the Spring 2007 semester will hopefully begin on January 8 (currently classes are scheduled to begin on January 16).

This proposal will give students an extra week to relax, after Spring exams, before beginning bar review courses. Moreover, it will provide them with additional time to make arrangements with their employers and/or families.

Additionally, this change will result in grades and class ranks being posted a week earlier. This will give students notice of their academic standing before beginning summer classes, as well as benefit students applying for summer and/or fall employment.

It should come as no surprise, given the above listed benefits of this policy, that seven out of eight law schools in Ohio end their spring semesters a week earlier than C-M. The current schedule places us at a severe disadvantage, with respect to these other schools, when it comes to bar preparation

If you have any questions regarding this policy, I encourage you to contact myself, Meredith Danch or Jamie Umerely. Meredith and Jamie worked very hard on this policy, and I sincerely thank them for their efforts.

A few final notes, on March 4th, 2006, the SBA will hold its annual Barrister's Ball at the Allen Theatre located at Playhouse Square. Keller Blackburn did an excellent job planning this event, and it should be a memorable time for all those who attend.

Furthermore, we are beginning a fundraising drive to raise money for the Wolstein Scholarship fund. The SBA's goal is to raise seven to ten thousand dollars. We will auction off three bar/bri bar review courses to help meet this goal. Again, I thank Ryan Feola and bar/bri for their continued support of the C-M student body.

Additionally, Scott Kuboff (SBA Treasurer) and I teamed up with professor Hoke to sell books donated by the faculty. We sold every donated book and raised around $1600. I would like to thank professor Hoke and the rest of the faculty for supporting the scholarship fund. Moreover, I thank Mr. Kuboff for his energy and commitment to this project.

As always, if you have any questions, please feel free to contact me at bhealy@law.csuohio.edu.

Getting to know professor Buckley

By Nicole DeCaprio
Staff Writer

Q: Where did you grow up?

A: I grew up in New York City. Every time I'm there I make an effort to get back to my old neighborhood. Its demographics have changed over the years, but physically the neighborhood is the same as it was decades ago, with vast public parks and the only virgin forest in Manhattan.

Q: What's the best movie of all time?

A: I like movies. So I've seen far too many to pick just one. Excellent recent movies include A History of Violence and Brokeback Mountain is another. Hustle & Flo is also good, sentimental, but good and I like happy endings. Farther back in time, Psycho has to be on any list of great movies.

Q: What's my favorite TV show?

A: I don't watch much TV. The Weather Channel's Local on the Eights is what I'm most likely to select. For entertainment, Law and Order, the original version, at least is fast moving. When it was still on, Seinfeld was clearly my number 1 entertainment show. It was extremely well paced and written with real wit. I used to laugh out loud at Seinfeld.

Q: What's your favorite non-law book?

A: Again, (as with the movie question) the question seems to assume there would be some one book I love so much that I keep reading it over and over again, or that I carry a copy of it around with me at all times. That's not the way it is. At the moment I'm reading Madame Bovary, Fast Food Nation, and Postwar. They are all different. I recommend them all.

Q: Why are C-M students so great?

A: Most students have a good sense of humor. I just saw a T-shirt worn by a student that said "Make Love Not Law Review." I thought that captured a certain attitude with brevity and aplomb. But in fact, only students who work hard are apt to make fun of hard work with a witty tee shirt like that one. Students do work hard, both on school assignments and often on part-time or full-time jobs. It's remarkable how well prepared night students are. C-M students are serious students who don't however take themselves too seriously.

Q: Why should students take a course in commercial law?

A: It's on the bar exam, where the term "commercial law" includes both L601, Commercial Law, and also L 603, the Secured Transactions course. Both courses have practical relevance in addition to being on the bar.

Q: Favorite band / musician?

A: The Cleveland Orchestra / I listen to classical music and some jazz.

Q: If you weren't a lawyer, what would you like to be?

A: Maybe a movie-maker. I also wish I could write fiction.

Q: Do you have any kids?

A: Yes, I have one daughter, Elizabeth, age 41 (plus two grandchildren, 6 and 4) and one step-son, John, age 19.

Q: What do you do on Saturday?

A: I take hikes in the Metroparks. I go to the movies. I eat in good restaurants. I see friends. I do these and other things with my wife.

Q: Class you liked most in law school?

A: Constitutional law

Q: What do you listen to while you drive to school?

WCLV and when there's talk on CLV, to NPR.

Q: Any tattoos or piercings?

A: No

Q: What activities or groups are you involved in?

A: In the past, I was heavily involved in the ACLU as a board member and officer in both Ohio and Cleveland. In addition, I handled some pro bono ACLU cases.

Q: The worst job you ever had?

A: I worked in a factory running a punch-press one summer in high school.

Q: Any nicknames?

A: Tom

Q: Were you involved in any extra-curricular activities / sports in high school?

