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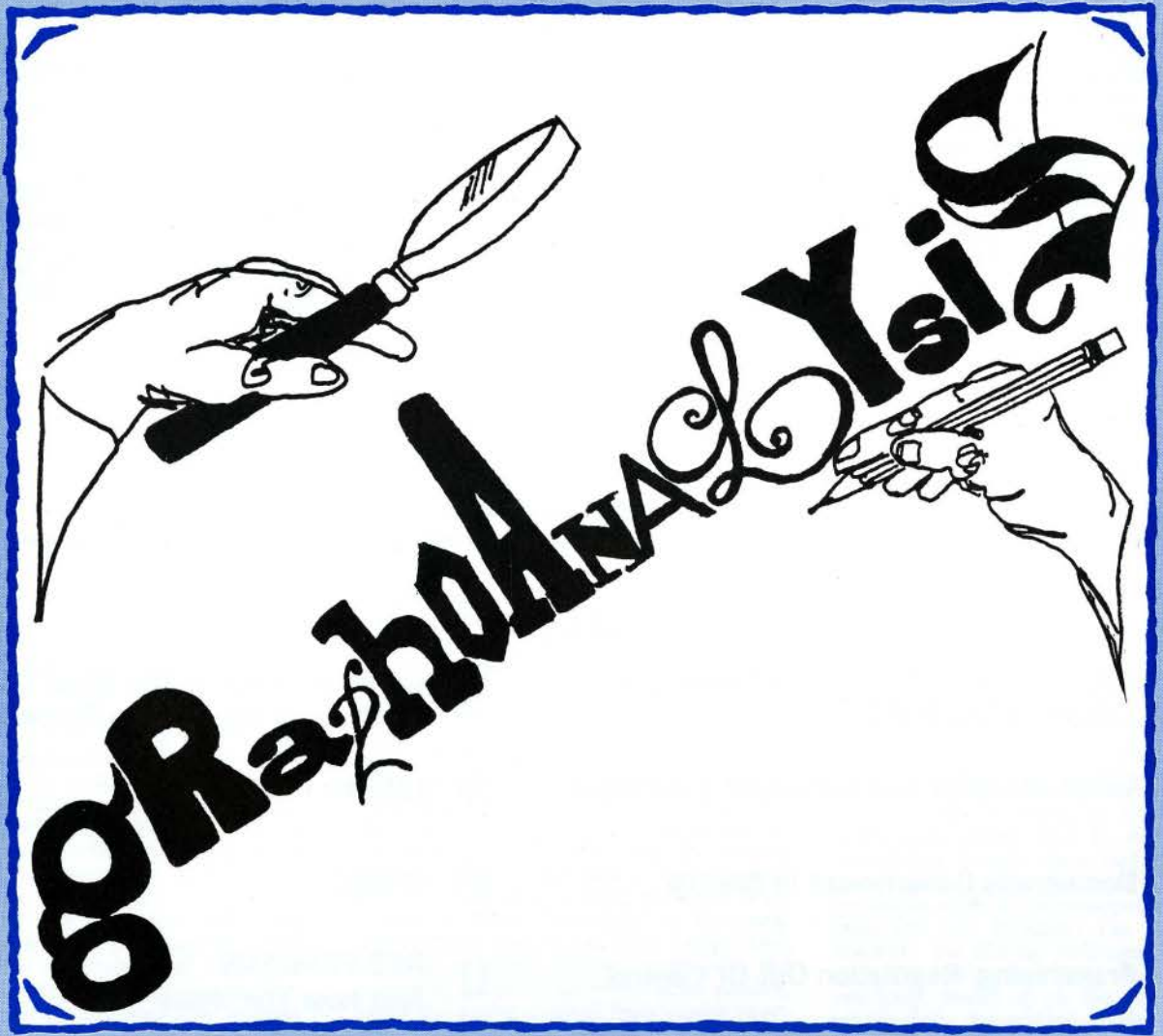

Editor's Note

It's hard to believe December is already here, bringing with it the close of another year. 1985 is just around the corner. For some of us, December brings thoughts of the first snowfall, cozy fires and the smell of Christmas cookies baking in the oven. To others, pleasant December thoughts are shadowed by foreboding thoughts of exams, exams looming as close as four days before Christmas. Needless to say, the light-hearted festivities of the Season will be all but forgotten as the final mad dash to prepare for exams begins. We once again must settle for delayed gratification. There never seems to be enough time ...

Just a few words as you approach this hurdle to the full enjoyment of the Holidays: Especially during reading week, set a schedule for yourself and stick to it. Don't outline what you already know. It's a waste of time Concentrate on the larger concepts and minimize the details. If you master the former, the latter won't be as important and won't clutter your mind.

