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The Gavel

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Moot Court: A Full Time Job

Some Cleveland-Marshall students feel that attending night school here is like working another full-time job.

If that is true, being a member of the school's moot court team too is like working three — and maybe three and a half — full time jobs.

Nine Cleveland-Marshall seniors are deeply embroiled in preparation for the annual competition which will pit them against the best law students of other schools.

They are all that are left of a group of some 35 who last year indicated their desire to participate in moot court competition.

In "intramural" competition last year, the volunteers were trimmed by local judges to 12.

Since then, three of those selected have dropped out.

Those remaining are: Al Thomas, Bob Thomson, Jack Budd, Jerry Wochna, Wendell Wellman, Don Tabb, Joe Rubin, Jim Hardiman and Edward Becker.

Of these, six will be selected to represent Cleveland-Marshall at the district competition to be held Nov. 7 and 18, in Detroit.

Outside judges will listen to all nine argue the fictional case which has been selected for this year's national competition.

Although it is fictional, the case strongly parallels one which will be submitted to the U.S. Supreme Court in the near future — but will probably not be decided until after the national competition, if the court grants certiorari.

It involves a stockholder suit against an accounting firm for alleged negligence in mishandling accounts of the corporation in which the shareholders have stock.

Among the problems moot court members face is deciding whether the suit should be a common law action for negligence, or one brought under Federal Securities and Exchange Commission regulations.

The fictional case is to be argued before the Supreme Court, and there are other complications.

For one thing, two federal district courts have come to differing conclusions in like actions. For another, there are resident corporations of two states involved.

For a third, in addition to stockholders and the accounting firm, there are also bondholders of the corporation who have entered the action to protect their interests.

Cleveland-Marshall moot court members received the hypothetical case Aug. 25. Between then and the start of classes, they have averaged 40 hours a week — and even more — in researching it.

Since then, they have averaged 20 hours — and more — a week in the C-M library.

It's a lot of work for three hours of academic credit — four if you make the team going to district competition.

But it's also a lot of prestige. Thompson comments, and he's not half kidding, "It's great. We love it."

Most of the moot court members are married, which puts a little more strain on their time.

In the district competition, the six Cleveland-Marshall men will be divided into two teams — three for the plaintiffs and three for the respondents — but each of them must also be prepared to argue both sides of the case.

Advisors for moot court this year are professors Hyman Cohen and Wilton Sogg.

Ex-Reserve Students Comment

By John McMonagle and Bill Summers

"So, what's the difference?" This question was asked of a few of the students at Marshall who have transferred from day law school at Western Reserve to night school here. Most of the answers were exactly what was expected, but a couple showed some misconceptions about Marshall.

First of all, the students who transferred were surprised by the cost of education at Marshall. Reserve charged at least Fifteen Dollars ($15.00) more per credit hour but with approximately the same facilities. Sure, the library was more complete at Reserve, but the close proximity of the Court House library more than offsets any edge that the Reserve library gave to its law school.

Secondly, there was a misconception about the degree that one receives when graduating from Marshall. Reserve gives out a Juris Doctor and the transfer students were under the impression that Marshall only gave a Bachelor of Law. This writer assured them that Marshall not only gives J.D. to graduating seniors, but according to administration sources, Marshall was the first law school in the state to begin such a practice.

The curriculum at Marshall is essentially composed of required "Bar courses" while Reserve offers more ancillary courses. Evidence of this fact is shown by a comparison of the respective law reviews. Marshall has a definitely more practical approach to many common problems that arise in daily litigation while Reserve deals mainly with theoretical or conceptual approaches to problems that are not as often encountered in litigation.

In comparing the faculty of each school, the Marshall reputation came out better than expected. Even though Marshall has a number of teachers who are only part-time faculty, it was these men who impressed the students most. Reserve, reportedly is doing away with all of their part-time faculty and trying to recruit either name professors, (ones who have written books, but aren't necessarily teachers) or recent graduates of top eastern law schools. The students felt that they were very impressed with these professors' titles and degrees, but still they learned more at Marshall from a person who has made his living by the active practice of law.

Next, the subject of grades was brought up and it was unanimously agreed that better grades were easier to get at Marshall. However, one student made an interesting observation on this subject stating: "At Marshall, a student usually only has to study for one course on a given night, while at Reserve, you might have to study for as many as four courses in one night because you could possibly have that many classes the next day. No matter where you are, you still put in the same amount of time, but here (at Marshall) you only have to concentrate on one subject."

Finally, when questioned about status, the general feeling was that the students were not in as good a position to move into a large law firm when graduating from Marshall as from Reserve. But on the other hand, not one of the men questioned had any intention of going into a large firm, so, in actuality, they had everything to gain by doing some practical work in the day and learning, as much as they would learn anyplace else, at night.

