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Infra.

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THE GAVEL
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Cover illustration
by Steven Mills
In 1982, there were a reported 71,593 uninsured motorists involved in traffic accidents in Ohio. Of accidents caused by uninsured motorists — 35,341 — there was an estimated loss of $330 million last year.

There are 1,035,621 uninsured drivers in the State of Ohio. Are you one of these uninsured drivers, or are you financially responsible?

Beginning January 1, 1984, a new law in Ohio says if you own or drive a motor vehicle, you must be financially responsible. Although this new law at first glance may seem harsh, the new law actually attempts to put everyone driving in Ohio in an equal position. Finally those who have been covered by insurance for all these years can operate their cars knowing to a certain extent that everyone else is in a similar financial position to pay for accidents he or she is involved in.

The new statute defines “financial responsibility” as able to pay for damages.

continued on page 4

by Lynette Ben
REASON PREVAILS
continued from page 3

cased in a traffic accident. Without proof of such financial responsibility, a person may not legally operate or permit the operation of any vehicle.

Under the new law, such financial responsibility is achieved when motor vehicle owners and drivers can show they are able to pay for a minimum level of damages to life, limb and property resulting from a traffic accident. The minimum amounts required by law are: bodily injury or death, one person ($12,500); bodily injury or death, one accident ($25,000); property damage ($7,500).

Anyone who currently has liability insurance or other liability coverage is considered financially responsible under the new law. Persons without such liability coverage are not forced to obtain such coverage through an insurance company. To attain financial responsibility, a person may obtain a surety bond written for the minimum level of damages, file a certificate of self-insurance if he owns 25 or more motor vehicles, establish a $30,000 certificate of deposit with the State Treasury, or purchase a policy of insurance.

Liability policies are issued by insurance companies, and pay for accidental injury or death to others and/or property damage when a person is at fault for an accident. The basic problem with liability insurance is that it does not cover damages to personal property or the vehicle of the guilty party; however, such coverage could be applied to persons other than the vehicle owner when they drive the car.

Surety bonds are issued by some insurance companies to individuals. The major problem with such bonds is that they provide less coverage than liability insurance and cover only the bonded person—not family members. Their major selling point is that they are less expensive than most insurance premiums.

For those persons who don’t believe in liability coverage and plan to get around purchasing any form of coverage, so that they may be financially responsible, their task will be a difficult one. Starting January 1, 1984, everyone applying for Ohio license plates and for new, renewal or duplicate drivers’ licenses must sign a sworn statement that there is some form of liability coverage currently in effect on their motor vehicle and will be maintained. Regardless of whether current drivers’ licenses expire, or what month persons register their car, the coverage must be in effect no later than January 1, 1984. Also, unless persons can honestly swear that they are covered for liability, they cannot apply for license plates or drivers’ licenses. Any persons who lie can be prosecuted by the State of Ohio for falsification.

When must financial proof be shown? Proof of financial responsibility is mandatory in the following situations: (1) any time you are cited for a moving traffic violation that requires a court appearance; (2) any time you are involved in an accident resulting in injury, death or more than $400 of property damage; (3) whenever a motor vehicle owned by you but driven by someone else is involved in a moving violation or reportable traffic accident.

There are a number of ways for demonstrating proof of liability coverage, but such proof must be presented to the court or Bureau of Motor Vehicles. If persons fail to show such proof, their vehicle registration and license plates will be impounded, their driver’s license is suspended for 90 days, and they will have to pay court costs. Additionally, there is a $30 fee for reinstatement of driving privileges and a $50 fee for failure to surrender your plates, license and registration voluntarily.

According to an additional provision, driving privileges are not reinstated automatically. Persons cannot drive again until they do show proof of financial responsibility. The coverage must be filed and maintained for three years.

Enforcement of the new law does not appear to be any problem. Every Ohio officer of the law is an agent for the Bureau of Motor Vehicles for this purpose. If persons continue to drive without liability coverage or their vehicle is seen on the roadway, the officer has authority to seize their license, plates and registration on the spot.

It is believed that the new law will substantially reduce the number of uninsured motorists in Ohio. However, the Bureau of Motor Vehicles is urging Ohioans to maintain their “uninsured motorist” coverage. This will protect persons involved in an accident with someone who is violating the financial responsibility law, or who is from a state not requiring liability coverage by law.

For drivers who have always maintained at least liability coverage, the new law will not cause any inconvenience whatsoever. Those who have personal and/or property damage for accidents which insured persons cause will continue to be compensated. Besides the financial aspect, these drivers desired to extend a courtesy to others on the roadway. Unfortunately, uninsured motorists must not have felt any need or desire to reciprocate that courtesy. However, beginning January 1, 1984, having liability coverage in Ohio is no longer a courtesy. It is the law!!!
Edwards' main focus was on the question "how often and to what extent do modern federal appellate judges feel constrained to decide cases in particular ways?" He stated that he decides roughly 100 cases during a 12 month court term. Of these 200 cases, he estimated that one half of these cases are easy to decide. That is, the "pertinent legal rules are unambiguous, and application to the facts appears clear." Of the 100 remaining cases, he stated that approximately 5—15% of these cases are "very hard" to decide. Judges must use their own discretion to fairly apply the rules of law to the facts presented. The remaining 35—45% of the 100 cases leave judges feeling constrained to decide in a particular way. In these "hard" cases, each party is able to make at least one colorable legal argument, and the judge feels constrained to decide in favor of the party making the stronger argument. Thus, judges may not draw on their own discretion, personal values, or free choice in rendering a decision.

