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### Family matters

Dennis Butler '68 gives guidance to young lawyers who'll be pulled from one side by their work, from the other by their loved ones. CAREER, PAGE 4



### How terrorists get off easy

President Clinton's latest blunder is his biggest — he let FALN members go free. OPINION, PAGE 6



### De-grading

Tired of this school's capricious grading system? So was Ann Vaughn — so she devised her own (capricious) system. SIDEBAR, PAGE 7



# THE GAVEL

VOLUME 48, ISSUE 1 ■ SEPTEMBER 1999

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

## City Club yields floor to local pols, presidents

By Sonja Lechowick  
STAFF WRITER

There is only one institution in Cleveland that is synonymous with free speech, politics, debate and education — the City Club of Cleveland.

**Where To Go** Founded in 1912, the City Club is the oldest continuous free-

speech forum in the country, and has hosted dozens of U.S. and world leaders through the years. In its modest building near the southwest corner of East 9th Street and Euclid Avenue, the City Club attracts prominent figures due to its expansive audience, which includes a radio network of over 400 stations, local television coverage, extensive newspaper coverage and occasional C-SPAN airtime.

The City Club's Friday Forum has been a popular cornerstone of the Cleveland community since its inception. The forum is See CITY CLUB, page 5



COURTESY MICHELE MCKEE

Killed by a drunk driver, 2L Deanne Dominguez was 31 years old.

## Alumnus, 2L killed in crashes

GAVEL STAFF

The Cleveland-Marshall community lost two of its most well-liked and motivated members over the summer.

Second-year law student Deanne Dominguez, 31, was killed on the first night of summer classes in a collision with a drunken motorist on state Route 2.



Darrell Tyburski

Darrell Tyburski, 33, was a 1995 C-M graduate and a rising star among criminal defense attorneys in Cleveland. He was killed when his car veered off the Shoreway heading west and crashed near Edgewater Park.

Turn to Page 2 for more on the compelling stories of Dominguez and Tyburski.

## Software bugs create a stink

### CSU's conversion to PeopleSoft disarms unsuspecting law students

By Kevin Butler and Eileen Sutker  
STAFF EDITORS

Problems with PeopleSoft, Cleveland State's new university-wide software package, have not passed by Cleveland-Marshall, and some law students are still reeling from the financial aid and records disasters that have plagued CSU since it introduced the software to students last fall.



While the CSU administration and trustees stood by their decision to implement the software and committed even more funds to it, administrators at C-M have worked to avert several major glitches which have had far-reaching consequences to law students.

Students have complained mostly about their financial aid. Though the university bursar received loan checks from various lending institutions on time, problems with PeopleSoft prevented CSU from printing students' overage checks once the loans were applied to their account balances.

### Check's in the mail

For many law students, especially full-time day students without jobs, that overage money is essential to pay for daily living expenses.

According to Jayne Geneva, C-M's director of career planning, one law student awaiting her check admitted during orientation that she could not buy copies of her class materials because

See PEOPLESOFT, page 2

## Former judge discourages myths about mediation work

In a speech to C-M, Markus equates mediation with 'testing no' rather than 'getting to yes'

By Eileen Sutker  
STAFF EDITOR

Retired Judge Richard M. Markus presented the 1999 Distinguished Jurist Lecture on Sept. 15 to an overflowing audience in the moot courtroom. Markus is now a visiting professor at Cleveland-Marshall but served as a judge on the Cuyahoga County Court of Common Pleas for four years and on the Ohio Court of Appeals, Eighth Appellate District, for almost nine years.

Markus spoke on "Fundamental Misconceptions About Mediation Advocacy." He referred to mediation as "testing no" rather than as "getting to yes" and explained that mediation advocacy is unlike trial advocacy because lawyers need skills of compromise. Mediation is not

merely a form of negotiation, he said. He discouraged the myth that mediation requires little or no preparation by attorneys by noting that opening statements need to sway a hostile audience. He also argued that mediation does not necessarily fail if no settlement occurs — a major goal of mediation can be to narrow the issues for litigation. He reiterated that advocacy skills can and should be taught in a wide variety of scenarios, and posited that mediation advocacy as a teachable discipline is



COURTESY LOUISE MOONEY

Retired Judge Richard M. Markus

developmentally where trial advocacy stood about 10 years ago.

Questions generally revealed the audience members' diversity of mediation experience, but when asked about the use of mandatory mediation, Markus quipped, "I have trouble with mandatory anything." He closed by saying, "Mediation does not satisfy lawyers — it satisfies clients."

Markus retired in 1998 as senior litigation partner from the law firm of Porter, Wright, Morris & Arthur. As president of Private Judicial Services, Inc., he provided mediation services before joining the faculty at C-M.

## With new theme, BLSA welcomes first-year students at reception

By Timothy Gardner Jr.  
CONTRIBUTING WRITER

The Black Law Students Association's third-annual reception to welcome 1Ls was held Sept. 10 in the garden area of the law school.

BLSA centered the event around its theme for the year, "Looking Back to the Past for Guidance to Build a Unified Bridge to the Next Millennium."

Judge Janet Burney of the Cuyahoga County Court of Common Pleas discussed the need for 1Ls to seek help with problems and to study consistently.

Dean Steinglass encouraged the students to maintain a spirit of unity.

"You have each other," Steinglass said. "The power of having each other is vastly important."

Fred White and Errol Ashby, both associate deans, shared personal experiences at C-M and talked about the challenges of law school.

Alumni Association President Laura Williams also attended, along with several leaders of the black law community.



## Admissions, SBA revise orientation

By Linda Griffin  
STAFF EDITOR

Student Bar Association President Matt Hite remembers the initial night of orientation.

"When I first came out of orientation two years ago, I thought, 'What did I do to deserve this?'"

That is why, for the first time this year, the admissions department and the SBA joined forces to make the transition into law school less stressful for 1Ls. The two groups revised the peer advisor program and implemented a new orientation process in general.

SBA Rep. Genesis Brown and Mary Dale, a student working in admissions, formed a committee whose primary purpose was to design a more formal orientation schedule.

"On the night I met my peer advisor, I felt like I was in a herd of cattle, and I didn't like that feeling," Dale said. She compared her orientation experience to the Army, where she previously served as an officer.

"If orientation were more organized and professional, people might get more out of it."