A: Yes. I was the editor-in-chief of the school newspaper, and I was a sprinter on the track team.

Q: Do you know anyone famous?

A: Yes. But I am not a name dropper.

Q: Whom do you admire most, and why?

A: There is no one person that I admire the most. When I drive to work I see cars with bumper stickers left over from 2004. They remind me that I kept a George McGovern bumper sticker on my car for years after he ran for President. It was still there when I finally got rid of the car. (My Kerry bumper sticker came off as soon as the election was over.) I admire George McGovern. But he's not the only person I admire.

People who I admire a lot include Nelson Mandela, Eleanor Roosevelt, Martin Luther King, Jr., Albert Einstein, Noam Chomsky, Mary Robertson (for those who don't recognize the name, she has been President of Ireland and a UN official working on refugees). The reason I admire these people is that they tell (or told) the truth about how things really are and they stand up and fight for what they say -- and, of course, I agree with what they stood for and think it is and was important. I wish I could include some other people such as, for example, Lyndon Johnson, who led the country to pass the Civil Rights Act of 1964 and also dedicated himself to eliminating poverty in our country, but Vietnam is a major flaw that ruined Johnson's record.

Q: What has been your greatest achievement to date?

A: I do remember really enjoying being part of a very small legal team that got a panel of the 6th Circuit Court of Appeals to hold Ohio's very religious State Motto to be unconstitutional. The Court thereafter, en banc, reversed itself. But it felt great to bask in the headlines while they lasted.

1Ls recover from shock of fall grades

1L
First year life
Part IV

The following is the fourth part in a six-part series following a first-year C-M student from orientation to spring exams.

I have a four letter word for every family member, friend, and lawyer who told me the first semester would be the hardest. Liar!

When I am congratulated at making it through the dreaded First Semester I can only shake my head. I am only now realizing that this is just the eye of the storm.

We have hardly had time to swallow the aftermath of finals and figure out what we did right or wrong, and already we are drowning in the new semester. And I mean drowning.

Webster defines "drowning" as to "suffocate by submergence, overpower, overwhelm, to cause to be muted". I would say we are suffocating by submergence, especially to the point of being muted.

It seems like we have gone from high school to an asylum. If we aren't a little depressed about last semester's grades, then there's at least some depression hanging around each of us as we struggle and fail to no end to get everything we need done each day. If it's not depression, then certainly its insomnia that is plaguing some of us.

Most of the time I can't even begin to think about sleep unless I've had some sort of sedative help. At lease one classmate has admitted sleeping only 3 hours a night. Lately I have heard stories of people waking up in sweats and having nightmares about classes.

I noticed the other day that I woke up and had to stop and think what day it was before I packed by bag for class. The stress is destroying my sensibility.

Having to take six classes is overwhelming us all. It could be that most of us missed the mark in at least one or two classes and are still getting over the shock that we can't all have straight A's (or B's for that matter).

Or maybe it is the fact that our professors have *openly* admitted that they have *increased* the class reading requirements despite the reduction in class time and credits. Readiness for the bar exam is their excuse, or defense---which is it exactly?

The administrators who made the curriculum change were truly genius. How are our bar passage rates supposed to improve? With all the statistics and ivy league degrees our administration has to offer you would think they would realize *less isn't more* when it comes to raising the *lowest bar passage rate in the state.*

We now have less class time to master course material and some of our professors are more concerned with meeting syllabus deadlines than ensuring student comprehension of the subject matter.

Of course it's not fair to say all of our professors are obsessed with syllabus page numbers and outdated books (were we really four years old when that book was published?). There seems to be a general bi-polar positioning of professors.

We have a few that love teaching and love their students. They have an open-door policy. They welcome questions and probably are more upset at themselves when we answer a question incorrectly. Those are the ones we will always remember regardless of our class rank. But then there are the "others".

We all know who those "others" are. They are the bullies, and the ones who gloat about failing students. They live to humiliate in and out of the classroom. Unfortunately, the "others" will not earn our respect.

They, however earn us a shot or two or three at Becky's, in May when we can gloat about surviving. In May, we will finally be able to say the worst will finally be over.

When we think about three more months till finals again, we can't help ask ourselves if it can get any worse? But then we already know the answer: yes, David Lee Roth in place of Howard. Even the morning commute can't get much worse than this.

Lawyer blogger takes on big firm anonymously

By Aaron Mendelsohn
STAFF WRITER

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

What started out 20 years ago as Internet bulletin boards has morphed into a pop culture 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 School grad employed at the prestigious Manhattan labor and employment law firm, Littler Mendelson, to a cult hero amongst many fresh-faced associates.

Lafsky wrote about life as a young attorney, sharing witty, humorous anecdotes about herself and her friends that were working at some of the city's top firms. She did so in the truest 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, nothing 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."