Edwards stated that judges disagree among themselves on the proper way to classify the various difficult decisions, and they disagree on the outcomes of these cases. Edwards explained that the "fact that appellate judges disagree on hard decisions casts doubt on the proposition that judges are constrained by the law." However, Edwards feels that there are tangible explanations for the disagreements. First, each party to a lawsuit can be equally persuasive in arguing novel issues that are not governed by prior decisions. Second, there are no clear assurances that personal views of the judges don't color their decisions. Third, general rules applied to specific facts using nothing else but the canons of rational ability make it difficult, if not impossible, to reach a consensus of opinion. Besides the canons of rationale, other factors such as common conventions of being a judge, and the judge's own personal make-up also affect decision making. Finally, judges are only "people" and are susceptible to the "human factor." This is especially evident in cases where there is no "right answer", where controversial social issues are involved, and where the judge personally disagrees with the law. Finally, since judges are human they can simply make a mistake in deciding a particular case. In analyzing these various factors, Edwards concluded that "judges are significantly constrained in decision making."

Edwards then proposed four ways that judges might "think and act if they are to do their jobs as well as they can." The first proposal was entitled "The Judge as a Monk." He stated that judges are presently aloof to social and political happenings. Since judges have limited channels to get information, and a limited number of people to test their ideas out on, their knowledge of human affairs is often limited. Edwards feels that a judge should have a duty to involve himself in society, so that his personal beliefs can be consciously realized. Edwards' second proposal for improving judges performance dealt with "focus v. wide angle adjudication." Edwards pointed out that, frequently, extensive independent research and analysis is utilized to decide problems which are much narrower in scope. This type of wide angle research should only be used infrequently because of time constraints. Edwards' third proposal was for an increase in collegiality. He believes that spending time discussing cases with colleagues would create a more relaxed atmosphere and would help each judge crystallize his or her own views. Finally, Edwards proposed that judges must speed up case processing. He feels this can be accomplished by shortening opinions, reducing the number of dissenting opinions, eliminating string citations, and by not misusing Lexis and West Law.

Edwards concluded his speech by offering two ways in which congress can help appellate judges to be more productive and correct. Congress can assist by writing clearer statutes that can be more easily applied to the facts of the case. This could be done by utilizing the "Old English" system of writing clear preambles. Second, Congress can give more attention to the appellate judges so that judges can easily get assistance from the congress when it is needed.
Seven Up: High Court in Action

by Debra Bernard

It was 7 o'clock on Tuesday morning, October 25, 1983. The sky was just beginning to lighten into daybreak. The early morning dampness was dissipating. Yet even at this unearthly hour, the usually quiet atrium was beginning to exhibit signs of life. A hushed air of excitement filled the hall. Anxious men and women traced patterns in the flooring while pacing back and forth. Bursts of conversation pulsed through the lobby. By 8 o'clock a.m., throngs of people of all ages and descriptions had filled the corridors. The occasion? The Ohio Supreme Court was to be in session at 9 o'clock a.m. in the Moot Court Room.

Just after 9 a.m., the solemn seven in their long satin-black robes proceeded down the aisle, then up the few steps to their seats at the bench. Justice C.F. Brown occupied the seat at the far left, followed by Justices Locher and Wm. Brown Chief Justice F.D. Celebrezze, then Justices Sweeney, Holmes and J.P. Celebrezze. The gavel sounded, the "Hear Ye's" were said, and the Court was in session.

The audience was comprised of interested members of the legal arena, members of the general public, and groups of school children of all ages, some appearing as young as first graders. Many high school groups and college students sat in clusters, and dotted throughout the room were many Cleveland Marshall students waiting, watching and listening. The onlookers fell silent as the first case was called: Brooks v. Rollins. Each advocate verbally wrestled within his sparse fifteen-minute time allotment, struggling to impress upon the court the rightness of his argument. Now and then a Justice would clear his throat, and as he twirled a pencil between his fingers, ask for a point of clarification. Though it appeared at times as though various members of the court were uninterested or literally lost in thought, the litigators were often startled by the sudden sharp comments and queries hurled at them from the perceptively swift members of the bench. Pensive musings erupted into salvos of "point and counterpoint" exchanges between the litigants and the judiciary. Just as quickly the tension dissipated. The red light glowered signaling time's end. The next case was called.

Repeatedly during the next three days, from October 25th through October 27th, this was the scene as the Ohio Supreme Court took up residency in Cleveland Marshall's Moot Court Room. The Court held both morning and afternoon sessions, and at the closing of the three-day period, approximately eighteen cases had been litigated before the Court.

The cases were widely diversified in substance as well as complexity of legal issues. Procedure cases seem to have dominated the docket, but these were interspersed with a variety of other cases delving deeper into other areas of the law. A sampling of the cases heard illustrates the assorted concerns brought before the bench: State of Ohio v. Bickerstaff was a controversial criminal case; State of Ohio v. Industrial Commission of Ohio was a case that dealt with workers compensation; a case of disciplinary action involving an attorney was Bar Association of Greater Cleveland v. Wilsman; a case centering on issues predicated in tort and products liability was Mathis v. Cleveland Public Library; and Season Coal Company, Inc. v. City of Cleveland was a case involving fraud that seemingly could have easily been brought under the Uniform Commercial Code.

The majority of the attorneys appearing before the Court were more than adequately prepared to litigate the issues in true professional style, but more than once was an attorney obviously poorly prepared for litigation. The members of the Court, however, seemed tolerantly attentive.

The three days of Supreme Court sessions passed quickly. The cases were interesting, and each session progressed smoothly until the docket had finally emptied. Those scheduled had had "their day in court". All who had witnessed the high court in action left the Moot Court Room with a keener knowledge and awareness of the workings of the minds of the men on this Court, borne of first hand experience. Indeed, more than just a few had had "their day in court".
The National Lawyers Guild is postponing part III, *The Legal Defense of Civil Disobedients* of its series on that subject for the time being in order to present herein a summary of a talk given November 9 by Professor Barry Kellman: **Attacking the Weapons Industry — Legally** (a Guild event).

Professor Kellman has a decade of experience in the field of regulated industries — the centers of corporate power in this country. His teaching specialties are: Energy Law, Antitrust Law, and Corporations. The topic that he presented has a relationship to the current activities of civil disobedients in that both focus on an arms race that is out of control.