In summary then, this writer feels that the students who have transferred from Reserve are impressed by the quality of education offered at this night school and are definitely more satisfied here.

Student Bar On Participation

Stymied by an apparent lack of communication between student leaders and faculty representatives, the Student Bar voted unanimously Thursday night to request the transcripts of the proceedings of faculty meetings.

Most of the two hour student leaders' meeting was devoted to discussion of plans for student representation on faculty committees. The major conclusion was that only Student Bar members should sit on these committees since they were the elected representatives of their classmates.

A complaint was also raised at the meeting that due to the school administration's negligence those students entitled to G.I. Bill financial aid would be about three months behind in receiving their checks. However, the actual effects of the delay are minimal, since the school will hold off on collection from these students until the checks arrive.

Larry Grey announced that the new student directory will be out in about one month.

Vindicate the Innocent or Get the Guilty Off?

By David Lowe

Like an orchestra—booming timpani one minute, *sotto voce* the next — Jay B. White's voice traversed a series of questions on the criminal bar with his customary candor and spontaneity. After twenty-one years of criminal defense work, nattily-dressed White aspires to vault the bar and to gain the bench. "I plan to run," he says with conviction.

This third interview is directed to the topic of the series — the criminal lawyer himself. Do criminal lawyers win their cases, or do they "get their clients off"?

Expressive, knowledgeable and direct, Mr. White takes the baton. . . .

Interviewer: A substantial portion of the American public seems to think that a defense attorney doesn't really win his cases — but "gets his clients off." What is your general feeling on that subject?

Mr. White: I think that the hypothesis is just about correct. As far as the general public is concerned, they don't realize that there is a responsibility upon the part of the courts and the lawyers to do more or less that which the Constitution says that they have to do. And in the past several years, beginning with perhaps Mapp v. Ohio in 1961 — this was the beginning of the rights of the defendant. The defense lawyer now has a greater opportunity to protect the right of the defendant.

You must also consider that the Constitution is more concerned with the individual than it is with groups, and the general public does not have the rights that the individual has, and you might hear a lot of discussion now about protecting poor defendants. But you've got to realize that a defendant is *only* a defendant and is not a felon until such a time that he is convicted of a felony.

One of the best arguments I've ever heard, particularly with respect to Miranda V. Arizona, was exemplified by Professor Yale Kamisar (University of Michigan Law School), when a close friend of his posed this question to him: "Let's assume that your daughter had been viciously raped by the most dispicable character imaginable, and that a suspect was being held. Would you be willing to have that suspect afforded all the Constitutional guarantees that Miranda v. Arizona said he must necessarily have?" Professor Kamisar paused and thought for a few moments, then said: "My dear and learned friend . . . let's suppose that suspect was your son."

Interviewer: Regarding the Supreme Court decisions of the 1960's, is the defendant in fact being given rights which he should have had almost 200 years ago?

Mr. White: I would say that the Supreme Court has been giving persons rights that they should have had years ago. You might think of this — it was not fashionable to espouse the rights of the criminal in the early days — a lot of people were not interested in protecting their rights.

I've always espoused this cause, that the police are the buffer between the haves and the have-nots. Without the police, the have-nots would eventually go over and take what the haves have.

I remember the "Mutt and Jeff" situations — there would be a real large policeman and a real small policeman. The large policeman would walk out of the room and then the small policeman would tell the accused — "you know, you may as well tell me the truth about what you are here for, because he's so big that I can't stop him if he begins hitting you." But of course the professional criminal is never even interrogated — because he *knows* his rights. It's only the first-time offenders, like Escobedo was, who come under the "Mutt and Jeff" situation.

Interviewer: The *Canons of Professional Ethics* admonish the defense attorney to "present every defense that the law of the land permits." It seems, however, that the general public attaches a stigma to the attorney who uses "every defense" too successfully. Would you care to comment on that?

Mr. White: Well, that's something you can't overcome.

Interviewer: Do you think that the recent Supreme Court decisions give the defense man a certain advantage over the prosecutor?

Mr. White: There is no such thing as a defense attorney having any advantage over the prosecution. I would venture to say that in Cuyahoga county, of all the criminal trials, there are about 92% convictions. What the Supreme Court probably has attempted to do is try to equate the situation. Theoretically, there are 2200 policemen in Cleveland who can investigate a crime, and there are 30 or 40 lawyers in the prosecutor's office who could, theoretically, participate in a prosecution.

Interviewer: Does an attorney like F. Lee Bailey — or Jay B. White — who might use "every defense that the law of the land permits," help the image of the criminal bar?

Mr. White: I can say this — I think it helps the image of the criminal bar to this extent. A long time ago it was unfashionable to practice criminal law. You couldn't get anyone from any of the "reputable" law firms to take a criminal case. Today, they realize that there may be some *rights* involved, and it could be someone near and dear to them, so consequently there is broader participation on the part of the bar. The American Bar Association, which is probably one of the most autocratic types of associations, has a criminal bar section.