"So I thought, well how about I start a blog. I'll start writing every night before I go to bed about whatever's on my mind. I'll try to make it funny and fun, and my friends and certain members of my family can read it, 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 old posts down, but I was sleeping, I was more energized. And it was very therapeutic."

"...Lafsky was blogging about what she saw or heard from friends, short posts about a ridiculous senior partner's antics, or the lavish, unappreciated parties thrown for summer associates."

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 from friends, short posts about a ridiculous senior partner's antics, or the lavish, unappreciated parties thrown for summer associates. It was what consumed her life at the time, and it made for thoroughly entertaining 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. "Maybe my friends were reading the blog, and a couple other people were reading it, but it wasn't any kind of big deal. It was just me kind of just venting at night. Saying all these things that everyone seemed to agree with, but nobody ever seemed to say. And I was kind of curious as to why that was. Then *Gawker* discovered the blog a month later."

Gawker, the ubiquitous Manhattan gossip website, exposed Opinionista to a much larger arena. Soon after *Gawker* mentioned the blog in April 2005, Lafsky went from having maybe 500 total hits in a month to 10,000 hits in 24 hours. And because she was discussing such a taboo subject, people became obsessed at figuring out who Opinionista was.

All the while Lafsky continued living her double life, working diligently at her firm, ensuring her blogging habit did not interfere with her job, but then posting silly exploits about what she or friends encountered.

This past fall though, Lafsky's level of notoriety jumped another rung in the fringe media sociospehre, when the *New York Times* ran a story about Opinionista and other anonymous bloggers. At that point Lafsky realized she might not be able to come out of the situation unscathed.

"The *New York Times* article upped the ante," she said. "All of the sudden, thousands of people were reading about the blog. It was all over the Internet. And I realized I'm probably not going to be able to walk out of this with no strings attached. I already knew that I wanted to leave my prior firm, and I even called a few recruiters and sent out a few resumes thinking, maybe I'll just go to a different firm, and stop the blog. And I'll just try to wipe it under the rug. But it became clear that enough people knew who I was at that point, and enough people were talking about the blog, that eventually it was going to come out."

And last month Lafsky had her grand coming out party, with a lengthy, flattering article in the *New York Observer*, exposing Lafsky as the intelligent, insightful author of Opinionistas.

Since Lafsky's revelation, she has left her job as an attorney to pursue writing full time. She's already hired an agent and is working on a manuscript featuring many of the composite characters she writes about online.

As to the world she's left behind, Lafsky couldn't be happier, but she is quick to note that she's left a lasting impression with her old employers. With a sly chuckle, she noted that "yes they did" in fact adopt a no blogging policy.

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The "right" to smoke: a civil liberty or public health hazard?

Tia R. Suplizio
GAVEL CONTRIBUTOR

As a self-proclaimed advocate of individual freedom of choice, I tend to be somewhat skeptical when the government attempts to impose restrictions or regulations on a private individual 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 smoking in public businesses.

While some view the potential state-wide ban of smoking in public places in Ohio as a progressive movement towards 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 understanding of how people in the City of Cleveland view the proposed ban, I hit the streets and began asking questions.

Laura Balliett, a 25-year-old nonsmoker who has worked in bars in Cleveland for five years, is in favor of the ban.

"[Smoking] customers don't [care] about non-smokers," said Balliett. "I have to inhale [secondhand] smoke all night and it makes it hard to breathe."

David, a 48-year-old smoker, enjoys frequenting non-smoking restaurants, like the Great Lakes Brewing Company, 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 government-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 City, has been a non-smoking establishment since September, 2001.

"The decision was our personal choice," said Elizabeth Buck, General Manager. "The response has been overwhelmingly positive 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 it slowing down. When asked about the staff's general position, Ms. Buck replied that the staff overall appreciated a healthier work environment.

"We offered hypnosis cessation programs to all staff who where interested and many participated," Buck said.

Professor David Forte at C-M, a supporter of "smoker's rights," shed light on the subject 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."

Professor Forte elaborated further on how private-business owners should be able make their choice based on market conditions.

"Let the private business owner make the decision based on whom he wants to serve, and that will be shown in whether he makes a profit or not," said Forte. "This is a case where the community is regulating itself and the market actually does solve the problem."

Professor Forte further explained his position from a political stand point.

"The evidence on secondhand smoke shows that it is ambiguous," said Forte. "It is difficult to find a direct connection between secondhand smoke and cancer."

Finally, professor Forte viewed the argument for a smoking ban in public places as self-contradictory.

"They always say that they don't want to ban smoking in people's homes, but if there is any place that second-hand smoke has some relevance, it is in the home where you have a chain-smoker and a non-smoker," Forte said.

Professor Forte then explained, "the non-smoker, inside the home, may have a higher degree of certain illnesses, but they are not going to ban that."

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

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAM