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Cleveland-Marshall College of Law

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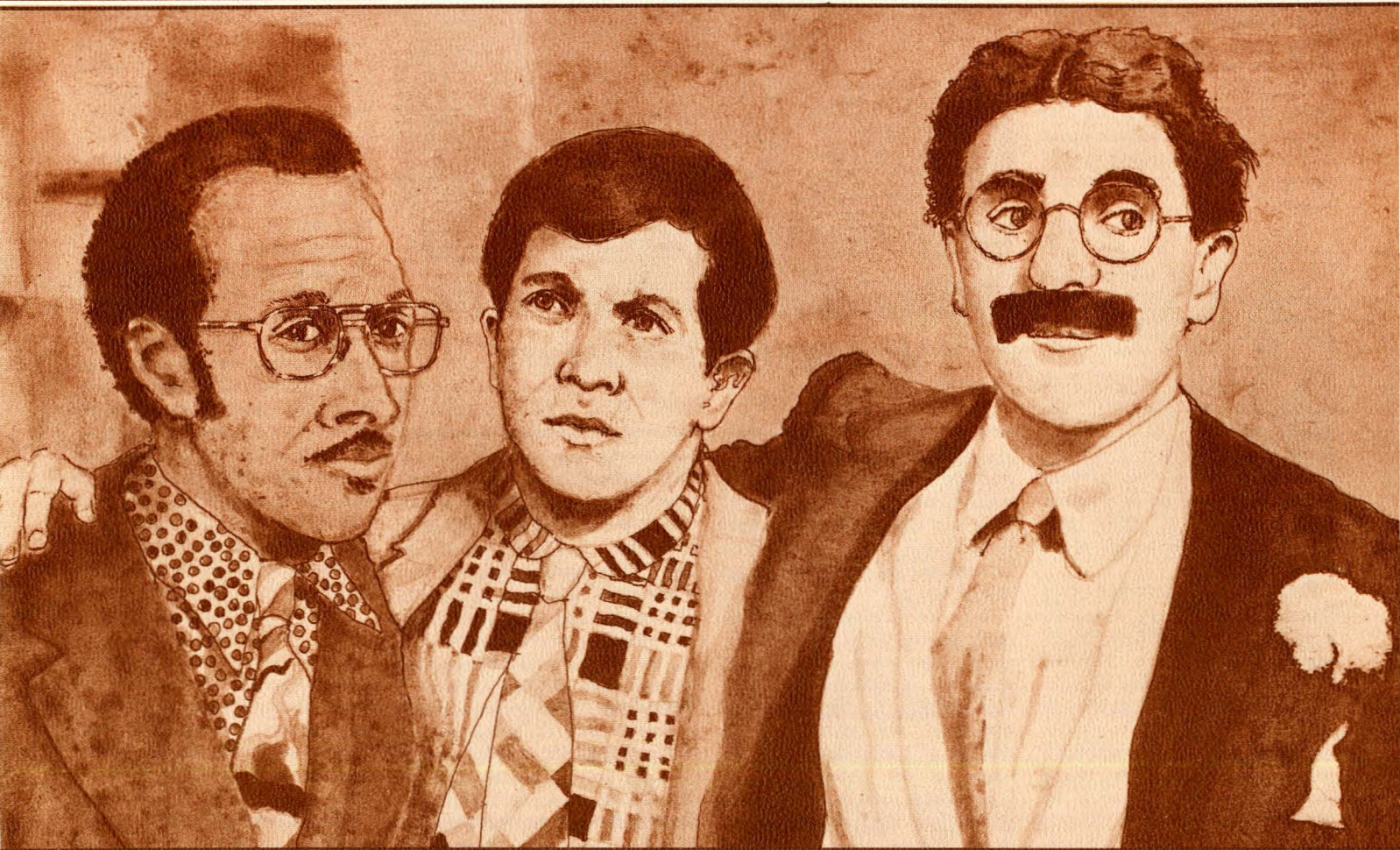
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# THE GAVEL

Cleveland-Marshall College of Law



## **A Day At The Light Plant**

**Is it more than just a Dennis and George show?**

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**Interviews with former Plain Dealer reporter  
Bob Holden,**

**Cleveland Law Director Jack Schulman,**

**Councilman Michael White**

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**Student  
Survey**

## COMMENTARY

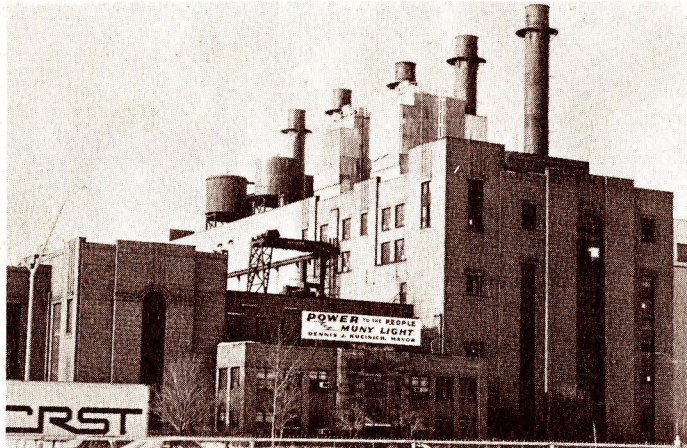
In our recent poll we asked our readers whether they approved of our dual format of school news and current legal issues. We were concerned at the time that our coverage of news outside the law school might be distracting us from our main function—reporting on “who gets what” at C-M. While working on this paper, however, we learned that our coverage of the outside world can provide us with some needed perspective on our own pressing issues.

After some reflection one realizes that the problem festering at the law school is one of the problems at the heart of the campaign to save Muny Light—the accountability of the powerful.

In Cleveland, the corporate community is exempt from public scrutiny. At C-M the faculty has enjoyed a similar autonomy from the student body. The question is whether the autonomy of these two groups works to the benefit of the people they serve.

CEI's lack of accountability is illustrated in Larry Sheehe's article on former Plain Dealer utilities writer Bob Holden. Holden got into trouble when he attempted the unthinkable—to pin down CEI about the impact of some of its “competitive practices” on Muny Light. When Holden pressed CEI just as he would any politician, its officials got mad. As Sheehe notes, Holden never got his answers; he was called off the story by his own editors for being “unfair” to CEI.

Public monitoring of corporate practices is only one of many issues arising out of the Muny Light debate. Also at issue is whether Muny Light is an asset or a good intentioned drain on city resources; whether the city



## Muny Light, Late Grades: Accountability Issues?

by Lee Andrews

can maintain its Anti-trust suit if the light plant is sold; and finally, what Cleveland must do in the long run to regain its financial stability. The Gavel has attempted to explore these issues in this edition.

But certainly the most controversial issue has been the suggestion that Cleveland's corporate community owes some responsibility to the people of Cleveland; the idea that the records of businesses should be open to the citizens of the community where businesses make their money; that Brock Weir should meet with the public.

At C-M a similar right to have some basic expectations of those in power should be pondered. The problem of late grades and the problem of getting little feedback before and after exams certainly raise the issue of faculty accountability to students. But what seems to force the issue is the attitude of Dean Bogomolny

toward faculty autonomy and faculty priorities.

At a recent meeting of the Dean's student advisory committee, students asked the Dean for his solution to the problem of late grades. Specifically they asked him if he was going to impose penalties on the faculty for grades handed in beyond the thirty day deadline. The Dean was attentive and appeared sincerely perturbed by the problem. He said he would consider cutting faculty salaries for their tardiness in turning in grades. But he also said that he would leave any immediate penalties to the vote of the faculty since he considers the faculty a self governing body. It should be noted that the faculty recently repealed a \$25 penalty that could levied against those who handed in late grades.

How will the situation improve in an arena where the employees set their own conditions of employment?

Lee Kravitz

At the same meeting the first year students requested written comments on their exam booklets so that they may learn from their exams. The Dean responded that when he was a full-time professor grading exams took up two months of his year. He indicated that it was a very unsatisfying experience because he didn't “learn” anything after reading about 11 blue books and because the time allotted took away from his “production.” Isn't there some part of the law school process where student needs and not faculty needs are paramount?

The Dean's comments would suggest that the faculty's tail is wagging the law school. The question is, however, where is it acceptable at an institution designed to develop the potential of the students as well as the potential of the faculty.

Perhaps it is time that Robert Bogomolny—as well as Brock Weir of Cleveland Trust and Karl Rudolph of CEI was asked to re-evaluate his business priorities for the good of the public.

## Elections

Elections for the Cleveland State Student Government will be held on February 28 and March 1, 1979. Eleven law students are running for university wide office.

Running for University Vice-President is incumbent Gerald Kovacik. Running for Law School Senator is Ann Mannen.

Candidates for the six Day Senators at large are Sue Carroll, Ona Smith, Tom Lobe, Ken Roll, Layne Liddle, and Wendel Haynes.

Candidates for the three night Senators at large are Bonnie Duerenfeld, Donna Taylor and Marilyn Barkley.

## THE GAVEL

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Cover illustration  
by Martin Nadorlik

# SURVEY

Last fall *The Gavel* interviewed the Dean and various faculty members concerning what direction Cleveland-Marshall was going. We now turn our attention to the student body. The following questionnaire was distributed at random. 176 responses were received. We think the figures speak for themselves.

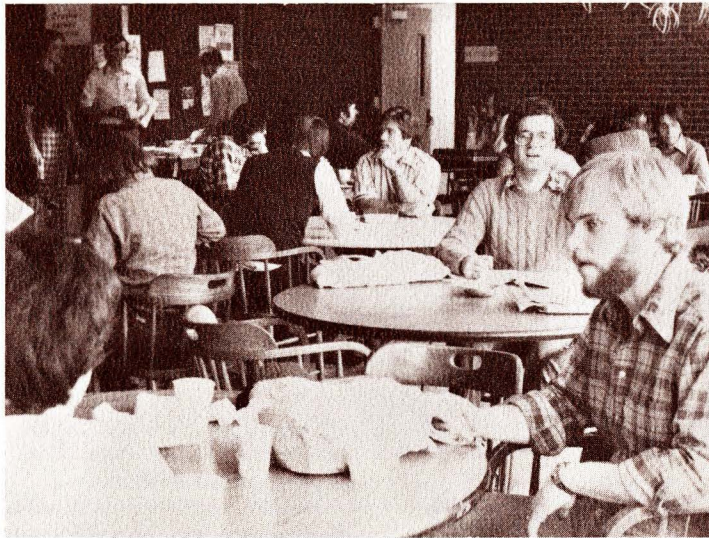
**1. What single factor should be weighed most heavily in evaluating teachers' promotions?** Academic publication, 3%; Accessibility outside classroom, 0%; Changes in the law by legislative, judicial or executive means, 1%; Field research, 0%; Teaching skill, 96%.

**2. In your opinion, who are the three best and the three worst teachers in the law school based on: motivational skills, classroom preparedness, communicative ability, and knowledge of the subject matter? (The numbers next to the names indicate the votes received. 473 votes were cast.)**

**The best:** Prof. Lazarus 78, Prof. Cohen 43, Prof. Babbitt 40, others 312. There were forty-four professors named in the "other" category.

**The worst:** Prof. Murad 69, Prof. Kuhns 44, Prof. Sierk 39, others 254. There were 406 votes cast with thirty-four professors named in the "other" category.

**3. Cleveland-Marshall's strong points are: (Choose three)** Curriculum 7%; Dean 5%; Faculty 7%; The Gavel 6%; Law Review 6%; Location 18%; Moot Court 7%; Physical facilities 18%; Placement 1%; Reputation 2%; SBA 2%; Students 15%;



Other 4%.

**4. Cleveland Marshall's weak points are: (Choose three)** Curriculum 12%; Dean 9%; Faculty 15%; The Gavel 1%; Law Review 2%; Location 3%; Moot Court 0%; Physical Facilities 3%; Placement 22%; Reputation 20%; SBA 6%; Students 5%; Other 2%.

**5. Prof. Browne has been quoted as stating that C-M students are lazy. Do you agree?** Yes, they are lazy, 35% No, they are not lazy, 65%

**6. Do you think the Socratic method is an effective method of teaching law?** Yes, it is effective, 47%; No, it is not effective, 53%

**7. How would you rate Dean Bogolmolny's performance thus far?** Excellent, 9%; Good, 22% Average, 28%; Fair 22%; Poor 19%

**8. How would you rate the**

**performance of the Placement Office?** Excellent, 0%; Good, 10%; Average, 17%; Fair, 27%; Poor 46%

**9. Would you favor converting from the present quarter system to a semester system?** Yes, 58% No, 42%

**What is your opinion of the Student Bar Association?** Positive, 19%; Neutral, 51%; Negative, 30%

**11. This year The Gavel has tried to focus on legal issues in Ohio, as well as school news. What is your impression?** Stick to school news, 13%; Continue the dual format, 83% Other 4%

**12. My overall attitude toward Cleveland-Marshall College of Law is:** Positive, 56%; Neutral, 25%; Negative, 19%

## A Letter

Editor:

The pressures put upon first-year students is something every reader of this article can understand. I want to make notice of one specific problem that I think needs correcting before next year's entering class falls prey to the same predicament that I am now in.

I am against having classes meet twice a week for one hour and forty minutes. My reason is that students and professors seem to be quite tired after approximately one hour and fifteen minutes. In my small group, the professor wants to hold back 25% of the class time for our oral advocacy education. By doing this both times that we meet, we are essentially spending 50 minutes a week away from the topic of the class.

I would like to see those classes meet three times a week. I would like to see each class meet for one hour and fifteen minutes twice a week for instruction on the subject matter and then 50 minutes the third class period for oral advocacy instruction. This would separate the areas of discussion. This would also allow the students a better chance of comprehending the professors' lectures.

I am also completely against having a class meet four days a week. Every first-year student that I know was very relieved when Wednesday rolled by (ah, no criminal law). I would like to see the criminal law instruction reduced to a three-day-a-week program. The classes could be lengthened fifteen minutes each to eliminate the fourth meeting. This would hopefully lead to two things: less cut-off discussions and more awake people.

If these changes can be put into effect I think we can lessen the pressure on first-year students. Our class will have to suffer through six more months of long classes. I only hope we can stay awake through them. I know I am slowly losing interest in classes because of too much exposure to them.

Peter A. Sackett

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Bob Holden

## Why Bob Holden Resigned

by Lawrence G. Sheehy

An editorial appearing in a recent issue of the **Village Voice** began with the statement, "There is almost nothing so repugnant to humankind as a newspaper in Cleveland."

It's one thing for a radical paper in New York City to say that. It's quite another for someone who lives in the Cleveland area to believe it.

Yet, the actions of management at Cleveland's **Plain Dealer** during the month of January were sufficiently "repugnant" so as to lend some credence to that claim.

In January, the **Plain Dealer**, Ohio's Largest Newspaper, shirked its civic responsibility and shrank from a fight on behalf of the public interest at the behest of a private interest. It backed off from printing a story that was begging to be read. Then it turned on the conscientious reporter who was to have written it.

Robert Holden was that reporter. The story was a series detailing the issues in the upcoming election which will determine the fate of the Municipal Electric Light Plant (Muny Light). The series was also to have spoken of the desires, motivations and attempts of the Cleveland Electric Illuminating Co., (CEI),

to acquire Muny Light.

The series eventually was written in February. It appeared under the bylines of David T. Abbott and Daniel R. Biddle.

Robert Holden was not available to write the series in February. He felt that he had no choice other than to resign from the **Plain Dealer** on January 26. Why?

\* \* \*

Robert Holden had been writing stories about CEI and Muny Light for the **Plain Dealer** since December 1977. It was his assigned beat. "There was no doubt that I was the most qualified person on the staff to write the series," said Holden.

For 14 months then, Holden had been laying a foundation for the series. He freely acknowledged that his stories were not well received at CEI. "CEI had bitched steadily for a year about my stories, both to me and to management," said Holden. "Almost every important story I wrote about them prompted an irate phone call from somebody at the company."

In late December of 1978, Bob McGruder, the City Editor of the **Plain Dealer**, assigned Holden to write a three-part series which would analyze the Muny Light issue which would be on the ballot. The series was to explore

the issue from the point of view of: 1) the anti-trust case; 2) Muny Light's profitability; 3) the value of Muny Light's assets; and 4) the impact of the possible sale vote on the anti-trust case and on the rates of Muny Light and CEI customers.

On January 10, McGruder pulled Holden off the series.

"I was told to stop work immediately on the series. And, furthermore, I was told not to write another word ever again about CEI or Muny Light," said Holden.

When Holden asked "Why?", he was told by McGruder that the management of the **Plain Dealer** felt that he would be biased if he continued. "Biased against CEI, that is," added Holden.

Holden stressed that the decision had been imposed upon McGruder from above and that McGruder was opposed to it. "He (McGruder) had been on the verge of quitting," said Holden.

The decision, Holden learned, came from Managing Editor David Hopcraft and John Clark, the Assistant Managing Editor.

On January 11, Holden and members of the **Plain Dealer** unit of the Cleveland Newspaper Guild met with Hopcraft and Clark. Hopcraft and Clark insisted that this was not a disciplinary issue, and therefore not a Guild issue. The Guild saw things differently.

A formal grievance session ensued. Later the same day, an emergency meeting of the **Plain Dealer** union of the Guild took place. On Saturday January 13, the union staged a two-hour picket line. It was also decided that reporters, photographers and artists would withhold their bylines and credit lines in protest starting on Tuesday, January 16.

"There was a great deal of publicity on the television and the radio. It was very intense and very embarrassing to the **Plain Dealer**. On Tuesday morning, the **Plain Dealer** requested a meeting with the Guild to discuss it," said Holden.

The meeting—an unprecedented concession by management at any newspaper—lasted 8½ hours and yielded only an oral agreement. The agreement was that Holden would be returned immediately to his previous status without restriction, including the coverage of CEI

and Muny Light, except for the month of February when he would substitute for the vacationing Book editor.

Holden mused, "Of course it was coincidental—it's not coincidental at all of course that the election is to be on February 27."

Yet, Holden urged that the Guild ratify the agreement that was supposedly bound by the word of Hopcraft. He reasoned that he still had half the month of January to write his Muny-CEI stories.

On Wednesday, January 17, Holden turned in his next CEI story. The City Editor, the Assistant City Editor, the news desk and the copy desk all approved it. It was given a headline and "dummied" onto the makeup pages. At 10:45 P.M., the Managing Editor called the News Editor and said "Kill that story." It was killed.

On Thursday, January 18, the story was cut in half, stripped of Holden's byline and set for Friday's paper. On Thursday, Holden wrote yet another CEI story. It would run on Friday, but it too was stripped of Holden's byline.

In Holden's words, "This is an extremely unusual way to handle a reporter's story."

The Guild was enraged. Another all-day session took place on the following Monday, January 22. At this meeting, management disavowed having ever agreed to the terms of the oral agreement. The Guild felt betrayed, but it had gone as far as it could go.

By Thursday, January 25, word had come from the Managing Editor's office that nothing was going to change.

On Friday, January 26, Robert Holden made his decision to resign. On Saturday, January 27, the **Cleveland Press** carried the story of Holden's resignation. The **Plain Dealer** did not consider it noteworthy.

\* \* \*

It is Holden's opinion that Hopcraft was following orders from above. Just how far above can't be determined with any degree of certainty.

Likewise, the motives of the **Plain Dealer** in going forth with the CEI-Muny Light series after the resignation of Holden are a matter of speculation.

*continued on page 10*

"I'm no lover of CEI but at what point does your fight for the future [of Muny Light] become a detriment to the people of this city."

-Michael R. White  
24th Ward Councilman

Mike White appreciates the art of politics. He smokes cigars, drinks black coffee, leans back in his office chair, and hangs props on his wall labelled "Penalty of Leadership." He understands that outward style and more importantly—control of language are the trappings of a politician's credibility. White has the ability to supply complete and thoughtful answers yet, if one is not careful one forgets that many of White's responses are replies to his own rhetorical questions. However, White's control is welcome after the constant barrage of ranting and reprehensible mudslinging demonstrated by Kucinich, Forbes, and the utility Moguls over the past year. Irresponsible verbiage always clouds the issues involved.

In a Feb. 9th interview, White said it was time to sell the Municipal Electric Power Plant. He explained that Muny Light is a drain on city finances because only 20% of the city uses the services while the remaining 80% subsidizes its operating budget. He added that the 4% break that Muny customers get on their light bills was a pittance compared to the outlay made by the city to keep Muny functional. Fort Wayne, Ind. residents



Michael White

# White: No Lover of Muny

By Ken Reinhard

voted to lease their public utility in 1974 to Indiana and Michigan Electric Co. for 35 years with the option to extend the lease another 15 years. Their utility bills have doubled since the sale and many residents including former mayor Ivan A.R. Lebamoff are pursuing a class action in U.S. District Court to revoke the lease. A reporter asked the councilman about Fort Wayne and White distinguished the situation in three ways. First, there is no comparable Ohio circumstance. Second, Indiana

has different regulations concerning Public Utilities. And third, the Fort Wayne plant generated its own power whereas Muny Light does not.

Then, the discussion turned to the interpretation of the final paragraph of Section I of Muny Light special election ordinance.

**Notwithstanding any other provision or section of this charter to the contrary, the powers and duties of the mayor and the Director of Public Utilities over non-tax supported Light and Power facilities of the City of Cleveland shall cease and terminate as of the date of Sale of all assets of the Division of Light and power herein provided.**

Section III-1, Ord. No. 3153-78. Mayor Kucinich and his Law Director Jack Shulman contend this paragraph was written to derail the city's \$300 million anti-trust suit against CEI. They claim this precluded the continuation of the suit if the electors vote to sell the Plant. White said he would defer to the experience and acumen of the attorneys for Council who have stated that the ordinance does not preclude continuation of the anti-trust suit. Attorneys Joseph W. Bartunek, Anthony J. Garofoli and John R. Climaco drafted the ordinance.

Councilman White attributed the decline of city government to two factors; 1)An obvious lack of

financial stability; 2)"the brain-drain" or flight to the suburbs. He claimed that a "carpet bagger mentality" has pervaded the business community in the past.

"The businessmen have literally tucked their heads in the sand," White said. When one reporter stated that regional government might be the answer—White objected. He said it would be ludicrous for a black politician to take such a stand when 49% of Cleveland's population is black. Votes translate into leverage and leverage is Mike White's game

White, who is a former CSU Urban Studies professor, proposed a "Downtown-Neighborhood linkage" as a remedy for Cleveland's ailments. It's a new name for an old idea. His premise is that self interest is the key to motivation. (Benjamin Franklin must have penned the same in "Poor Richard's" Almanac.) White said Cleveland could compete with its suburbs if it utilized its land and eminent domain power effectively. He suggested a quid pro quo—land sold at a good price in exchange for redevelopment and jobs.

During the latter part of the discussion, one reporter asked White about the significance of the Carnival indictments of Black public officials. "They are selective and racist and it's no coincidence that I was audited this year," he replied. White alleged that the percentage of black public officials investigated and subsequently indicted is substantially greater than their white counterparts. He argued that white councilwoman Mary Ann Lecate (5th Ward) was a throw-in to obfuscate the true reason for the indictments—racism.

Of course, the problem with these statements is that they are just that—statements with no factual foundation. A first quarter law student would file a 12(b)(6) motion pointing out that the facts are insufficient to constitute a cause of action. White pleads conclusions instead of facts.

At interview's end we had circled back to the topic of Muny Light. White stressed that in order to be viable the Plant would have to generate its own power and gain a consumer base. He thinks it is fiscally irresponsible to renovate the plant at the expense of other city services.





## Is Regional Government the Answer?

by Mike O'Malley

On February 27 the people of Cleveland will vote on a proposed 50% increase in the city's income tax. While such an increase seems to be needed and also warranted in light of Cleveland's current financial mess, it is doubtful that the tax increase alone will bring about financial prosperity which the city lacks. Do possible governmental reforms exist as viable solutions to Cleveland's financial problems?

Professor Harold Babbit cites an eroding property tax base as the key to the collapse of Cleveland's financial structure. "Cleveland is getting less revenues and at the same time is experiencing increased costs in the provision of services, due to inflation, and that's just a killer." As a result, Babbit proposes a change to a regional form of government. "I advocate the state, which we all know is the source of all power, simply and flatly declaring new corporate limits for the city of Cleveland, and they will be expanded to take in all of

Cuyahoga County, or the Greater Cleveland area." Babbit realizes that such a change would require "a great act of political courage on the part of the state legislature," and possibly certain state constitutional amendments to get around the "home rule" provisions.

Babbit also feels that the strong mayor system should be retained, together with a reduction of the size of city council, and the election of council members at large and for longer terms. Under this setup, council members could truly be statesmen of the city, and not have to continually bow to the wishes of their constituents within wards.

Professor Babbit advocates a regional form of government for two reasons.

First, with the limits of the city expanded, the new property will be included in property tax base, which will enlarge the financial base of the city. Babbit sees this as an advantage because "only by raising its own money can Cleveland retain the power to

spend that money."

Babbit's second reason is the vastly expanded political base which would result. "We'd, quite frankly, have more qualified people interested in running for political office than we do now."

As for what actually will happen, Babbit foresees the state stepping in and permanently feeding money to the city. Nevertheless, if the income tax fails, which Babbit feels is entirely likely, the Governor must do more. "The permanent solution is to so structure the situation so that Cleveland can permanently take care of itself, and in my judgement the only way to do that is by expanding the geographic boundaries."

David Sweet, dean of the College of Urban Affairs, considers Babbit's proposal an idealistic approach, and one that is an appropriate course of action only from a theoretical point of view. "We should set out by dealing with pragmatic approaches that have some possibility of implementation."

Dean Sweet sees the major problem as the fact that Cleveland's population consists mainly of low income and fixed income groups, the very groups that have high service demands and no ability to pay for them: "the situation creates a very dramatic challenge to provide the needed services on eroding property and income tax bases."

What, then, are the measures that can be taken to meet the challenge? "What realistically can be anticipated is a restructuring at the county level so that you develop a legislative and executive function, and a realignment and reassignment, to the county, of those services which it is better prepared to provide. That is a realistic target for reform."

Sweet feels that along with a systematic review of services which the people deem essential, and the appropriate realignment, possibilities of tax reform must be explored. "For example, one possibility might be to incorporate an ability to pay concept in the payroll tax."

Dean Sweet considers voter education crucial, so that the issues are voted on "with some degree of intelligence and understanding of the benefits which can accrue from the restructuring efforts."

Professor Ronald Rosenberg

views the transfer to a regional form of government highly unlikely, but would agree that regionalization of services is the trend of the future, forced basically by cost efficiencies.

"In terms of Cleveland's future, I think that what is needed is a long range economic and physical planning for the city aimed at reversing population trends encouraging employment shifts back into this area. We need to plan for development of service industries that will retain the highly skilled labor force we have here."

Rosenberg feels that private investment is crucial to the city. He believes that Cleveland will be unable to attract such investment until the city's practice of using capital funds to meet operating expense is stopped, and the city's bookkeeping methods are revamped.

Rosenberg concedes that the positive effect of these community development plans on the property tax base may not occur for 20 years. "What we need possibly, is something like an entire new industry, mass transit production, for example, coming to this area."

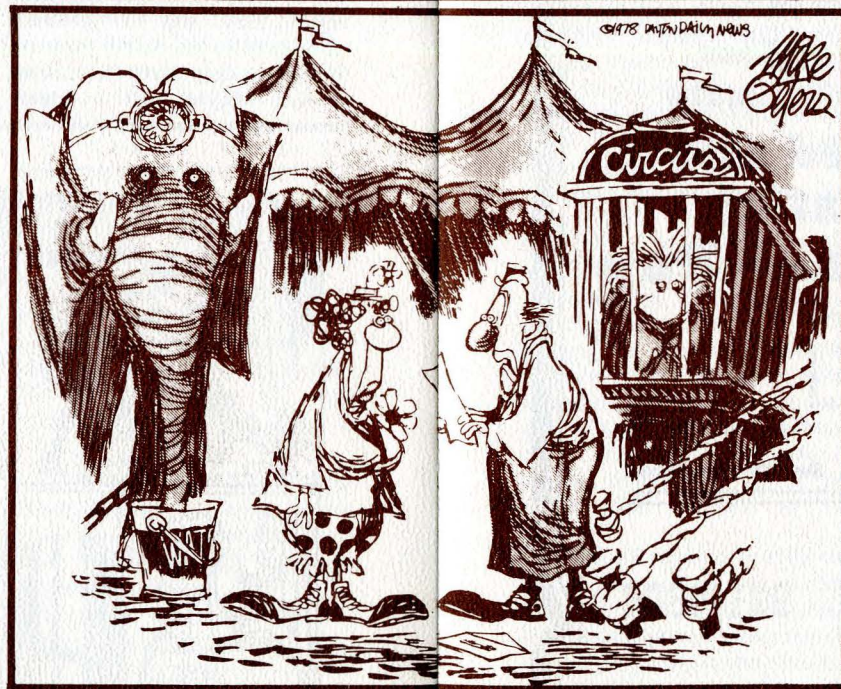
Obviously, there seem to be several approaches available to solving Cleveland's problem. The plan adopted remains to be seen. Meanwhile, when is the next prayer breakfast?

City Law Director Jack Schulman was interviewed recently by The Gavel concerning the City's Anti Trust suit against CEI. Cleveland's suit is based on Cleveland Electric Illuminating's violations of the Sherman Anti Trust Act by monopolizing wholesale and retail electric power markets. Joined as party defendants are the members of the Central Area Power Coordinating Group (CAPCO) who are charged with contracting reciprocal agreements to exclude municipal utilities from the group.

Shulman contended that these utilities have extended their reach beyond the scope of natural monopolies—approaching that of a shared monopoly. In fringe areas where CAPCO members abut, customers can choose between utilities or switch their service. There is one hitch however—the customer must incur a period without electrical service in order to change companies. Shulman alleged this effect stifles competition and promotes an agreed allocation of utility markets.

In support of the city's claim, Shulman cited the findings of the Nuclear Regulatory Commission (NRC) rendered in January, 1977. The salient findings are as follows:

-CEI tried to force Muni into price fixing.



IT'S FROM JUNIOR... HE'S RUN OFF TO JOIN THE CLEVELAND CITY COUNCIL...



Jack Schulman

David Douglass

than answers. What percentage of the city's resources are allocated to Muny Light? Is it cheaper to service city buildings and streetlighting through Muny rather than CEI? Will Muny ever increase its customer usage to make it a viable asset for the city? No matter what the outcome of the special election, Muny Light's problems will be with Cleveland for many years.

. . .

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Written by Roldo Bartimole, former Plain Dealer and Wall Street Journal reporter. Now in its 11th year.

## Shulman on Muny Light

By Ken Roll

-CEI caused Muny Light outages by avoiding proper connections.  
-CEI refused to sell emergency power during a 1972 Muny outage unless Muny contracted away its streetlighting rights.  
-CEI forced the city to buy power it didn't actually need.

CEI tried to forestall expansion of Muny and installation of pollution controls.

-CEI delayed engineering plans for interconnections.

All six conditions were found by the NRC as egregious violations of anti-trust policy.

The NRC also made several conditions precedent to the approval of CEI's proposed nuclear power plant, Davis-Besse I.

-CEI must sell power to Muny at wholesale for 25 years.

-CEI must interconnect with Muny at reasonable rates.

-Muny must be allowed to join CAPCO and have access to the Davis-Besse nuclear power.

-“Third Party Wheeling” or power purchasing from other utilities must be offered to Muny. CEI is currently appealing the NRC's findings.

Shulman stressed that Muny would be making a profit today if not for its debt/interest retirement. He pointed to the R.W. Beck report which projects a \$1.26 million surplus for 1978. The Beck report is based on a cash equivalent operating statement and thus fails to include depreciation in the cost of operation. In 1978, \$2.25

million worth of depreciable capital was expended to generate \$24.98 million in revenues. One wonders where the Kucinich administration plans to get the financial leverage needed to float bonds for reinvestment.

The Perk administration worked out a sale agreement of \$158.5 million. It was broken down as follows:

-\$38 million down payment.  
-\$50 million payable over 40 years.

-\$70.5 million interest (but not labelled as such).

Shulman claimed that by not labelling the balance “interest” CEI can eventually pass the cost to its customers. He said the initial capital outlay of \$38 million will be tacked to CEI's current rate base.

But, more questions abound

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&  
Thursday 5:15 p.m.



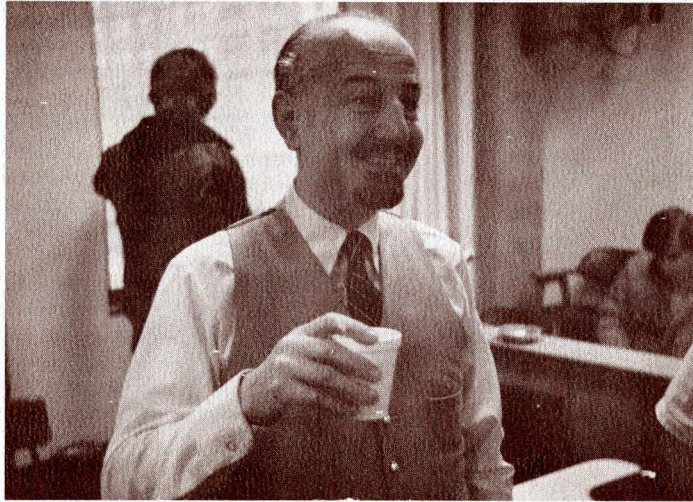
The Cleveland-Marshall Fund Enrichment Program, brought Yale's Guido Calabresi to C-M as the visiting scholar on January 18 and 19, 1979.

The visit of Calabresi was one of the most successful the program has ever hosted. Even before Prof. Calabresi's address to the Tort classes of Prof. Cohen and Prof. Leiser on Thursday evening in the Moot Court Room, C-M students had been passing the word that he was worth cutting class to see. Thursday evening's audience was treated to a lecture-discussion of Torts as an economic system for the allocation of risks. A particularly effective event allowed students to schedule time to meet individually with Prof. Calabresi. This concept proved quite popular, with the demand of students exceeding the two hours of allocated time.

The style of Guido Calabresi proved to be so alluring to C-M students and faculty that at 5:00 P.M. on Friday, when the school would ordinarily be deserted, the Moot Court Room was nearly filled. Although the delivery of the Thirteenth Cleveland-Marshall Fund Lecture entitled "Products Liability: Curse or the Bulwark of Free Enterprise" was awkward and rushed, the substance of the address was so compelling that the hour passed swiftly. The lecture discussed three means by which society may allocate risk and uncertainty and the relation of Products Liability to our free enterprise system.