Interviewer: Do you think that a performance by a hot-shot attorney like Bailey, with all of his resources, militates against a conviction?

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This is the fourth issue of the Gavel since the beginning of school in September. Editorially, during this time, we have pointed out the plight of a student in obtaining a cup of coffee and the right of a student to participate in that which concerns him.

Our request for a third floor coffee machine has been rejected. Our request to attend faculty meetings has been rejected. But the request to participate on faculty committee meetings has been granted. What is even more important than attendance at faculty committee meetings, is a continuing line of communication between students, faculty, and administration.

Keep Line of Communication

That student requests are not granted is disappointing, but that student requests are not answered is insulting. Thus, we would like to thank Dean Oleck for answering our requests.

In regard to a third floor coffee machine, he wrote a letter that was posted on the first floor bulletin board explaining his reasons for rejecting the presence of such a machine on the third floor. And, the Gavel, after much soul searching, agrees with the Dean on this matter.

In regard to student participation at faculty meetings, the Dean has answered through a Letter to the Editor (next column). And, the Gavel agrees with the Dean's letter as far as it goes. We are not contesting the judgment of the faculty, nor its right to determine policy for Cleveland-Marshall. We just want to keep the lines of communication open — to be better able to explain the policies established by the faculty to the students.

We are thus encouraged by Dean Oleck's willingness to re-submit our request for attendance at faculty meetings, and pleased with his consideration in answering our requests.

Miscellaneous Comments

We would like to pass on a message from Harvey and Frank, and strongly urge that it be heeded. Please do not throw coffee cups on the floor on the third floor. Trash receptacles have purposely not been put there as they are an eyesore and coffee drinking on the third floor is discouraged. The third floor is a floor of classrooms, not a lounge. We, night students in particular, are making life miserable for these two guys. So, let's give them a break.

We would like to congratulate Marty Lentz for the most fantastic bit of scientific research that has come to the Gavel's attention this year. Marty has determined that it takes exactly 15 seconds to get a cup of coffee from the Vendo machine from the time your dime is deposited. Thus, Marty figures that only four students can be served per minute or forty students can be served during the break. These figures do not account for normal shuffling. Marty, thank you for adding much to the scientific annals of Cleveland-Marshall.

We would like to mention the publication of Dean Oleck's *Law for Living* in hard cover. The book is a compilation of articles authored by Dean Oleck which have appeared in The Plain Dealer. Luckily, at Cleveland-Marshall, it's not publish or perish — but, it is nice to see a familiar name on a book.

The Gavel

The Gavel is a publication of the students of Cleveland-Marshall Law School. Published twice a month during the school year.

Editor: **Mildred Schad**

Staff:

David Lowe, Ralph Kingzett, Nancy Schuster, Ken Hoffman, John McMonagle, Bill Summers

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Vindicate the Innocent...

(Continued from Page 1)

Mr. White: I don't think that anything that any lawyer may do will necessarily militate either for him or against him. But I do believe that when you have money, you have an opportunity to present a better case. You have more time to do more investigation, and so forth.

The reason why I imagine criminal justice has been somewhat poor before now is because the criminal, a long time ago, had no means with which to command the attention of men like Bailey, Williams, Foreman, Ehrlich and men like that.

Interviewer: Does a client's retention of a lawyer like Bailey prejudice the jury?

Mr. White: I don't think so. Percy Foreman told me that while he was empanelling a jury one time on a homicide case, one of the prospective jurors told him that the accused *must* be guilty if he hired Percy Foreman to defend him. And Percy left him on the jury, and that juror carried the ball for Percy more than anyone else. I think, by and large, that when people sit in that jury box they are the most conscientious people in the world.

Interviewer: Using the word "typical" with all of the vagueness that that word accrues, would you say that the "typical" defense attorney holds any advantage over the "typical" prosecutor?

Mr. White: No. I would say that the "typical" prosecutor has an advantage over the "typical" defense attorney, for the reason that the prosecutor is doing this *every day* — plus he has the opportunity to consult with 30 or 40 other lawyers. He also has the police department at his disposal. Whereas the typical defense attorney is usually an individual practicioner, perhaps with two or three other lawyers with him.

Interviewer: It could follow, though, that a high-powered defense attorney could be in a better position than a "typical" prosecutor, or vice versa.

Mr. White: Yes, but that would be a very rare instance. You've got probably the best prosecutor in the world here in this area — John T. Corrigan.

By and large, I think that the American public is prosecution-minded anyway, so the defense lawyer starts out with a decided disadvantage.

Interviewer: Have you ever had a would-be client of yours ask you to enter a plea of not guilty — yourself knowing with reasonable certainty that he is guilty. Or do they pretty much play ball with you?