**THE GAVEL**

**National Lawyers Guild**

**Attacking the Weapons Industry Legally**

*Edited by Clare Mc Guinness, NLG*

We stare down the precipice into destruction, despair, the final end, the termination of humankind. We live in an absurd age. Striving to live out our time on the planet and bequeath a better world to our heirs; we commit a huge portion of our national treasure to the production of destructive weapons. Even more absurd, we pour our generation’s wealth into weaponry with the avowed, self-conscious intent that these weapons not be used. Even the most rabid proponent of arms production does not seriously intend to use the products of that production. On the contrary, the purported and in fact true reason for producing weapons is to insure that these weapons and those already stockpiled will live, like we humans, to a ripe old age.

We build weapons to deter war because only through strength may we be secure. Perhaps our age is cursed to live on the brink of holocaust. But the thesis here is that we can begin to take a few, careful strides back from the precipice. The arms race, like any race, must eventually end. Either the weapons must someday be used or the planet will have to learn how to go about its business without these weapons. Responsible people would not disagree as to the preferred outcome. Nobody wants to use weapons; we would all be happier if we could be secure without them. It makes sense for our society to address the question of how we may expeditiously move toward a peaceful end of the arms race.

Why is this perfectly rational and virtually unanimous desire to de-weaponize the world not being realized? It is feasible to suggest that there exists in the United States, and no doubt in the Soviet Union, a network of weapons manufacturers who make a great deal of money. Furthermore, members of the weapons industry exert a wholly disproportionate influence on our political system. Finally, the complexity and power of the weapons industry not only causes inefficiencies in the form of cost overruns, but that the unbridled power of the weapons industry causes more weapons than we reasonably need and is itself a destabilizing force, and a jeopardy to our national security.

The notion of a military-industrial complex goes back to Eisenhower’s warning, a warning that has gone unheeded. No doubt General Eisenhower’s worst nightmares could not imagine the current situation. Cumulative world military expenditure since the end of World War II amounts to well over $7 trillion dollars. In 1983, military expenditures will equal the combined gross national products of the 65 nations in Latin America and Africa.

Four countries, the United States, the Soviet Union, the United Kingdom and France, provide the bulk of the world’s capacity to design and produce weapons, and virtually monopolize the international trade in arms. We must recognize that the existence of the Soviet complex is the best justification for the continued existence of our own weapons industry, just as our weapons industry must be the best justification for the Soviets to maintain theirs. But it is critical to recognize that even the existence of a Soviet military capability does not justify an expenditure for weapons we make. In fact, the enormity of the United States weapons industry and the unchecked nature of its political power weakens our national resolve, our moral premise as a nation and our very economy, thereby weakening us in the competition with the Soviets. Indeed, even if one begins with the premise that the Soviets are the embodiment of evil, United States weapons policy is contrary to our best interests. For this reason it is proper to focus on the American weapons industry.

The analysis of the American weapons industry may be divided into three categories: strategic weapons, tactical weapons and weapons for export. Strategic weapons refer primarily to nuclear weapons aimed at the Soviet Union. This forms the essence of a foreign policy based on mutual deterrence through mutual assured destruction (MAD). Tactical weapons are designed exclusively for defeating enemy forces in battlefields, rather than destroying enemy cities or military installations. Weapons for export are either sold directly by the manufacturer to a foreign government (the transaction approved by the Department of Defense and State Department), or they are sold by the Department of Defense to the foreign state, with production on a subconractorial basis.

However, the argument is not inherently technological. The question is not so much what the Soviets can do to us or what we can do to the Soviets. Rather, the question is more accurately understood to involve fundamental political choices regarding national interests worthy of defense. To meet security needs defined by current national interests, Secretary of Defense Weinberger has prepared a $322.5 billion budget for the fiscal year beginning next October; nearly $220 billion will be spent on weapons procurement.

This is an industrial sector run amuk. The weapons industry is no longer responding to our legitimate needs, but is determining those needs. Our political will is being held for ransom. Choices are being thrust upon us which do not reflect national interests that have been determined by the people.

Current operation of the weapons industry is premised upon the following two assertions. First, the military, sole consumer in the weapons industry, is motivated only by national security concerns. Second, essential to national security is the minimization of typical checks and balances on industrial conduct, such as the disclosure of relevant information, competition, adversarial litigation and federal regulation. These assumptions are manipulative. The result is a network rich beyond the dreams of avarice, immune to challenge. The weapons industry uses public insecurity about world events to skew political processes to its own purposes.

Two courses of action may be taken to put the weapons industry in its proper place with respect to the political process. First, there must be a comprehensive Congressional investigation of the weapons industry. This investigation must attempt to: name the participants in the weapons industry, define the share of the market controlled by leading firms; describe the disbursement process and map the distribution patterns of military contracts; note the opportunity for adversarial challenge, the extent of bargaining between producers and consumers and built-in conflicts of interest within this process; list and compare profit levels to heavy industry; examine the role of non-disclosure of company activity on the basis of national security and its function as a shield for improper business practices. These are but a few of the many tasks to be accomplished by a Congressional investigation of the weapons industry.

continued on page 10
In the early medieval period the judges were all clerks in Holy Orders, a condition which endeared itself to the development and administration of the legal system in that the clergy were the only literate class. For example the staff of the Chancery until the Reformation were clerics and the medieval Chancellors, with a few exceptions, were bishops or archbishops. Their assistants *clerici ad robas* were also in Holy Orders. By Tudor times they had the title Masters of the Chancery and were often Doctors of Law. The principal one was the Master of the Rolls, whose task it was to maintain Chancery records such as patent and close rolls.

It follows naturally that with the first professional judges being clerics, then the first legal advisors would be members of the same class with an educated background, knowledge of the law and ability to communicate. The clergy in carrying out their charitable work were allowed only to practice in the lay courts on behalf of the poor. On the other hand they were checked from practicing in the lay courts altogether, as there was no lay profession as such in existence. Ab initio there was a division between the person who stood beside and spoke for his client called the *advocatus* or *prolocutor* as compared with the person who acted for and on behalf of another, the *attornatus* or *procurator*. There was never any question of the English legal profession dividing into two; the division of function preceded the profession but their respective functions have varied in the meantime.