The Contractual or Property approach allows the parties involved to negotiate all of the terms for risk allocation between themselves with government acting only to enforce the private agreements made. The underlying premise of this approach is that individuals are best situated to arrange risk allocation and that the government lacks the necessary knowledge to determine how to allocate the risks. The primary deficiency of the Contract's approach is that the terms of risk allocation cannot always be negotiated in advance, for example—automobile accidents.

The Regulatory or Criminal Law approach rests on the foundation of a government that does know how to best allocate, manage, and control risks. It



## Guido Calabresi

by David Douglass

operates as a fixed, bureaucratic system, but it provides absolute certainty. Every society employs the regulatory approach to some degree, but its fundamental assumption that government knows best is in conflict with the concept of free enterprise which relies on the marketplace for distribution decisions.

The Liability or Torts model combines the Contractual approach with the Regulatory approach so that government makes the policy determination

makes the policy determination as to which party can bear or prevent a loss and then allows the involved parties to decide how to most effectively manage the risk through contractual agreements. The free enterprise system is thus allowed to function in the management and control of risks.

Prof. Calabresi went on to discuss Products Liability as a combination of the Contractual and Liability approaches. After discussing the problems of who would have the best relative knowledge of what the risk entailed; how the risk could best be controlled; which parties were most adverse (or inclined) to risktaking; and whether a capacity to contractually shift the risk would exist, Prof. Calabresi concluded that the entrepreneurs who are willing to take the risks should be encouraged to do so, and that the free enterprise system can ensure efficient allocation of society's risks.

These entrepreneurial risktakers would be the most knowledgeable and would have the best opportunity to control or shift the risks. The successful risktakers would be rewarded by the profit mechanism of the free enterprise system. The

imposition of additional governmental regulation on Products Liability would act to smother the free enterprise system by spreading the risks and costs to everyone through a bureaucratic system that would not be able to benefit from the knowledge of entrepreneurial risk-takers. The government lacks the incentive of a profit mechanism to encourage efficient management of the risks.

Prof. Calabresi concluded that the Products Liability concept can be the "bulwark" of the free enterprise system, but only if government regulation is stifled.

The full article by Prof. Calabresi will be published in a future edition of Cleveland State Law Review.

C-M Fund Chairman David Goshien announced that Stanford Professor of Law John Kaplan, holder of the Jackson Eli Reynolds chair, will appear on April 9th and 10th and Prof. Clyde W. Summers of University of Pennsylvania and holder of the Jefferson B. Fordham seat will visit C-M on May 9th and 10th.

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# First Year Students Propose Changes

by Ken Callahan

In what might well become the perennial want of the first year student at C-M, sharp questions regarding grading procedures are being raised in response to a host of low first quarter marks and the absence of effective means of self-appraisal.

This year, however, criticism has gone beyond the repeated suggestion that there exists an unspoken urge to "weed-out" first year students, to more positive ideas of increasing student self-perception.

Moved by the feeling that much more can be done to increase the student's awareness of his relative position, several first year students met recently with Dean Toran to discuss a variety of specific written proposals. Similar complaints were heard at the S.B.A. meeting of February 1, where Dean Bogolomny was invited to come and personally respond to several issues regarding grades.

Among the alternatives proffered were the more general circulation of practice exams, the filing of model answers to past exams at the library, the possibility of specific class time being allotted for explaining test procedure, and of having model answers handed back with graded bluebooks. In addition, the group feels that a professor should be required to base a final grade on a minimum of two evaluations.

Spokesman for the first year group, Vince Lombardo, views the effort as a constructive attempt to provide some light in the otherwise turbid malaise of the first year experience. "The suggestions we've made are very flexible; I'm sure that every instructor could adopt at least one of them. At the very least, every professor could place a sample answer for his or her examination on file at the library."

Response to the proposals was mixed among several faculty members who were contacted. Professor Garlock discarded the idea of providing model answers, commenting that it is the "responsibility of students to

come to an understanding of the issues themselves in the process of self-learning." Garlock additionally felt that, for reasons of time, two written examinations in a one quarter course would be impracticable, but was open to the possibility of practice exams, "if there was a felt need for it."

Professor Kuhns agreed that practice exams were a desirable means of providing feedback, providing that they do not impose an impossible time burden on the faculty." Asked about the existence of a "weeding-out" policy in operation, in connection with the plethora of low grades (in three first year courses, 17% of the grades were D or lower), Kuhns replied that he was "unaware of any law school policy which demands, encourages, or suggests it." Further questioned if the large number of low grades weren't then a reflection of ineffective teaching, Professor Kuhns admitted that "there may be a grain of truth to the possibility," but quickly added that "students may often use that reasoning to satisfy themselves."

Lombardo expressed the hope that his efforts, and those of the S.B.A., will improve the means by which students may more accurately gauge their progress—provided, of course, that such information is handed back in time.

**Mike Douglas says: "Give a gift from your heart."**



**Call Red Cross now for a blood donor appointment.**



## Get Those Grades In Other Schools Grade Faster

by Tom Johnson

"We consider the students. If they don't know their grades from the previous quarter, how will they know where to improve," says Ms. Helen Hatcher the registrar at University of Toledo Law School. With 800 in their student body, Toledo is way ahead of Cleveland-Marshall when it comes to getting grades in. Toledo has a deadline of 21 days. Although some professors have been late, "there are always a few," the longest Ms. Hatcher has ever waited is one month, two days. After finals are given, everyone tries to get grades in. If they don't, the Dean puts on a little pressure and zap—the grades. It works in Toledo.

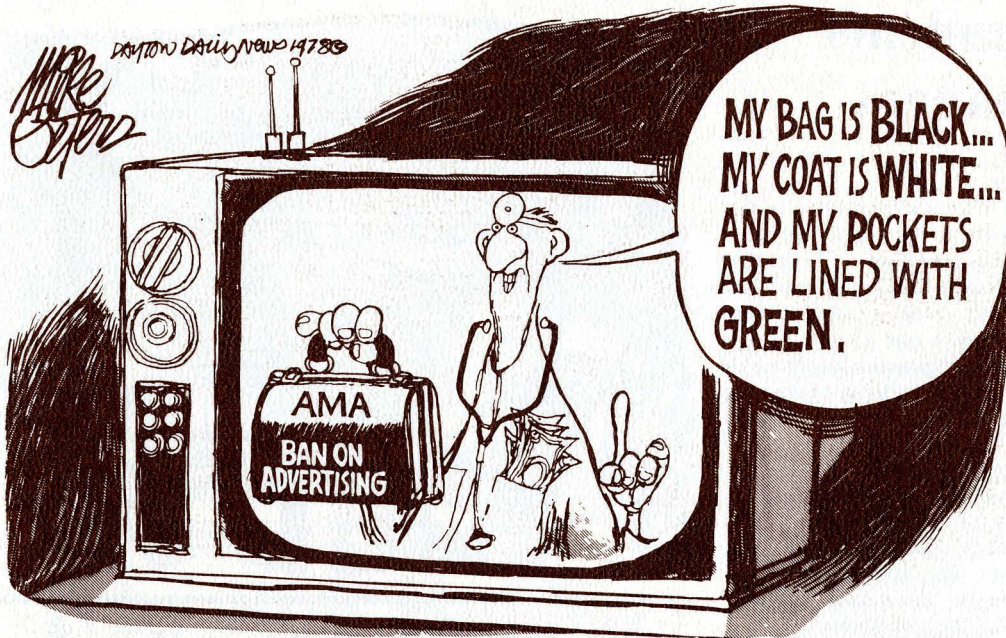
Moving down to Columbus, we get a different picture. At Ohio State University School of Law, with a student body around 650, it is suggested that professors deliver grades within 10 days. Former Dean Kindra states, "I think it's impossible." He feels professors should take as long as they need to grade exams properly. Unlike Ms. Hatcher, Professor Kindra doesn't see the need for students to know their grades. Perhaps, he should apply for a position at Cleveland-Marshall.