In early June Margaret McNally, assistant dean of admissions, and student recruiter Rebecca Zim proposed a plan with the consent of this committee for 1Ls to receive adequate information as they began the rigors of law school. The committee also selected peer advisors and scheduled peer advisor training sessions.

At orientation, beginning Aug. 16, 1999, approximately 25 peer advisors were ready to greet the 251 incoming students. Full-time day students and part-time evening students were paired with similar peer advisors. Following the address to the class, a peer advisor led his or her group of seven students around the school for a tour covering the student services center, grade board, lockers and mailboxes.

Students also received information about the SBA book sale, the bookstore and various other CSU locations — information once gained by trial and error.

On Friday, Aug. 20, the peer advisors made a year-long commitment to the lawyers-in-training at a picnic honoring 1Ls.

"Monday night's program was well put together but, looking back, the events should have been spaced out more throughout the week," Hite said. "The incoming students were hit with everything the first night."

In a telephone interview, McNally said she was satisfied with the SBA and student support.

"We would like more peer advisors," she said, "and next year we'll recruit in the spring and start training earlier."

## IN MEMORIAM

### Deanne Dominguez

1967-1999

By Michele McKee, Troy Prince and Roger Bundy

CONTRIBUTING WRITERS

The evening of June 3, 1999, was the first Thursday of summer classes. We were just settling into the summer when fate, God, evil — whatever you believe — intervened. Some of us headed to Becky's as we had done so many times. Deanne Dominguez stayed for less than an hour; she wanted to see her daughter and she had to wake early for work.

On her way home to Mentor that night, an extremely drunk man with a suspended license (he'd been convicted of drunk driving three times before), entered state Route 2 going the wrong way. He hit Deanne head on at over 65 mph. Both were killed instantly.

Ultimately, there are some sorrows words seem sorely inadequate to express. Deanne had a wonderful future ahead of her. She infected everyone around her with an unfailing love for life, always joking, ready to offer a supportive word. She was also a dedi-



COURTESY JANET TYBURSKI



COURTESY MICHELE MCKEE

cated student who stood out in her classes. Her death is a great loss to all of us.

She maintained a long-distance marriage to her husband Horacio on Long Island and shared a home with her four-year-old daughter Kayla and mother-in-law in Mentor. She was a clerk for Cleveland lawyer R. Jack Clapp and an equestrienne instructor at Lake Erie College, where she received a bachelor's degree in 1991.

Contributions in memory of Deanne are being accepted for a trust set up for Deanne's daughter. Contributions may be made to SBA. In addition, as a continuing tribute, Deanne's image will be incorporated into a mural that has been commissioned for the new student services center. There will be a formal dedication upon its completion. ■

### Darrell Tyburski

1965-1999

By Eileen Sutker  
STAFF EDITOR

Alumnus Darrell Tyburski, C-M '95, died Aug. 24, 1999, when his car went out of control on the westbound Shoreway and crashed near Edgewater Park.

He was 33, husband to Janet and the father of three daughters.

Tyburski made a mark in the few short years he practiced criminal defense for Al Giuliani & Associates. Jeff Kelleher, C-M '75, was co-counsel in Tyburski's first defense, a felonious assault case they won.

"He was giddy," Kelleher said. "He said, 'This is what I want to do.'" An impressive number of judges and attorneys attended his services, a testament to his passion at trial.

Tyburski was born in New York City in true hardship but played football throughout high school on Long Island and in college at East Stroudsburg (Pa.) University, where he was a 320-pound star tackle.

He played semi-professional ball and was a corrections officer before his uncle, an attorney in Canton, suggested he attend C-M.

Professor Steven Werber, who coached Tyburski on the moot court team, said he understood the team concept well.

"His heart was bigger than his size," Werber said, "and he was huge." ■

## PEOPLESOFT: Pricy conversion proving costly to students

Continued from Page 1 — she had just 70 cents in her pocket and had eaten only two cups of oatmeal in two days.

Another student who spoke on the condition of anonymity said she never received the telephone calls the *Gavel* placed to her home because her phone service was cut off for nonpayment.

The vast majority of students have received their overage checks by this week.

Responding to rumors of impropriety at the university level, law financial aid Director Catherine R. Buzanski said she was confident federally granted student loan monies could not be shuffled into interest-bearing accounts by the computer system between the time CSU received the loan checks and the date the overage checks were cut.

CSU finally advanced \$300 to students who had not received their checks for the purchase of books — a sum insufficient for many law students carrying a full course load. Beyond that aid, law students could only wait.

### 'Whatever it takes'

The PeopleSoft conversion also created billing errors for several students. 2L Otto Elkins received a tuition invoice for more than \$60,000 in August.

"I thought for a moment that I was attending the school down the street," Elkins said. CSU cor-

rected the error — only to send another bogus invoice for \$12,000 owed. Elkins said he was assured a resolution by the end of September.

CSU President Claire A. Van Ummersen released a statement to students over the summer responding to several *Plain Dealer* articles detailing the problems with PeopleSoft. In it she pledged to do "whatever it takes to provide you with superior service."

Among the remedial measures she instituted was a special student services center designed to operate during the fall registration period.

"This center will act as a resource for you if problems concerning financial aid and/or billing should occur during the regular registration process," she wrote.

Students were not so lucky. One law student said she tried five times to correct her address at the registrar's office. But because her bursar account would not accept changes made by the registrar, to this day the university has two separate addresses for her.

Kay Benjamin, whose office maintains student records at C-M, reported in an e-mail to students that she became frustrated when they walked handwritten corrections to the CSU records department, watched the corrections



GAVEL FILE

OCP's Geneva heard from a 1L who had eaten just two cups of oatmeal in two days.

being entered and received printouts that were still wrong.

### Grade flip-flopping

When law students' spring grades and class ranks were not tabulated correctly by midsummer, Benjamin ran the numbers by hand. Despite her efforts, she said, some graduating students lost prestigious clerkship opportunities and at least one lost a job opportunity with a major law firm because CSU did not send a timely transcript to the potential employer.

Benjamin said she had trouble adjusting student grades as well. The PeopleSoft package calculated the year-long courses as two separate courses — one

for each semester. Hence, students who received C's in constitutional law, for example, received two C's on their report cards instead of one. Additionally, students who received incompletes had the credit hours added despite not having grades, which artificially lowered their GPAs.

In four cases, Benjamin reported, PeopleSoft's program miscalculated law students' GPAs as 0.04 on a 4.0 scale. Regardless of their actual class standing, these students suddenly found themselves subject to academic dismissal.

According to the *Plain Dealer*, CSU has already spent more than \$7 million over its projected cost of \$4.2 million on PeopleSoft. The university has considered legal action against the California-based company but has made nothing official.

CSU is not alone. Ohio State University has spent close to \$30 million more than what it had projected the program's conversion would cost. The *Chronicle of Higher Education* reported that universities across the nation are facing the same problems with PeopleSoft implementation.

In light of the alternative — to return to antiquated systems that are not Y2K-compliant — CSU and most other universities are, at least for now, staying with the promise of a brighter future.

# "You Could Tell By The Look On People's Faces..."

Dear PMBR:

I graduated from the University of Arkansas at Fayetteville. The next day, I drove to Oklahoma City to begin your 6-day "Early Bird" workshop. The first day's exam was in criminal law. Of the six Multistate areas, I had not reviewed criminal law because I had spent the last year and a half clerking for the Prosecuting Attorney's Office. Criminal law would be a breeze, right? WRONG! I only scored 40% correct! That afternoon, Steven Palmer explained to us that the old common law of crimes, which is totally useless in the "real world", is what they test on the Multistate. My real life knowledge of criminal law was actually causing me to miss questions!

By the time my Bar/Bri course began, I was working PMBR practice questions and starting to memorize the ton of information that we had to learn. While those who did not take PMBR were hearing the lectures on Multistate subjects for the first time, I was actually reviewing what I had already learned from the "Early Bird" workshop.

I definitely believe that PMBR was the reason for my score of 170 on the Multistate. I have never been skilled at taking multiple choice tests, but the PMBR professors taught me how to avoid the traps that the bar examiners set for the unwary. At the bar exam itself, you could tell by the looks on people's faces whether or not they had taken PMBR. While most people were in a state of panic, those of us who had taken either the 3 or 6 day workshops were pleasantly surprised to learn that the actual Multistate exam was easier than our practice questions!

I wholeheartedly recommend PMBR to everyone who hates standardized tests as much as I do. Keep up the good work!

Sincerely,  
David A. Bailey

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**D**O I PRACTICE LAW to support my family or do I have a family to support my practice? Sounds like a strange and unrealistic question, of course, but by the time

**Alumni Advice**

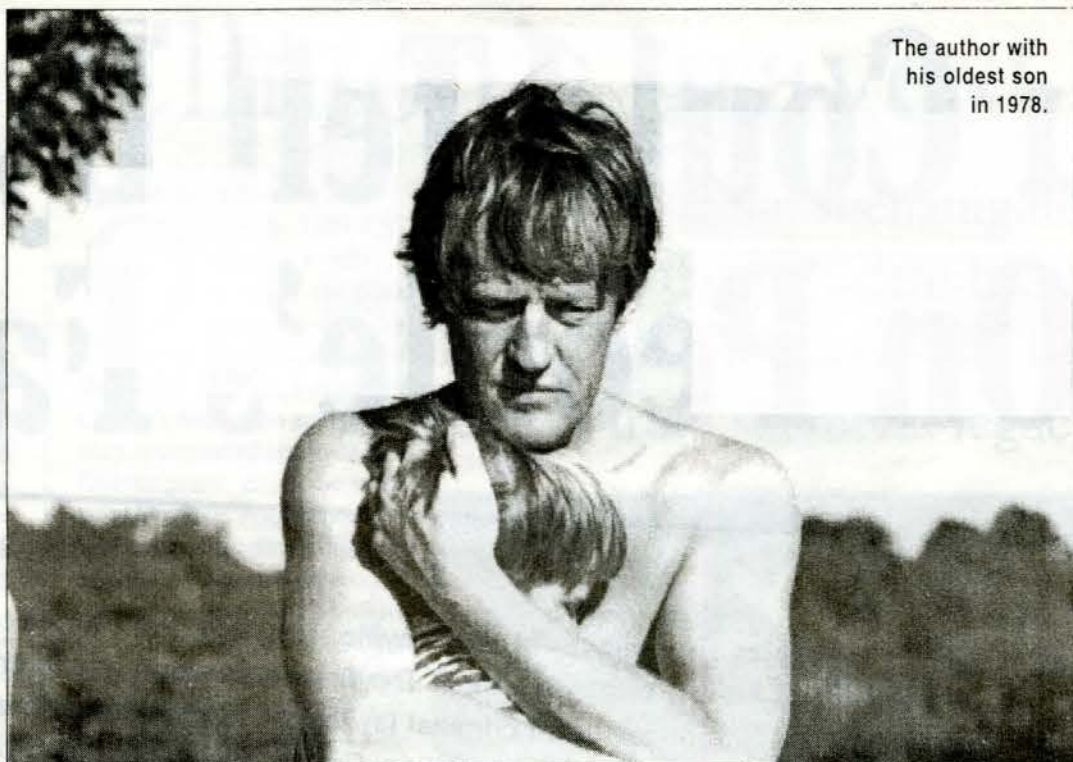
you learn to respect the question the proper response may come too late for you.

You may have already passed the point where, by your absence, your family has suffered irreputable harm and the relationship is permanently damaged.

The determination and devotion that is required to be a seasoned and prosperous lawyer sometimes blinds the choices we make in life. Sure, it's admirable that you work hard and maintain high standards in your representations, but excessive work can lead to an imbalanced, exhausted and alienated existence. If your family doesn't have warm and affectionate memories of you, is it possible your clients will remember and cherish your devotion? Unlikely at best.

The excessive ambitions of poor law students can lead to economic prosperity in an otherwise emotional wasteland. After you finally acquire this wealth, with whom do you enjoy it? You won't be able to take it with you to wherever death leads you.

It is an old lesson of life — to be controlled by balance and good timing. To do this, you must be aware of the pitfalls common to professionals and consistently monitor your progress and ego to ensure your timing. What, after



The author with his oldest son in 1978.

COURTESY GERRI BUTLER

# Family advocacy

Before the people who wait for you in your office come those who wait for you at home. **By Dennis F. Butler**

all, does it profit a lawyer if he shall gain the victory for his client and lose his own family? If you stay alert, you can avoid that unfortunate outcome. A few suggestions on what to watch for:

- **Be patient.** Don't try to become independently wealthy in the first years of your practice. An early concentration on wealth will pull you too far from your family. Furthermore, be aware

that the first years are where you will actually learn how to be a real attorney. This takes time and is essential to your later success; don't blow it by following fortune solely.

- **Rejuvenate yourself.** Remember that being a lawyer does not exempt you from physical and mental exhaustion. Take the time to rest and renew yourself. All too often attorneys will use

alcohol to relax and relieve themselves of their burdens. We all know what this does to our families, not to mention ourselves.

- **Observe your elders.** Watch how the older, sure-footed and respected lawyers gear themselves in their practices. Examine how they work for the benefit of, not in opposition to, their families. Too frequently young lawyers will associate only with

their contemporaries, which is of little benefit since their contemporaries are struggling with the same problems they are and can teach them very little. Most established lawyers, on the other hand, will give you their direction free of charge.

- **Invoke providence.** Keep in touch with your god. Benjamin Franklin interrupted the Constitutional Convention to seek God's help and pose the question, "If a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?" They trusted in God, and see how we have been blessed as a nation; so too will it follow in your career and family choices.

To paraphrase Gen. George Patton in conclusion, the object of a lawyer is to control his law practice and not let his law practice control him. Most lawyers who have reached greatness in law have also reached greatness as human beings, as fathers and mothers. This is, above nothing else in life, our ultimate goal.

▪ **About Dennis Butler:** Butler, 59, is a 1958 graduate of the University of Notre Dame and a 1968 graduate of Cleveland-



Marshall. The son of the late John P. Butler, a noted criminal defense attorney, Dennis has been

in private practice as a defense attorney in Cleveland for 30 years. He lives in Lakewood with his wife and the youngest four of his six children.

## A sad fact about C's: law school grading is truer to life than any other scheme

By Karin Mika

▪ **Do you think the grading guidelines are fair?**

Frankly, I'm probably not in a position to answer this since the grading of legal writing isn't at all the same as grading the exams in other classes. I suppose the guidelines seem more fair to those receiving an A as opposed to those receiving a C. The bottom line, whether any of us likes

**Legal Writing**

it or not, is that in a large sampling of people, there will be a couple of exceptional individuals, and a whole lot of average performers.

And yes, the percentages reflected within the grading guidelines probably do accurately reflect how many people will be average performers within a large group. The problem, of course, is that a C no longer seems to mean average, but seems to be a connotation for deficient. Explaining to employers that law school is a more accurate way of grading than was undergraduate school doesn't quite make it either, but that's the way it is. Our

place in the world is always measured by artificial standards and the most we can do is to keep on trying to get where we're going regardless of external circumstances or encumbrances.

- **If it is generally known that only the top 10-20 percent of the class get decent job offers, what hope is there for the rest of the class that seem to get "marked for life" below that?**

One of the sad facts about the field of law is that many of the high-paying firms rarely look beyond class rank (and first-year class rank at that) when hiring an associate. That being said, you can't just crawl into a hole and die if you aren't one of the chosen few. A friend has said to me, "Cream always rises to the top." In law and in life there is an inordinate amount of room for good, hard-working, quality individuals who see opportunity, grasp it and make the most of it. In fact, those people often wind up more satisfied than the chosen few. Keep in mind, however, opportunity doesn't often come to your door, announce itself and issue you a personal invitation. I

have little sympathy for those who believe that success will simply happen and then blame someone or something else when it doesn't.

- **Whatever happened to the murder mystery you were working on a couple of years ago?**

To bring people up to speed, a couple of years back I started writing a book with Jerry Chattman — an adjunct at Cleveland-Marshall and managing partner of Chattman, Gaines & Stern. It started out as a joint effort, but before too long it was clear that I was writing a law school satire and he was writing a pulp murder mystery. He won out (as most managing partners often do), so I bowed out of the creation of the plot and took the role of managing editor, creative editor, artistic director and advertising agent. I also typed the whole thing from long-hand notes.

I am gearing up for Chattman's book signing to take place at Mac's Backs (at Coventry) on Oct. 25. The book is called *An Education in Murder* and the core events take place

at a school strangely resembling C-M. In the end, the book turned out to be something in between a satire and a pulp murder mystery. Members of the Marshall community may believe they recognize some of the characters, but of course we categorically deny that we based any of the book on real people or events.

The cover photo is a wonderful picture of the Cleveland skyline taken by our own Ralph Perk, Jr., Cleveland municipal court judge. If all goes well, or even moderately well, we hope to produce a series of books with many of the same characters.

Mika is the assistant director of legal writing at C-M.



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# CITY CLUB: Institution hosts younger social group

Continued from page 1 —

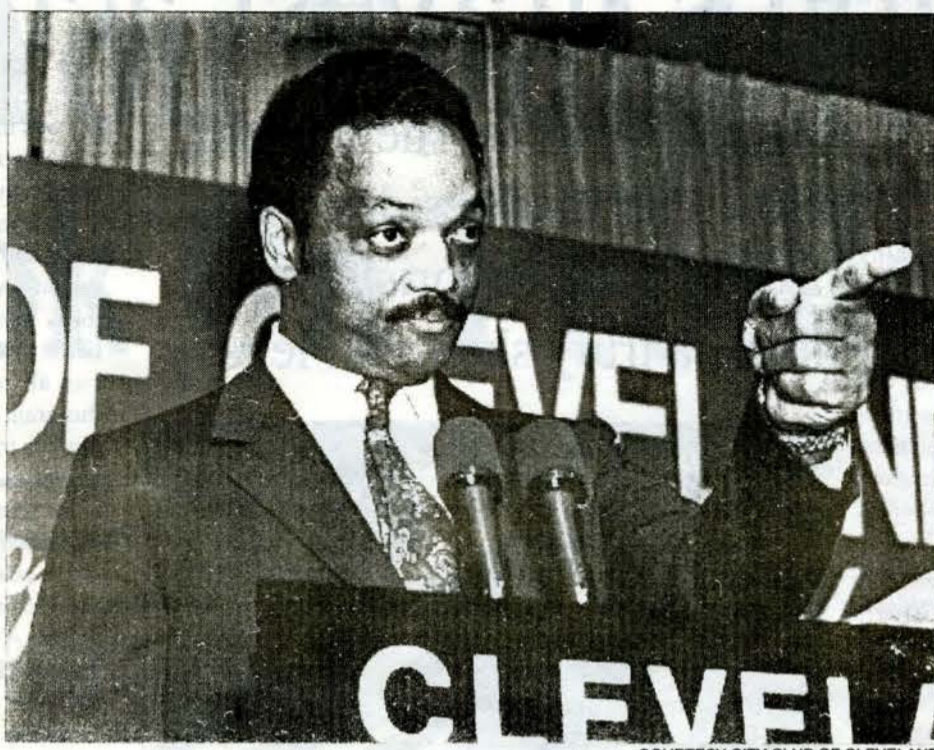
from noon to 1:30 p.m. every Friday afternoon, and includes lunch, a 30-minute address by the featured speaker and 30 minutes of questions. All speakers must answer unfiltered, unrehearsed questions directly from the audience. Often the speakers make major policy announcements at the forum.

Just a few of the recent speakers include Madeleine Albright, President Clinton, Ross Perot, Newt Gingrich and Gerry Adams. Past speakers have included George Bush, Ronald Reagan, Jimmy Carter, Dr. Benjamin Spock, F. Lee Bailey, Sandra Day O'Connor, Jane Fonda, Eliot Ness and Babe Ruth.

Since the City Club is a hotbed for free expression and ideas, it is not surprising that politics take up a large part of the forum's calendar. "A big part of our organization caters to politics," said Nan Alexander, director of membership and mar-

keting. "We always have political debates between candidates of an upcoming election, and most U.S. presidents have put the City Club on their speaking agenda."

be a Great Lakes Theatre Festival dinner, where the festival's artistic director, James Bundy, will speak. The group meets approximately once a month.



The City Club of Cleveland is a perennial stop for political candidates like Jesse Jackson, above. Since 1912 the club has been a landmark of free speech and debate in downtown Cleveland.

Law students might be interested in joining the City Club for its newly formed "New Leaders" program, which is aimed at the under-40 crowd for social and networking purposes. For example, the next meeting will

from Colorado, on Dec. 17.

Information on the City Club, its membership benefits and the New Leaders program is available at (216) 621-0082, or by sending e-mail to ALEXANDER@CITYCLUB.ORG.

Upcoming Friday Forum speakers include Daniel Ashbel, consul general of Israel, along with Hasan Abel Rahman, chief representative of the PLO and Palestine Authority in Washington, who will both speak on "The Future of Israeli/Palestinian Relations" on Oct. 22; Ohio Gov. Bob Taft on Oct. 29; retired federal appeals Judge Nathaniel Jones on Nov. 5; Akezahn Kazhegeldin, former prime minister of the Republic of Kazakhstan, on Nov. 12; and Pat Schroeder, former Democratic congresswoman

## Fall speakers to focus on social reform

By Steven H. Steinglass

To our new and returning students: Welcome to Cleveland-Marshall's 1999-2000 school year. I look forward to meeting our new students and to greeting our returning students.



### The Dean's Column

You have entered or returned to the college of law in a year you will remember as one of the fullest and most stimulating in your law school experience, a year in which some of the area's and the country's finest scholars will gather at the law school for a series of lectures, seminars and special events that will enrich your law school experience and your understanding of the issues you will confront as members of a global community.

Let me tell you about upcoming events planned for this fall.

Associate Dean Michael J. Slinger has organized a series of informal programs in which faculty members will speak on their scholarly interests and pro bono practices. Each begins at 5 p.m.

On Oct. 26 Professor Stephen J. Werber will discuss "Judaic Law: An Exploration of Comparative Law." On Nov. 16 Professor Susan J. Becker will discuss "Sexual Orientation and the Law: An Overview."

On Oct. 5 at noon and again at 5 p.m., I will meet with students for the first Dean's Forum of the year. Bring your concerns and your suggestions to this meeting and stay afterward for pizza.

At 5 p.m. on Oct. 6, Ratna Kapur, director of the Centre for Feminist Legal Research in New Delhi, India, will discuss "The Two Faces of Secularism and its Impact on Women's Rights."

The law school's criminal law faculty have developed a series of criminal justice forums for the fall, beginning with "Trying a High Profile Death Penalty Case: Lessons Learned from the Oklahoma City Bombing Trial of Terry Nichols" on Oct. 13 at 5 p.m.

On Oct. 21 at 5 p.m., Pulitzer Prize-winning historian Gordon S. Wood will speak on "The Origins of the American Democracy." Two days later on Oct. 23 the law school will be the site of an all-day conference in the moot court room on "Re-Orienting Law and Sexuality."

The second criminal justice forum takes place on Oct. 29. "Circle the Wagon Trains: Criminal Defense in the New Millennium" will examine the most difficult issues confronting criminal defense lawyers.

Each of these programs is a wonderful opportunity for our students to learn more about important social and legal issues and the influence that legal scholars have on social reform. I urge you to attend as many events as possible.

Steinglass is dean of C-M College of Law.

## How we brought an unyielding school district to its knees

By Ann Vaughn

CONTRIBUTING WRITER

Not long ago I battled the Lorain County school system over its busing policy. Every year elementary school children walked along the shoulder of State Route 58 for approximately two miles to get to school. Regardless of the weather conditions, they walked this treacherous four-lane road while cars whizzed by at high speeds. As one of those drivers, my heart skipped a beat when a child's book bag crossed the line demarcating the shoulder from the actual road and almost touched my car. The bag belonged to a small five- or six-year-old, who was totally oblivious to the danger as he continued to swing his bag along the way. Daily I passed this scene and could not comprehend why these children weren't provided with transportation. This particular day compelled me to do something about the situation.

The majority of these children resided in the nearby housing projects. From the director of the Metropolitan Housing Authority I learned that these children were not provided busing as a matter of school policy. While he was sympathetic to their peril, he said there was nothing he could do.

The school principal revealed that the absentee rate for these children was incredibly high, and that the often-cited policy was from the school district, which provides children with transportation only if

they live more than two miles from school. My odometer read 1.9 miles when I drove the distance from the corner home in the projects to the school.

I learned that many of the parents, particularly the single mothers, chose to keep their children home when the weather was incompatible with walking along a state route. Many parents also related stories of how their children had close encounters with speeding cars or near accidents.

Community leaders told me that others had tried to change this busing policy for years, and that I should just save my energy and not bother.

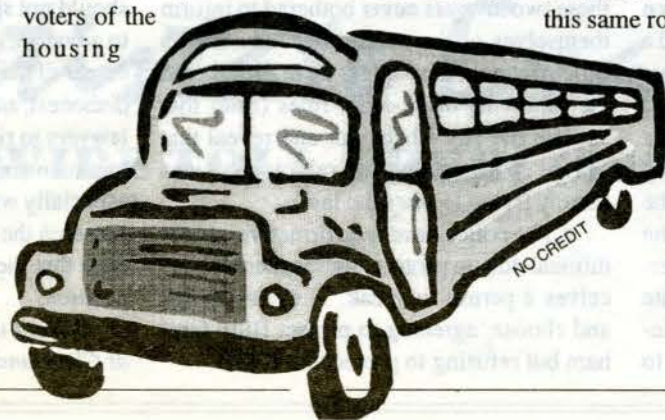
Nevertheless, another like-minded individual and I were willing to work for change. So we brought the issue to a candidates' forum for those running for the school board. Individual candidates seemed perplexed that such a school busing policy existed. They did, however, admit it was a bad thing, and dutifully promised to work hard to change the situation once elected.

We circulated a petition among the registered voters of the housing

When we noticed that schoolchildren walking to school were in danger of being struck by passing cars, we did something about it — and won their safety

development, since a petition signed by voters naturally carries more weight at election time. Parents received the phone number to the school district's transportation department and superintendent's office and were encouraged to call to question the busing policy. They flooded phone lines, forcing the school district to confront the issue.

Probably the most enlightening aspect was bringing the issue to the school board. Were they aware of the policy that forced young children to walk almost two miles along a busy state route? They responded by stating that the policy prevented them from doing anything. Could they change the policy they made in the first place? Would they allow their own children to walk this same route?





## Why we're privileged to be here

By Kelly R. Johnson  
CONTRIBUTING WRITER

I had a checklist of things to accomplish before school began again. Yes again, because this is my second year. Again, I'll buy books and complain about the expense. Again, I'll juggle work, family and studying. Again, I'll experience the privilege of being a law student.

I realized it was a privilege only when several people asked if I was returning this year. How could they ask that question? Of course I was returning. This is a major commitment and I am not choosing between higher education or a career as a waitress. Yes, I choose law school.

This summer when I sat in on a trial, the man next to me asked about my notes and the importance of the judge's words. As I explained to him some of the rules and procedures, I realized that other people seek the knowledge I now possess. It struck me that my words are valuable. Someday I could give legal advice at \$200 per hour instead of getting \$2.12 per hour for asking, "May I take your order?"

But this privilege of law school goes beyond money-making potential. As law students we experience something most people are not smart enough, motivated enough or just plain lucky enough to encounter. For most of us, studying the law is like a drug — an addiction that grows with every exposure. We are here because we want to learn. We are here because somebody planted the seeds for success. We are here because we want to be lawyers, and one day the title after our names will represent the fruit of this privilege.

Johnson is a 2L.



### THE GAVEL

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# Clinton's gravest act yet

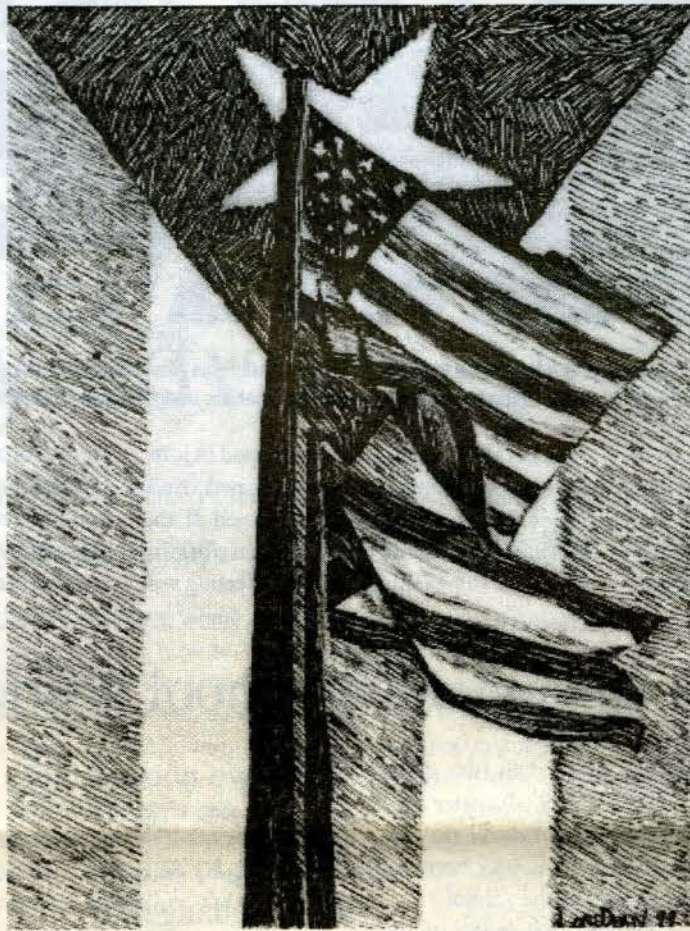
By Ross Matlack

**O**F ALL THE EXAMPLES available to us of the poor decision-making skills of the current occupant of the Oval Office, President Clinton's decision to grant clemency to convicted terrorists will forever prove to be the most mind boggling. Forget about the womanizing, the illegal drug use and all the other well publicized blunders made by this administration. Convicted terrorists were just freed by the president.

These were not innocent men wrongly convicted — they were self-described soldiers in a self-described war of independence. The Armed Forces for National Liberation (FALN) took credit for a series of bombings and other crimes during the 1970s and 1980s. The group's goal was to secure the independence of Puerto Rico from the United States, and its members routinely used violence in pursuit of that goal. The only thing these terrorists accomplished was the killing and maiming of the innocent. Randomly chosen by men with depraved hearts, their victims never stood a chance. They died as they walked down the street, shopped with their families or enjoyed a quiet cup of coffee. To FALN, independence meant killing the innocent.

*The men and women of FALN were and are citizens of the United States.* Their acts of cowardice rank with McVeigh, Nichols and the Ku Klux Klan — Americans who have perpe-

Forget his usual shenanigans. Now that the President has freed FALN terrorists, he'll leave a truly shameful legacy



LORI DEAN FOR THE GAVEL

trated acts of senseless violence against other Americans. There was no chance of success for FALN because no one in Puerto Rico supported their cause. According to an anti-independence site, [WWW.PUERTORICO51.COM](http://WWW.PUERTORICO51.COM), the

large majority of Puerto Ricans has historically favored maintaining an association with the United States, while fewer than 5 percent have voted in favor of independence over the past 30 years. FALN's campaign of ter-

ror was impotent from the start and never held any support to change the status quo.