The records about the year 1200 give the names of the pleaders and attorneys who appeared regularly in court. In 1275 the Statute of Westminster I, Chapter 29 prescribed punishment for professional lawyers guilty of deceit or collusion. This was followed in 1280 by a regulation prescribed by the City of London determining the admission of practitioners practicing in the Mayor's Court, the administration of an oath for the newly — admitted practitioners and providing a register so as to separate the functions of the pleader and attorney. There is also evidence that about the same period, a similar provision made certain that the
pleaders of the Common Bench were chosen by the judges there and they had to swear on oath to be aloof from the practitioners. The seeds of the division thus sown it became necessary to regulate admission to the more select group. At about the same time attorneys in the royal courts practicing in non-intellectual litigation became a distinct profession. The judges sought power by a royal ordinance in 1292 to regulate them and by 1402 they became officers of the common law courts.

By 1402 the judges examined them and if successful they had their names enrolled as officers of the common law courts. The result was a separation between solicitors and barristers, between pleaders and attorneys, based on the nature and quality of the work.

Around 1300 the Bench of the Court of Common Pleas had the exclusive jurisdiction in adjudicating the civil actions: the writs of right and remedy, the possessory assises, debt, detinue, covenant and account because they were the "common" pleas. The jurisdiction of the court was over disputes between subject and subject inter se. Coke called the Common Pleas "the lock and key of the common law." To this court would go a body of learners or apprentices of the Bench to learn their law. They sat in wooden boxes, called the "crib" to listen and to take notes, and sometimes a benevolent judge would explain to them the difficult points of law in the course of an argument. Because what a judge said in the Common Pleas had the effect of informing the legal world what his opinion on the law was, he might even insure that at the time of such pronouncement someone would be there to record his views. The Year Books recorded the arguments in the court of Common Pleas which was followed in the 16th century by other courts such as Westminster.

By the year 1400 there were many Inns responsible for the education of law students. As students they would receive lectures delivered by barristers, who were members of an Inn before they could gain admission to any one of the Inns of Court. The writ was the instrument which enabled a plaintiff to commence an action which he did by purchasing it from the Court of Chancery. It commanded the defendant to enter an appearance at the court in which the case was set down to be heard.

On completing his learning, he would thus proceed to take the Bar examination. If successful and he wished to practice at the Bar he would next seek admission to an Inn of Court as an "inner barrister." For the next seven years he would spend his time visiting the courts, performing "learning exercises" such as moots, and keeping commons (eating dinners with his fellows). When called to the Bar he is made an "utter barrister." The "inner barrister" sits inside the bar and the "utter barrister" outside it.

Apprentices of the law would vary as to their choice of whether or not to take the Coif, those who took the order of the Coif could argue their client's case in open court. Those who did not, by the year 1400 were regarded as a junior branch of the profession and might practice either as attorneys or as advocates in the King's Bench Chancery, Circuit court, inferior courts, or counsellors in chambers. As the years rolled by these activities became more important, so much so, as to evaluate the standing of the lawyer in the eyes of his colleagues in the Inns of Court, and by 1400 the name "apprentice" was relegated to that of a double reader in one of the Inns of Court.

During the fifteenth and sixteenth century the Chancery and prerogative courts gained new jurisdictions which increased activities of the courts. This gave the apprentices an opportunity to gain experience in litigation work. Some were as busy as the sergeants at law and attorneys. All this increased activity led to the development of a new branch of the practicing profession who were capable of earning a living without taking the Coif or being enrolled as an attorney on the roll of attorneys.

**Etiquette of the Bar forbids any direct contact with a client on the part of a barrister**

It would appear that as membership of the Inns was enjoyed by apprentices, such membership carried with it the right to practice to which was attached the right of audience in open court.

To add to this legal scenario during the sixteenth century was a new class of lawyers called solicitors. Their task was to engage a barrister for their clients if such was needed as well as to advise the client on the jurisdiction of each court and to assist them with their grievances through the Chancery and conciliar courts where there were no attorneys. Gradually the roles of barristers and solicitors were distinctly separated. At one time it was thought that the solicitor was guilty of maintenance on account of his intermediary role in litigation as a "general solicitor" (as opposed to a servant). However by the middle of the seventeenth century, the law reluctantly allowed solicitors to receive their fees and to administer their own professional qualifications.

When the professions of sergeants at law and attorneys were later changed to barrister and solicitor, the barristers pursued actions which led to preserving their superiority over the solicitors whom they really regarded as purely ministerial or mechanical practitioners.

Baker, the legal historian, and friend dating back to our student days as undergraduates at University College of London, points out further in his Introduction to English Legal History that the barristers went out of their way to expel attorneys and solicitors from membership of the Inns of Court and to avoid their image as honourable gentlemen being tainted by mixing with them. To enhance their status they set about making the following rules:

1. that barristers are unable to sue for their fees — such are *honouraria* in the sense of the civil law,
2. that barristers should not associate too freely with solicitors,
3. that barristers should not undertake the menial work of soliciting causes and attending directly to the every day affairs of clients.

The effect of such an outlook provided for an increase in the earning capacity of solicitors which they have never lost, enabling them to prosper. In 1729 the solicitors regulated their members by founding a body and the title of "Society of Gentlemen Practisers in the Courts of Law and Equity" which was incorporated in 1826 to become known as the Law Society which is very prominent today. The Society regulates and maintains a high standard amongst its members and is as respectable as that of the barristers' Inn.

The historical foundation of the separation of barristers and solicitors is reflected in the nature of the respective functions which barristers and solicitors perform. Barristers are merely advocates which dates back to about 1340, the time of the division of the legal profession, although many do engage in paper work such as drafting of pleadings, divorce petitions, complex settlements, opinions on taxation and company matters. It is normal for a solicitor in a case of particular difficulty to seek the opinion of barristers, many of whom specialize in particular areas of law.

**Etiquette of the Bar forbids any direct contact with a client on the part of a barrister.** The client must at all times seek
The Moot Court Board of Governors of Cleveland-Marshall College of Law presented the Fifth Annual Fall Moot Court Night November 10. After successful argument on both sides, the evening’s bench of the Honorable Judges Anthony J. Celebrezze, Albert J. Engel and William K. Thomas announced the winning team of Thomas Wagner, Harvey Kugelman and Timothy G. Sweeney, representing the Petitioner.

The evening’s event was the final practice for the teams representing C-M in National Moot Court Competition; regional competition begins November 17. Counsel for the Respondent was the team of Thomas J. Silk, Michael W. Czack and Kenneth A. Zirm.

The case heard, which was granted a writ of certiorari by the Supreme Court of the United States, involved Rocky Vitas, Petitioner, who signed a stock purchase agreement with Respondents Loretta Younger and Michael Burton for their seventy-five percent interest in Wholesale Computer. Petitioner filed an action in U.S. District Court alleging violations of the Securities Exchange Act of 1934 and The Racketeer Influenced and Corrupt Organization Act (RICO). Respondents moved for dismissal for lack of federal subject matter jurisdiction and failure to state a claim upon which relief can be granted, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The case was appealed to the Circuit Court of Appeals of the Thirteenth Circuit, and is pending before the U.S. Supreme Court. A more detailed explanation of the case and both parties’ briefs are on file at the Law Library.

Before announcing their decision, all three judges commented on the excellent briefs and argument by both teams; and how well they fielded the judges’ many questions. Some general comments the judges made for the benefit of all future advocates was to remember that oral arguments were more than just re-reading the brief. It must be persuasive and key in on one or two major issues of the case and to anticipate questions from the bench.

Judge Celebrezze also congratulated Dean Bogomolny and the faculty for turning out such good students from the law school.

Quotes:
- “There is only one thing about which I am certain, and this is that there is very little about which one can be certain.” — by W. Somerest Maugham, The Summing Up.
Doctor, is there a cure?

Patient: I'm very worried, Doctor.
Doctor: I can see that by the anxious
look on your face. Will you tell
me about it?
Patient: I've been having a recurring
nightmare. It's broad daylight
and I'm in a classroom and I've
just been asked to explain Due
Process in plain English and ...
... I'm totally tongue tied.
Doctor: How long has this been going
on?
Patient: It's been happening off and on
for months now and it isn't al­
ways Due Process that I'm
being asked to explain. Some­
times it's the difference be­
tween voluntary and involun­
tary manslaughter, or the rights
of a landlord under the Ohio
Revised Code, or the elements
of a contract (like considera­
tion, for example). It's driving me
crazy because I've spent lots of
time studying all this infor­
mation, and soon I'll be pre­
paring for the Bar exam and still I
don't seem to be able to adequi­tately explain these concepts.
What should I do, Doctor?
Doctor: I'm writing an unusual pres­
scription for you. I'm sending
you to the Street Law Clinic
program for the Spring semes­ter.

Patient: What? I thought there would be
some anti-stress medicine I
could take and a fast cure.
Doctor: There is a cure — as I said, I'm
sending you to the Street Law
Clinic.
Patient: O. K. Doctor. What is Street
Law?
Doctor: Street Law takes you out of law
school and into high school class­
rooms all over the city. You will
teach Street Law to 11th and
12th grade students. You work in
tandem with their high school
social studies teacher. You will
be actively involving students in
the substantive legal areas of:
family law, housing law, and con­stitutional law. You will earn
2 semester credit hours. In ad­dition, you will coach your very
own MOCK TRIAL team.

Patient: Stop Doctor! What is a Mock
Trial?
Doctor: The Mock Trial is the capstone of
the high school students Street
Law experience. High school
students compete in a trial advo­cacy situation. They act as De­fendant's attorneys, Plaintiff's
attorneys and Witnesses at the
trial court level. Last Year, 24
teams participated and were
judged by over 60 attorneys,
judges and community leaders.

Anglo-American Law Corner

Oyez! Oyez! Hear Ye! Hear Ye!
The "Itinerant" Supreme Court of Ohio

Looking through English eyes on the in­
novating but unusual event of the
Supreme Court of Ohio adjudicating at the
Cleveland-Marshall College of Law for
three days (October 25th–27th inclusive)
for which the Dean, Professor Bogomolny
should be congratulated, one could not fail
but to observe that all seven judges did
not wear wigs. In an English court of Law
(except for magistrates courts) the dress
of the Judge and barristers are an
essential part of the court as is the
procedure in which the case is presented.
Both Judges and counsel are customarily
gowned and bewigged. The office of a
bewigged Judge produces a solemn air over
the whole proceedings which in itself can
be unnerving to the poor litigants, wit­nesses and even a bewigged counsel. The
Supreme Court proceedings under the
Judgeship of His Honour the Chief
Justice, Judge Celebrezze was conducted
in a comparatively relaxed and uncom­pli­cated manner, during which members of
the public could appreciate the questions
and answers that ensued, thus bringing
the law to the people. I am curious to see
what further developments may occur in
the future. Or could it be a one off event
ever to be repeated in the life of this law
school?

At this point the writer cannot resist
expressing his delight at the first visit of
such an august judicial body to the Cleve­land-Marshall College of Law School.

The visit coincides with the teaching of
the English Legal System for the first
time in this school of law. Thus ELS
students could draw reference to the work
of the itinerant justices in medieval times
when it was customary for them to travel
around the country dispensing justice and
at the same time contributing to the de­
velopment of the common law in which we
all have a common interest. It is also my
first experience of lecturing in an Ameri­
can law school. The visit provided me with
an opportunity to meet the judges and to
exchange views on points of Anglo-Ameri­
can law. For example, one was able to
discuss with His Honour Mr. C.F. Justice
Brown the English opposition to the
election of judges in favour of their being
appointed. I daresay the Dean has timed it
all very well for the Visiting Professor!!

— R.A.L.
Aiming for Excellence and Not Mediocrity

by Jimmy Thurston

Aiming for excellence and not mediocrity is the goal expressed by Professor Frederic White, Associate Professor of Law, Cleveland-Marshall College of Law. Recently, White, in a candid and off-the-cuff interview, expressed many of his concerns about law students, his development as a lawyer, and gave some pertinent advice for black lawyers who may or may not be striving to make their image constructive and beneficial to others.

White is a dynamic law educator who instructs in a variety of law subjects, such as: Administrative Law, Land Use Control Law, Local Government and Property Law. Also, he is faculty advisor to BALSA and Phi Alpha Delta, along with being the chairman of Legal Career Opportunities Program Committee and a member of the University Judicial Council. In addition to his duties as a law educator, he serves as counsel for Buckingham, Doolittle & Burroughs, a law firm in Akron, Ohio, where he is primarily involved with local government finance, and as president-elect of the Norman Minor Bar Association.

White still finds time to write and has published several articles in various law reviews, and he is presently writing The Ohio Landlord-Tenant Handbook, to be published by Banks-Baldwin Publishing Company later this year.

Q. Professor White would you give the readers an idea of some of your specifics concerning Cleveland-Marshall College of Law?

A. Are we talking about studying law or just generally?

Q. I'm concerned with getting a perspective on you and your career as a professor, as a lawyer, as well as a black man. For example, where did you observe a role model as a lawyer, and now that your are a lawyer, what do you feel is your responsibility as a role model?

A. In the first place, I didn't really observe any professional role models other than my teachers when I was growing up. Most of my family is pretty much a blue collar family, and they were good people, but in terms of white collar professional jobs, I didn't really know that many people. There was a guy next door to me who worked for the city when I was in Mount Pleasant that I knew, but I didn't really observe him. I worked a couple of jobs in the city (New York) when I was nineteen or twenty years old, and saw some people, but I can't think of anybody in particular that I had as a role model other than my family.

"Now, as to why I turned to law, I don't know. To some extent it was always being pushed into me, 'that you ought to be a lawyer.' I don't know if that's good or bad, but that's what happened. Family, friends, teachers, and I mean a lot of teachers from junior high school on saying, 'maybe you ought to go to law school.' So I did that, now whether that in the long run is a good idea or not is irrelevant, I suppose, because I'm a lawyer now, although I'm not practicing that much.

"As a lawyer, we have got to, I mean all lawyers, especially black lawyers have to practice. I had a white student who came to me the other day and said — it was basically the sort of old 'Calhoun story' from Amos and Andy — 'is it true that most of the black lawyers in this city are thieves?' Another comment from a black woman who called me up and said, 'can you get me a good Jewish lawyer.' I found both of those statements quite offensive.

"The problem is, of course, that there are maybe three hundred black lawyers in town, and maybe, let's say 10,000 white, continued on page 14
THE ENGLISH LEGAL SYSTEM
continued from page 9

Surya compliance and expertise. A conference by a barrister is
and would then have to satisfy an
dent authority that they had the
specified number of years in practice, they
could be a system under which all lawyers
would be entitled to be classed as experts
and the aid of a solicitor to obtain a barrister's
opinion. A conference by a barrister is
always held in the presence of the solicitor in
the barrister's chambers. It is the
solicitor who makes the choice of a barrister on behalf of his client.
The solicitor, on the other hand, is an in-
dependent lawyer. He prepares the
evidence for litigation, interviews witnes-
se, issues writs, conducts interlocutory
proceedings, drafts contracts, wills and
administers estates. They have a limited
audience in court. They have a monopoly
in the conveyancing of property between
vendor and purchaser. In fact it is the
source of at least 50% of their total
income. The solicitor prepares the work
for a litigating barrister who appears in
court (other than magistrates court) in
wig and gown; a solicitor can wear a gown
in county courts.

Over the centuries praises have been
showered on the English legal profession, but in more recent times there are signs of
stress appearing in the legal fabric of the
profession. Many are the criticisms level-
led at the Bar by those who are concerned
about its future, particularly, those who
have not prospered under it when they
should have, are calling for improvements.
The most poignant question is that of
fusion. It is a very controversial one and
has been simmering for a very long time.
The Bar regards fusion as the end of the
existence of barristers and the specialists
corps of advocates which is the hallmark
of the barrister. No longer would there be
a body of trusted and respected lawyers.
The suspicion of the barrister can be
dispelled by looking elsewhere to other
common law countries to see the success
of fusion. In Australia it is normal for bar-
risters to spend a couple years with a firm of
solicitors before practicing at the Bar.
In Scotland, it is a professional require-
ment; not only has this arrangement helped to provide them with clients in
their early years, but it gives them a much
souterd knowledge throughout their
working lives of how solicitors operate and
how the Bar can best be advised to
help them.

A past president of the Law Society, op-
posed to fusion, did suggest that there
could be a system under which all lawyers
could receive similar learning and after a
specified number of years in practice, they
would be entitled to be classed as experts
and would then have to satisfy an independ-
ent authority that they had the neces-
sary compliance and expertise.

The evidence of such fused systems in
the United States of America and Canada
are good examples of a successful rela-
tionship and should allay any fears of
fusion. At the same time, I would draw at-
tention to the fact that the American legal
profession, although not divided into
solicitors and barristers, is certainly
divided for it is not without its specialists.
Its line of division is a socio-economic one.
The English Bar may be elite but the
Americans form one just elite. There is
always that big discussion between the
upper middle class graduate of the Ivy
League law school, such as Harvard and
Yale, whose graduates are automatically
recruited to join the top selective Wall
Street firms, as compared with an
ambitious hard-working or lower middle-
class student from an ethnic minority
group who works during the day for a
lawyer as an apprentice and attends
evening classes until finally he passes his
exams; such a student finds it rather dif-
cult to compete in Wall Street.