Mr. White: Let me say this to you. Let's assume that I have a case — a felony matter — and he has told me certain things that I believe that if they are proven to be true, he is guilty — I have on numerous occasions refused to put him on the stand. And if he does go on the stand, I am not one to compound any perjury.

Interviewer: Public opinion seems to run highest against the defense lawyer who defends those of known criminal association, yet we know that due process must be extended to all. How can the criminal bar avert this stigma?

Mr. White: Well, you can't avert it. But it is becoming less and less. In 1865, I believe it was Seward, Lincoln's Secretary of State, who stepped down and defended the woman who owned the house that Booth lived in — and they were trying to show some conspiracy there. And I think they almost wiped Seward off the map.

Interviewer: You don't think there's any way out of this stigma?

Mr. White: No. The stigma has just diminished — but it hasn't been eradicated.

Interviewer: Have you ever "gotten a client off"?

Mr. White: Do you mean have I ever "gotten a man off" who perhaps may have been doing what they said he was doing?

Interviewer: Yes.

Mr. White: Yes.

Interviewer: Do you have any pangs of conscience in this regard?

Mr. White: No. You see, in the area of law — it's like playing football. The other day Ernie Green made a beautiful 65 yard run and it was called back. But the fellow who was penalized for holding had nothing to do with the actual play.

Criminal Law Contest Announced

An annual essay contest for law school students is being inaugurated by the *Criminal Law Bulletin.*

There are four prizes totaling $500 in law books to be selected by the winner. The first prize is $250 in law books, the second prize $125 in law books, the third prize $75 in law books and fourth prize $50 in law books.

The winning essays will be published as featured articles in the *Criminal Law Bulletin.*

In addition all students who enter the competition will receive a free one year subscription to the *Criminal Law Bulletin.*

Essays may be on any one of the topics included in the announcement of the contest which has been sent to all law schools deans. The contest will be judged by the editorial board of the *Criminal Law Bulletin.*

The deadline for contest entries is February 15, 1968. Entries are to be sent to: Essay Contest Editor, the *Criminal Law Bulletin,* 52 Vanderbilt Avenue, New York, N. Y. 10017.

Letters to the Editor

Dear Mrs. Schad:

Your editorial in this week's issue of The Gavel is strong and direct and does you credit.

However, you should not forget that law school policy primarily is a matter that must be determined by the faculty, insofar as student participation in faculty affairs is concerned. The faculty, after discussion, decided that the students would be amply apprised of matters of concern to them by having representatives sitting with the committees of the faculty; indeed, with all of the faculty committees, as you will note. The limitation is that a committee chairman might ask for privacy, now and then, when a delicate matter comes before the faculty committee — in matters inappropriate for student consideration; and this is a reasonable provision. You may be sure that the purpose is not to exclude the students from committee meetings except for very proper reasons, and that should occur only now and then, when faculty privacy is reasonably necessary.

With all respect for the judgment of the students, fully understanding that most of them are mature adults, the judgment of the faculty committee chairman ought to be a bit more important than that of most students in determining faculty action.

You are free to publish this letter in The Gavel if you wish to do so. I shall place before the faculty, at its next meeting, the request of the Gavel editor for reconsideration of the policy recently adopted. However, again, the decision of the faculty will govern. I have neither the power nor the desire to try to override such a faculty decision.

Sincerely yours,
Howard L. Oleck
Interim Dean

Editor of Gavel:

Students at Cleveland-Marshall relish reading the Gavel and eagerly await its publication. The paper is usually interesting and informative. It is one of the few methods of determining what is happening here at our school. Being second year students, we noticed many, many changes; twelve new offices, more classroom space, day school program, new professors and administrative changes.

The daily newspapers had earlier made us aware of the corporate struggle in Cleveland - Marshall and we wondered how it was possible that all these changes occurred in the face of such adverse circumstances; Someone must have had the interests and the continued welfare of the students deeply in mind to make such efforts while trying to keep our fine law school afloat.

Our primary interest as students is to learn to develop some maturity in our thinking about course work and important occurrences here at Cleveland-Marshall to the extent that the Gavel, or any publication, for that matter, contributes to our maturation we offer our congratulations!

On the other hand, we could care less about trash cans, elevators, marriages and coffee breaks, especially when publicated in a criticizing and derogatory manner... "just present the facts mam." Some of us are no longer in undergraduate school. Some of us are too old to beef about petty matters and some of us are just too darn glad to be here another year to "knock it."

P.S.: To Dean Oleck! Thanks for your new book *Law For Living.* How about a book about the 'Corporate Struggle'? A best seller please!

And what of your pen names? We would like to read more of your publications. They provide useful guides to those of us who are struggling to learn how to produce publishable articles.

Names Withheld by Request