Numerous members of Congress and cabinet departments, the attorneys general of a majority of states, and the various heads of law enforcement agencies all recommended against this grant of clemency. The delegate to the House of Representatives from Puerto Rico wrote to the president and specifically requested that these individuals *not* be released. The families of the victims made similar appeals. The result: Clinton granted clemency to the terrorists. The White House denies that this act has any link to Hillary's potential run for the Senate in New York, which has large Puerto Rican voter turnout.

In the early 1830s, President Andrew Jackson successfully prevented the first secession crisis from developing into a full-blown civil war. During that period he coined the oft-quoted phrase, "Our federal union it must be preserved." Jackson was once asked what he would do if he were to personally confront the leaders of the secessionist movement in South Carolina; he replied that he would hang all of them from the nearest tree. He would not tolerate violent acts of secession. Nearly 170 years later, he would be shocked that President Clinton calls himself a Democrat. Terrorists of any stripe deserve nothing more than swift justice and condemnation.

Matlack, a 3L, is a staff writer and a hospital administrator.

## Another casualty of the Ku Klux Klan: good lawyering

By Kevin Francis O'Neill

Young lawyers looking for an example of how *not* to behave need only examine the recent brouhaha surrounding the Ku Klux Klan's visit to Cleveland. Lawyers for two of the combatants — the Police Patrolmen's Association and the NAACP — made belligerent public statements that displayed a complete disregard (and a likely ignorance) of controlling precedent. Even worse, the Patrolmen's Association filed a lawsuit against the City of Cleveland that reflected the same disregard (and the same likely ignorance) of black-letter law. Witnessing such behavior, anyone who cares about our profession could only wince.

These ugly events were triggered when the city granted the KKK a permit to hold a demonstration on Aug. 21, 1999, six hours before the inaugural game at Cleveland Browns Stadium. Space restrictions prevent me from recounting the details, but two lawyers in particular — George Forbes of the NAACP and Patrick D'Angelo of the Patrolmen's Association — made intemperate public statements, ripping Mayor White for granting the permit, expressing incredulity that the Klan was being allowed to

Black-letter rules reveal that Mayor White, however reluctantly, was merely trying to obey the law.

speaking, disputing the duty of police to protect the Klan, and forecasting (if not promising) the outbreak of violence during the rally.

Based on their statements (and the pleadings filed by D'Angelo), it would seem that these two lawyers never bothered to inform themselves of the controlling *law*. With a little research, they might have discovered the following black-letter rules (rules that explain the city's behavior and reveal that Mayor White, however reluctantly, was merely trying to *obey* the law):

- The police have an affirmative constitutional duty to protect any speaker who receives a permit to speak. They can't pick and choose, agreeing to protect Billy Graham but refusing to protect the KKK.

- A permit to speak cannot be denied based on expectations of violence of the hated message of the speaker. The possibility that violence might result from outrage at the Klan's message would not have been a legal basis for denying them a permit.

- Time, place, or manner restrictions usually run afoul of the First Amendment if they block a speaker's access to his intended audience. Thus, the city would have been on very thin ice had it told the Klansmen that they were free to demonstrate at some later point in time, when their audience would have been gone, rather than Aug. 21, when their audience would be present.

I don't mean to suggest that lawyers should not speak out on, or bring test cases to advance, *changes* in the law. I've made a career of doing both. But it is intellectually dishonest, and it debases our profession, for lawyers to rip public officials for behaving in a manner *consistent* with settled law — especially when those lawyers fail either to *research* the controlling law or to *acknowledge* that the law does not yet support their position.

O'Neill is an assistant professor of law at Cleveland-Marshall.



September 1999

## Where short brunettes get A's: my new points-based grading system

By Jennifer Cunningham  
CONTRIBUTING WRITER

Hello! My name is No. \_\_\_ out of 199.

That was the first line of my resume. Not literally, at least, but effectively. Until yesterday. In protest against legal academia, particularly the dehumanizing practice of ranking students, I removed my class rank. That'll teach them to reduce me to a number!

Now, was that fries or onion rings with your burger?

I'm certainly not the first to bemoan the draconian grading system enforced at Cleveland-Marshall, but I'd like to propose an alternative I envisioned as I desperately attempted to convince a professor that the grade he gave me was arbitrary, capricious and unrepresentative of my knowledge of the subject, my intelligence or my worth as a person. I didn't *actually* expect results.

No professor has ever raised anyone's grade in the history of the legal profession. But assuming you can corner one, a professor is an easier target than, say, Jones Day.

Anyway, the professor delivered a "defense of the system" speech. He said that the academic standards committee and law firms demand an "objective" process for detecting the "smartest" students (that is, top 10-percenters and those possessing an uncle who will get *really* mad if his firm rejects young Johnny or Janie). The "smartest" students get jobs. Bottom 90-percenters suffer for three or more years only to discover we'd be happier and more gainfully employed if we abandoned law and tried professional pool.

Okay, those weren't his words *exactly*, but you understand. Anyway, when he finished his spiel, he admitted something astonishing. After one particularly long night of grading, he threw the graded bluebooks into piles in proportion to the pre-

scribed curve. When he compared the random grades to the "real" grades, they were identical!

So much for objectivity. Therefore, I propose the fol-



NO CREDIT

Unpreparedness costs you 15 points if you're caught, but earns 30 if you're not.

lowing "objective" system:

Everyone starts with 500 points per class. You gain and lose points in various ways. For example, if you say something stupid in class, you lose 10

points, unless it's so stupid it's funny — then you gain 20 points. Unpreparedness costs 15 points if you're caught, but earns 30 points if you're not. Heights are measured before finals. You lose a point per inch, unless you're from New Jersey or Indiana; cultural disadvantage earns points. Finally, 3Ls and 4Ls get 50 points free, because, hey, anyone who sticks around that long deserves it!

The highest scorer gets the high A, and so on, in a bell curve. This system would be especially fair if short, dark-haired women always got A's.

Rules for awarding points will be posted, so everyone's on notice. This system also eliminates professor idiosyncracies which make it impossible to tell if they actually graded the exams or merely threw them down the basement stairs.