The case for fusion rests largely upon
cost and efficiency. The hiring of two
lawyers where one could do the work.
Secondly, the solicitor possesses a greater
knowledge of his client's case and the
witnesses' statements. Here, it is usually
said that he tends to become too involved
and it is better to have the barrister who
is more detached — he can see the case
through fresh eyes and has special
experience in pleading, gained by constant
practice.

An interesting point is that fusion
would provide a wider choice of appointments
mendation to the judiciary. At present the Bar
has a monopoly over all the plum judicial
appointments. However, recently the
Courts Act of 1971 has made it possible for
a solicitor to have a limited right of
audience before the Crown Court and he
or she is now eligible for appointment as
a circuit judge after five years as a
Recorder (a part time judge).
The non-supporters of fusion believe that a separate bar bestows certain
benefits upon the public. McGarry in his
"Lawyer and Litigant" in England stoutly
defends the status quo. "The main
advantages," he argues, "of the English
system of divided profession lies in the
obvious benefits that flow from all special-
ization each becomes an expert in his own
field. A separate Bar means a client gets
an expert in advocacy as well as a specialist
in a relevant field of law. He also gets the
knowledge that there will be a degree of
parity between his counsel and his oppo-
ton's."

Fusion by agreement is most unlikely in
the present climate of controversy. So for
the present, since the problem cannot be
resolved in a hurry, it must be left open
for time to find a way because of its
importance both to the legal profession
and to the public.

THE GAVEL

Laventhol & Horwath, certified public
accountants, and Dalton-Dalton-Newport,
an architectural and engineering firm,
have been chosen by Cleveland State
University trustees to do a feasibility
study of a domed stadium on the Univer-
sity campus. Governor Richard F. Celeste
had requested that the board authorize
the study.

The two firms, working on a joint
venture, were chosen by the Buildings and
Grounds Committee of the CSU Board of
Trustees at a meeting on Friday, Oct. 28.

The $188,000 feasibility study is to be
paid for by the State of Ohio and take 60
days to prepare. Work will begin when the
state approves the contract, according to
CSU President Walter B. Waetjen.

The firms are to explore:
Potential Use — Whether and how the
building could accommodate both the Uni-
versity's needs and those of professional
sports teams and other events, and the
scheduling of such events.

Site and Project Planning — The ap-
propriate size and seating capacity, the
impact on the public transportation and
highway systems, necessary support
facilities, such as parking, and whether
the site chosen for the Convocation Center
would be large enough for a larger facility.
(The chosen site is between East 18th and
East 22nd Streets and Prospect and Car-
negie Avenues.)

Organization and Management — How
the facility would be organized and
managed, including ownership, and how
planning, development and construction
would be handled.

Financing — How the facility can be
funded by both the private and public
sector, and how and whether it can be fi-
nancially self-supporting.
Aiming for Excellence and Not Mediocrity continued from page 12

I don't know. But, of course, all you need is one or two black lawyers who are perceived as being less than ethical to sort of, if you will, give us all a bad name. Now you are not going to stop all that, of course, but I think we owe a kind of responsibility to the community.

"I think our primary responsibility is to give efficient, competent service. That does not mean that we don't have to charge for it. I think we, like anybody else, are in a profession, and we should get paid for it. I don't have any problems with that. But some lawyers, for example, refuse to acknowledge that they don't know something about a particular area, and so what they do is, they sort of fake their way through it, and they take too long and they may do it incorrectly because they won't turn it over to someone else or maybe they won't have enough camaraderie with another lawyer to say, 'how do I do this?',' that kind of thing. I think we've got to do that.

"I think the other thing we've got to do as lawyers is, we've got to realize that, 'you can't take it with you.' As I grow older besides just being a law teacher, but as a lawyer I'll go back and help other young lawyers in getting their practices off the ground. There are a couple of black lawyers in town, I think, who have made a lot of money, but what happens with it when they die, as we all will? There will be very few young black lawyers who will benefit from any of their expertise. They may have a couple of people who work with them from time to time, but there is a need—not necessarily to turn your business over to everybody who wants it— but we have to realize that we've all got to step aside. You can't just step aside and say, 'I made a lot of money.' I feel very strongly about that."

Q. As president-elect of the Norman Minor Bar Association do you have any significant things that you hope to accomplish once you're in office or an agenda?

A. Yes, but it will be hard because we're only elected for a year. I take office in January. What I would like to see, of course, is an ever-stronger internal group. I would like to see that all the black lawyers in town are members of Norman Minor. Many of them are but not everybody, but that's the same in every group.

"I would also like to make sure that we as a group begin to develop more political impact. For example, we do an evaluation of judges and elected officials. I want us to continue to do that. I want these elected officials to get to the point that it is a necessity. Some do it, but I don't know if it is an absolute necessity now. It is a necessity now to at least come to us and let us evaluate what we think of the candidates. Also, we're going to host a regional meeting of the National Bar Association here in June and, of course, we want full support of that."

Q. I was wondering just what was the connection with the National Bar Association?

A. We are an affiliate of the National Bar Association.

Q. We are an affiliate of the National Bar Association.

Q. You've been here at the law school since 1978, what has been your chief concerns?

A. I have tried to indicate, especially to black students, that barely getting by is not enough, that bare competence is not enough, and that the black community should expect no less from its lawyers than the white community. Don't misunderstand, I'm not saying that all black students are coming with that attitude, most of them do not. I want them to know that I want them to be good.

"I think we need certainly more black students, and more support for them, but sometimes that is a function of who is out there. It appears at least that black undergraduate enrollment is on a steadily downward trend and, I suppose, that shakes out to a steadily downward trend in graduate enrollment, including law school. Plus, we know or ought to know that as a group black people have less economic clout than white folks so it appears that they're going to need more monetary support, and the supports aren't out there the way they used to be, so it's a continuing cycle.