Ohio Northern's Claude W.

Pettit College of Law, with student body of about 535, retains an informal policy on the matter. The assistant dean, Doug Chapman, says the professors have three weeks from the last final to turn in grades. If the grades don't appear, a little pressure is applied. "There are no hammers over their heads." Chapman claims Ohio Northern doesn't really have a problem. "A few professors are slow and methodical but, they get their grades in within a month after finals." Dean Chapman says, "I remember when I was in law school and I waited and waited for those grades." Bless the man. Chapman's final statement is so true. "People with power can ignore deadlines, where people on the other side cannot."

Onto Chicago and our brother school by name. At John Marshall College of Law, in the booming metropolis on Lake Michigan, grades are seldom late. Both the Dean's secretary and the registrar claim their problem is slight. For example, last semester finals were over on January 17th and the last of the grades were turned in February 11th. Keep wishing. I did ask how many transfer students they accept.

• • •



## Interview Hints

by Nancy Goldman  
Placement Director

There you are, sitting in a plush office, stomach in knots. Across the desk is the "enemy"—the one who will shoot you down. He'll ask all sorts of questions that you won't be able to answer properly, and you'll leave defeated, discouraged and disgusted. Right? Wrong!

The only thing that's right with that little scenario is that that's what goes on in the heads of many of our own students before an interview. It doesn't have to be.

First of all, dress well—this means a dark business suit for the men—a conservative tie, a plain shirt (no wild colors, no corduroy jeans, no jeans—period). A recent hair cut would be proper; make sure that the hair is combed too. For the women, a suit, too, is best—blue, black, gray—with a blouse that is "quiet, conservative", no loud colors, none slit "down to there." A conservative "business dress" is also acceptable—but no short skirts—ever!

Secondly, think positively. A positive outlook projects a positive image. (Conversely, a negative attitude projects that slump—that hang-dog look that says "No" to an employer). The thought "I may be hired to work here" gives you a certain stature. Oh, yes—those butterflies in

your stomach. Anyone worth his salt will tell you they're ever-present in a situation like this. (If they're not—something is wrong).

When you are asked in to meet the person who is going to interview you, shake hands—firmly. Men shake hands with men; men shake hands with women; women shake hands with men; women shake hands with women! Look him (or her) straight in the eye.

To prepare for this moment some research should have been done beforehand. All the information you can absorb about the firm, bank, corporation, etc., will be like money in the bank. The placement office has firm folders and/or descriptions on file on many of the places you'll interview. The library is an excellent resource. Martindale-Hubbell is invaluable in some instances. Friends can be semi-helpful—ask. Be creative in looking up new sources and gleaning all the information you can.

Why all this preparation? Because this indicates interest to an employer. When you ask knowledgeable questions, the employer knows that you've taken the time to do the research. When you mention something about the firm (or company—or bank—or federal agency) that you could only have known through research, this tells the employer something about you, and that something is good.

## Bob Holden

continued from page 4

It can be said, though, that there is more than irony involved in the choice of Abbot and Biddle to write the series. The two are chairman and vice-chairman, respectively, of the **Plain Dealer** Guild unit. Both are also close friends of Holden.

Their series started on Sunday, February 11. It was a thorough and stellar piece of investigative journalism.

"I was shocked—but very

gratified—at the job they did," said Holden. "I would never even have attempted to do that."

Said reporter Dan Biddle, "We (Abbott and Biddle) both both put in about 80 hours on this story last week (February 4-11)." They were assisted in their endeavor by reporter Terry Johnson of the **Plain Dealer** staff and Tom Brazaitis of the **Plain Dealer** Washington Bureau.

Biddle concurs with Holden's thinking that pressure was brought to bear from sources outside the **Plain Dealer**. With that in mind they approached their assignment with an additional purpose. "We both wanted to make it clear to management and the various corporations that they couldn't silence us by removing a reporter from his beat."

Biddle continued, "I keep thinking of the line from the movie 'Casablanca' where the resistance leader says, 'If you kill me, a hundred others will spring up in my place.'"

"It's just unfortunate that the man (Holden) who provided the foundation for the series wasn't around to get the credit for it," said Biddle.

The story that somebody didn't want written was written, but the reporter had to give up his job to make it happen.

That's more than a little repugnant.

### Women's Law Caucus

Sale to raise funds for trip to  
National Women in the Law Conference

"Is There Life After Law School"  
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Entertainment '79  
Discount Coupon Book  
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Hundreds of good bargains all over town  
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Caucus members.

Maria George



## Marathon Man

by Jeff Winton

We are born to run, run to the bathroom, run at the mouth, ru(i)n other peoples lives. We run on crazy legs, bow legs, and for a few of the gutsy, no legs. And with finality we run out of gas.

Somewhere between origin and destination something possesses one to collect these various runs, and funnel them into foolhardy stunts, so that he can later explain to people that he is indeed **not** a jackass using whatever futile linguistics he chooses. Although it may be easy game for pot-shot humorists, some dedicate a fair bit of their time and lives to running, a mandatory prerequisite to respectable times.

At first it's a bit of nonsense, then it grows into an itch in those hard to reach places that won't go away and finally, Hell, as long as I'm out here wasting all my time, a prime target for "Hey, asshole get outa da rain," there might as well be something to show for it—a finish card, sweaty number, and a sure to fade T-shirt... Big deal.

Rather than read a good book on running or talk with someone who really knows and set up a good program...meals, training, and healthwise...you may as well fly-by-night to stay as near to normal as possible and run when you can, but always pre-empting for basketball. You take two weeks of vacation before settling down to 3½ weeks at 50 miles per week which should've been a minimum of 3½ months at 75-80 miles. You buy Pumas just before the race only to find at the starting line that every one else is wearing \$50 Nike's which are little more than feathers.