A final rule: in borderline cases, professors may still grade the exams.

On that note, I need to study — I can't afford to lose points. If anyone wants to discuss my proposal, I'll be behind the drive-thru window or down at Becky's perfecting my eight ball.

## Word Search

### Evidence

R R H E A R S A Y D S E  
F O O R P S O C N E T S  
W R D R U F O O B A T  
E R I E P R A E M T T E  
I E B D P F A C I L E X  
G A L U Y A R N T C S H  
H L S U P P R E S S S I  
T R I E R A L D E G N B  
A F F I D A V I T D A I  
O E L O R A P V N E E T  
R D I S C O V E R Y M D

By Eileen Sutker

STAFF EDITOR

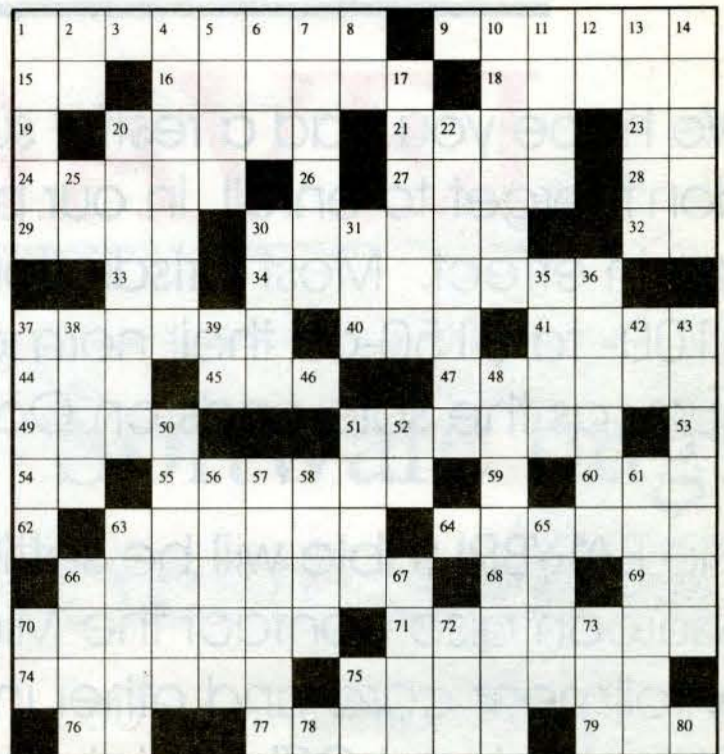
Find these words: affidavit, corpus, darn it, debt, discovery, draped, Erie, erred, error, evidence, exhibit, facile, facts, freed, habeus, hearsay, means, parole, Pliny, proof, puppy, real, room, rule, satin, states, suppress, taboo, tags, teen, testimony, trier, weight. Leftovers identify what went into the transcript.

## POP QUIZ

### Define "criminal lawyer":

- 1.) One who specializes in a particular branch of the law.
- 2.) An oxymoron.
- 3.) Two redundant terms.
- 4.) Nos. 1 and 3.
- 5.) All of the above but No. 2 only if part of the legal profession.
- 6.) None of the above unless you are part of the legal profession.

## Crossword Puzzle



## A practitioner's guide

By Eileen Sutker

STAFF EDITOR

### ACROSS

1. My immediate supervisor
9. Poet's forever
15. Dear and feather diphthong
16. Trade restriction
18. Frog genus
19. First letter
20. Seraglio
21. Egyptian bull or bee genus
23. Armed forces member
24. Blood coagulate
26. Me, myself, and —
27. Type of mega computer
28. Hafnium abbr.
29. NE Saudi Arabi gulf region
30. Superficial analysis
32. Beanie Baby maker
33. Kentucky neighbor
34. Close legal thinking
37. Expresses value judgments
40. Was formerly
41. What was in the complaint
44. Water snake
45. Having the delirium tremens
47. A brand of colas
49. Guinness or Baldwin
51. Failed to appear
53. Roman for 1000
54. Letters before ringe, stem and zygy
55. Viper type
59. Fifth letter
60. Electrically high-powered abbr.
62. See 59A
63. To persistently search for truth
64. What Mork said to eggs
66. Most unopaque
68. Egyptian sun god
69. Article used before orange or honor
70. Verbally slammed
71. Wording changers
74. Advocate and advisor
75. Special cell division
76. Manuscript abbr.
77. Bread and beer organisms
79. Showed the way

### DOWN

1. Tell, demonstrate, inspire
2. Laughter sound
3. Loneliest vowel
4. Heraldic animal with all four feet on the ground
5. Place for lawyers
6. Mine find
7. Apelike
8. Science fiction for short
9. Squeakiest vowel
10. When arbitrations fail
11. Facile
12. Provider of TLC
13. Day's opposite
14. Elucidate or explain
17. Easy
20. Adversary's intentions
22. Complaint's end: — for relief
25. A note to follow sol
30. Piece of a client's story
31. Able to do
35. Precedes facto
36. Less rapidly
37. — and desist
38. Depend on
39. Shortest cite form
42. Abbr. for one of 71A
43. Moistens or wets
46. Most curvy letter
48. Oat-y O's at breakfast
50. Like some ties or pizzas
51. Not grosses
52. Reaction to too many drugs
56. Speechify or pontificate
57. Mechanical model of the solar system
58. Title to land
61. Post funeral conveyance
63. Weak points in arguments and diamonds
64. Follows 19A
65. Lards, resins or volatile oils
66. Oyster relative
67. Golf ball supporters
70. Bill of lading abbr.
72. Morse code character
73. Lubricate or grease
75. Pa's partner
78. Highest violin string
80. Precedes 59A

Answers at left

### Crossword answers



Overheard: No one gets through law school unchanged — the best you can hope for is poorer but wiser and, like good lawyers, they make no promises about that last part.



# Welcome Back!

We hope you had a restful summer! As the new school year begins, don't forget to enroll in our program while early enrollment discounts are in effect. Most jurisdictions (states) are currently offering between \$100- to \$150-off their normal tuition rates. However, you'll have to hurry as the sale ends on October 31st.

The BAR/BRI table will be setting up shortly, so don't delay! By the way, you can also contact the Michigan-Ohio Regional Office to have an enrollment card and other information sent to you. The Michigan-Ohio Regional Office's telephone number is **(800) 937-2778**.

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