"I also would like to see — like you were talking about earlier — leadership roles. We have a couple of black people on law review a couple of years ago, and right now one black student, Bernita Brooks, on the Student Bar Association. I think we ought to see more black students. If we are going to be leaders, and we've got to start here, I would like to see more black students getting involved in more stuff in the school than going to class. If that means serving on committees for no other reason than it helps you to meet other people, so be it. I don't think we do enough of that, and I would like to see more of those kinds of things.

"I don't want to hear another black student saying, 'I just want to get by.' That really makes me angry. I've seen less of it, but it is still here. 'I just want to get by.' I don't want to hire anybody who just wants to get by. I want to hire somebody who wants to do their absolute best. That means aiming for excellence and not aiming for mediocrity. Only a small minority of Cleveland-Marshall's black students do that, but one is too many as far as I'm concerned." 

SPEAKER

by Mary Bienko

The Delta Theta Phi Law Fraternity sponsored speaker Kip Reader, partner with Ulmer, Berne, Laronge, Glickman and Curtis, on November 9 in the Moot Court Room. Mr. Reader's topic was how to prepare the trial court record for an appeal.

A specialist in oral advocacy, Mr. Reader took his audience through each phase of the trial process from initial pleadings through post-trial procedure with methods of preserving the record.

The bulk of the lecture dealt with what happens during the trial itself. Mr. Reader said the most challenging element to a litigator was the need to think quickly on his/her feet during the trial — when to object to a question of the opposition or to move to strike a response of a witness from the record.

If you ever have any objection to anything during the trial phase, it is important to get that objection in the record, in order to save it and base your appeal on it. He did caution that an attorney has to think quickly on his/her feet during the trial — when to object to a question of the opposition or to move to strike a response of a witness from the record.

The lecture was followed by a question and answer session and refreshments.
Studying Abroad:

Have you often thought of studying in Europe or the Far East? Well, this may be the summer of your dreams. The University of Santa Clara's Institute of International and Comparative Law will again offer its highly successful summer programs in Oxford, Strasbourg, Tokyo and Hong Kong. Each of these programs is unique because it strives for maximum integration of the students into the host institution and culture.

Dean George J. Alexander has announced that in 1984 the University of Santa Clara's School of Law and The Dickinson School of Law, will each be offering summer programs abroad for the study of comparative and international law.

The Oxford program, for example, is taught exclusively in the individual one-to-one Oxford tutorial method by Oxford University's superb law faculty. No other program is taught exclusively by the Oxford faculty, nor does any use the tutorial method. The Strasbourg program, which focuses on international human rights, draws its faculty from the outstanding collection of scholars and diplomats who congregate each summer in Strasbourg, home of the European Court, the Commission of Human Rights and the European Parliament. Both the Hong Kong and Tokyo programs focus on the legal aspects of trade in Asia.

The Strasbourg, Hong Kong and Tokyo programs also offer internship experience. Strasbourg students may, for example, find themselves working on a case in the European Court of Human Rights or find themselves attached to the human rights division of an international organization. Students at Hong Kong and Tokyo work in international law firms or in the legal departments of international trading firms. In lieu of an internship, Strasbourg and Hong Kong participants may elect an additional study component. The additional Strasbourg component is held in Geneva, Switzerland; for the first time this year the Hong Kong program offers an additional study opportunity in Singapore.

"Each of these four programs offers an incomparable experience which simply cannot be duplicated by study in a U.S. law school," Dean Alexander explained. "I might add that former students often remark how prospective employers were quick to recognize the unique value of this training."

The programs are open to students from A.B.A. accredited schools. Dean Alexander is happy to give details of the program to anyone who contacts him at the University of Santa Clara. Write: Dean George Alexander, c/o The University of Santa Clara, Santa Clara, Cal., 95053.

Summer Seminars Abroad program to be sponsored by The Dickinson School of Law.

Three two-credit-hour courses will be offered in Comparative Law, Comparative Criminal Law, and International Human Rights. Dickinson Law faculty as well as Continental educators and lawyers will instruct the sessions to be held at the University of Florence School of Law from June 9 to July 6.

The program is directed by Dickinson Prof. Louis F. Del Duca, who is a noted scholar in commercial law. "We will have timely presentations in international human rights and comparative criminal law in addition to the augmented basic course in comparative law," said Dr. Del Duca. "There are a lot of stars on the faculty for this program."

He will be joined by Dickinson Professors Thomas M. Place and Gary S. Gildin. In addition, Antonio Cassese, a renowned scholar in international law, Anna de Vita, a member of the University of Florence Institute of Comparative Law, and Nicolo. Trocker, also a member of the Institute of Comparative Law, will also serve on the faculty. Eleven distinguished scholars will complement the faculty, serving as lecturers.

Dr. Del Duca will provide registration information. Call him at (717) 243-4631 or write: Dr. Del Duca, c/o The Dickinson School of Law, 150 South College Street, Carlisle, PA 17013.

C-M Student Serves Her Community

A third year evening student at Cleveland-Marshall College of Law, Kerin Kaminiski, in keeping with the school's policy of providing public service, has drafted an innovative Code of Ethics for the City of Brook Park Public Officials. The Ordinance was introduced by Mayor Thomas J. Coyne at the Brook Park Council meeting on October 18, 1983.

The Code of Ethics was researched and written as a practical application of the legal principles learned in a course on Local Government Law taught by Professor Alan Miles Ruben. The Code of Ethics includes well - defined prohibitions on conflicts of interest. It establishes a three - member Board of Ethics Review to investigate potential violations and aid City Council in interpreting and applying the Code. The Code of Ethics has disclosure provisions designed to identify possible conflicts of interest. The penalties for a violation of the Code of Ethics range from public censor to, in an extreme case, removal from office. This Code, if enacted by City Council, will promote public confidence in the integrity of City officials.
GOOD LUCK ON FINALS AND HAPPY HOLIDAYS