And, yes, Dorothy, rumor has it that beer is good for you and that some knucklehead drinks a 6-pak enroute to sub-2:30 times

and chuckles over a few more while others are still struggling with far to go...obviously, no manners. The wise thing to do seemed to be to eat a pizza and two r.b. sandwiches only to find a stomach too bulged to sleep on, the eve of the race. Butterflies kept breakfast at dietetic proportions, later causing cramps from too little instead of too much.

As to nomenclature...way back in something or other B.C. when the Greeks were fighting a cold or inflation in the Battle of Marathon a messenger was dispatched to inform some luminary of the outcome of the battle. Upon finishing his task, some 26.2 miles, with "We've vanquished the Scourges" or something equally catchy, the runner received his just reward moments later and celebrated the hilarity of the event by dropping dead. For some macabre reason the whole thing caught on.

This particular episode started in downtown Buffalo directly behind an art gallery full of Justice Center clunkers that everyone loves to hate. To give the pre-race prep talk (after standing like sardines wondering

why you didn't read that damn book or at least talk for half an hour with Bill Roger's grandmother) was the world's 1st sub-four minute miler Sir Roger Bannister, (who did a spot more than be born to attain that title). And though a cynic to the last, his speech brought some shivers...it happened later when the fellow in the wheelchair...the guy with arms bigger than legs...yelled encouragement to the rest of us...but I'm sure he felt lucky to have two working limbs...he shortly vanished from sight...not to the aft.

The race starts a friendly jog and each settles to his pace. At every 5 mile split an official timer bull horns seconds, though every mile is marked and onlookers, giving times and drinks, stretch virtually the entire scenic Niagara Parkway, namesake of the swift river complementing most of the run.

A crucial error during the race is to grab that song that's going through your head and get too involved with the lyrics. Did you ever try to breathe rhythmatically to Hendrix's Purple Haze? This race perhaps didn't require as much concentration as training because it quite possibly met its billing of Skylon International Marathon; the world's most beautiful and unique.

The splits coming in sounded real good...5 miles at 34 min...10 at 70 min...halfway 1:35...15 at 1:48...have worked out a cramp that never really set in and bypassed some queasiness at 16-17...then 20 at 2:30...not fantastic but not bad for a beginner...7½ min/mile...feel pretty good...ETA pessimistically at 3:20. Then as if by some sleight of hand (would that I'd never heard of the Wall...the stuff about the last 6

miles telling the sad story...because now I'll never know if it was real or a psychic con game) for whatever reason, although most assuredly an empty stomach and too-fast-pace cockiness were big contributors, the bottom dropped out of my stomach and I decided it'd be a sight better (and a better sight unless you're into watching someone try to keep his spleen down) to stop and walk a few paces. My stomach...for others cramped legs, blurred vision, deep chest pains or blisters that must surely be exposing bone. The final 6 averaged 12½min/mile run walk with the end result of a few months of mental aggravation and physical confusion ringing up at 3:45:40, under a 4 hour goal but light years from the 3 hour qualifying time for the Boston. That time was worth a finish position of 1296 in a starting field of 3400.


Having laughed my way through *Love Story*, I felt rated high enough on Moh's hardness scale, but after crossing the finish line and collapsing in a mud rut there was an overpowering urge to start sobbing...not alone as my manager-spouse saw others who'd given in...strange.

In a knot of comaradery the race was raceless, sexless, ageless, and so on, there being good and bad runners of all callings. As I look back with the pain all gone and realize it was all worth it...Hell, No...at least not for a while.

Forgive me grammarians, historians, serious runners and other offendees; and having not read running material, speculations are to be regarded as purely personal with the reliability of lukewarm hearsay. Above all, remember the anthem: When the shit has hit the fan, send lawyers, guns & money!

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**International Women's Day**

On Fri., March 2, there will be a celebration in honor of International Women's Day at the Unitarian Society of Cleveland, 2728 Lancashire, Cleve. Hts. The schedule will be: 7:00-Potluck Dinner; 9:00-"With Babies and Banners"(1.50); 10:30-Party. The event is being sponsored by several local women's groups, including the Women's Caucus of C-M.

**Upcoming Films** The CSU Film Society has announced its Winter Schedule. Films to be shown include:

Feb. 23-24—"The Sailor Who Fell from Grace with the Sea."

March 2-3—Two classic Gene Kelly musicals, "Singin' in the Rain" and "An American in Paris."

March 9-10—"Deliverance" and "The Missouri Breaks."

**Better Late Than Never**

Persons expecting to graduate this academic year should see Mrs. Martin, the Records Officer, for the required forms. While it is not widely publicized, the deadline for filing was February 2, 1979. The graduation fee is twenty dollars payable to the Cashier's Office, Fenn Tower.

**Placement Notes**

Legal Services of Eastern Michigan will interview on March 5th.

**Defectors**

Rumor has it that several first year students have stopped going to the Civil Procedure course in which they are registered. Instead they have been sitting in on another class where the level of instruction is supposedly better.



**C-M Hosts Niagara Competition**

by Mike Gentile

Cleveland-Marshall took on an international flair when it hosted the Niagara International Law Competition, February 2nd and 3rd. The competition brought oral advocates from seven American schools and from four law schools in Canada. The winning team came from right down the street; Case Western won the overall competition. St. Johns of New York was second.

Our own ClevelandMarshall team, comprised of Steve Fedor, Bob Goldstein, and Ed Powers and under the guidance of Prof. Ann Aldrich, finished fourth in the overall competition but did win an award for second best brief.

In addition to four rounds of arguments for each team and the final round for the top two teams, the weekend's activities included a wine and cheese reception on Thursday evening and a banquet, attended by approximately 150

people at the Holiday Inn on Saturday evening. These activities provided an atmosphere where all team members as well as our own Moot Court members could get acquainted with people from the other schools.

Cleveland-Marshall Moot Court members who were instrumental in organizing and running the competition were Rande Horvath, Jack Haley, Mary Kay Kalivoda and Chris Covey. In addition, the problem was written by Prof. David Forte.

The competition was hosted by Cleveland-Marshall this year as defending champions of the competition. However, the host school must alternate each year between American and Canadian schools. Next year the competition will be held in Toronto since the University of Toronto was the highest ranking Canadian school.

**Gavel Awards First "Equity" Kick**

At the Spring Assize of 1553 the Touring Judge, the Earl of Cuthbert, brought the peasant tradition of "feetum equitum" or kick for justice into the mainstream of the Common Law. The Gavel, aware of its Common Law heritage decided to resurrect this ancient remedy. Dean Robert Bogomolny is its first recipient for his cameo appearance at Niagara International Law Competition. St. John's "mootineer" was overheard saying, "Where's your Dean."

**Worth Remembering**

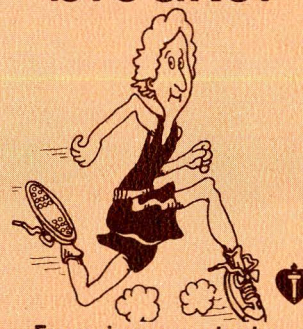
The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

Anatole France

**VOTE!!!**

Special election on the sale of Munny Light and the Income Tax increase will be held Tuesday, Feb. 27.

**Don't be a heart breaker**



**Exercise regularly.**