Take time for yourself. Burn-out is a dangerous thing at any time, but particularly so before exams. Believe in yourself and your abilities. We can't all be genuises, but not a one of us is stupid. Trust others enough to ask for help in explaining something you don't understand. Enjoy the beauty of the season. Eat, drink and be merry! Let your mind wander away from school when you can, as during the ride to and from school. Find a constructive way to vent your frustrations, and cry if you need to. We all make mistakes, but the important thing is that we learn from them. Take time to make someone else smile. It will increase your own contentment ten-fold. Do the best you can. No one can ask more of you.

Be thankful for the opportunity you have to better yourself through higher education. But mostly, take time to "smell the roses", or the poinsettias as the case may be! You just may find that the drudgery of eight days of exams will pass more smoothly than you thought.

On behalf of the entire **GAVEL** staff, I wish you the warmest of Holidays and the happiest of New Years!

Debra Bernard

Debra Bernard

P. S. And ... good luck on exams!

THE GAVEL

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JOB PROFILE: Portrait of a Prosecutor

by **Debra Bernard**

He struck me as a determined man. quiet, serious, and composed in manner, yet not without a sense of humor as evidenced in his smiling brown eyes. Tall, manicured, each move of his slender frame deliberate and precise, he reminded me of the conscientious, competent Captain Frank Furillo of the famed Hill Street Blues.

His name is Bryan J. Fritz. At age 30 he is the City of Cleveland's Chief Trial Counsel in Cleveland Municipal Court, prosecuting persons committing misdemeanors. Graduated from John Carroll University where his major was political science, he entered Cleveland-Marshall College of Law, subsequently graduating and passing the Bar in 1978. Though initially employed on the civil side of things as an attorney in the downtown Cleveland Office of Consumer Affairs, he aspired to a career in criminal law, pursuing a fascination of the subject he acquired in law school. In 1979, just nine months out of the clutches of law school, he therefore sought and was rewarded a position as one of several assistant prosecutors in the Prosecutor's Office under the direction then of Almeta Johnson.

Employed by the City as a prosecuting attorney for almost six years now, Mr. Fritz's routine is "hectic" but "satisfying". His typical day demands an 8 to 9 hour time commitment and a veritable juggling of duties, appointments and responsibilities. Daily arriving in the office between 6:30 to 7:00 a.m., his first task is conferring with police officers, offering guidance or advice based on their questions and concerns, and drafting affidavits for search and/or arrest warrants. At this time he might also confer with and give guidance to the office mediators employed to handle the myriad of private complaints filtered through the office. The 9 a.m. hour finds him breezing out of the office on his way to court where he will likely spend the next 3 hours involved in the disposition of the typical 20 to 40 or more criminal cases on his daily agenda. The docket volume is handled rapidly as most of the cases do not involve full trials, but rather plea bargaining, sentencing and the like. Occasionaly he finds himself embroiled in full trial, and this he enjoys. Matching wits against defendant's counsel, forcefully advocating the rightfulness of the City's position has a certain exhilaration for him, and he thrives on the absolute competitiveness of it. Unfortunately for him, full trials are less frequently interspersed between the other cases comprising his caseload, but he recalled a time, however, when he had a load of eight full trials in one week. Docket scheduling such as that, though, is a rarity. Infrequently he is involved in complaints charging felonies by participating in the defendant's preliminary hearing in Municipal Court. When probable cause is found, the case is released to the Common Pleas Court for formal indictment before the Grand Jury.

If not in court after lunch, Mr. Fritz spends the remainder of his afternoon preparing for upcoming trials or the next day's docket caseload, interrupted a hundred times by phone calls and questions directed to his office for his expert advice or resolution. Though his day at the office generally closes around 3:30 to 4:00 p.m., his day is not yet over as he must frequently engage in follow up work at home, such as making phone calls to police officers at their homes, or preparing for an upcoming case. As they say, the paperwork never ends in a government job!

Aspects of his job most appealing and satisfying to him revolve around the competitiveness of trial work, working closely with the police, and generally feeling that his efforts are benefitting society. With a furrowing of his brow, he described the negative, disappointing aspects of his employment as being the low pay for the responsibility and volume of work his job entails, the slow rate of advancement, the occasional need to work on Saturdays or Sundays, the repetitiveness of it, and the depression that accompanies acknowledgement of the multitude of repeat offenders. He smiled when he stated, however, that for him, becoming a prosecutor was the right choice, one he would make over again if need be. For him, the satisfactions outweigh the disappointments.

When asked what qualities are necessary in a "good" prosecutor, he folded his hands against his pursed lips and reflected on the question before answering. Unconsciously, he seemed to be describing himself. Honesty was the characteristic first elicited from him, important, he said, because a prosecutor is in a position of trust and deals with sensitive issues. Consistency, the ability to think quickly and clearly, conscientiousness, common sense in knowing how to handle situations that unexpectedly arise, the abilities to set goals and get along well with others, and decisiveness were other characteristics he felt were assets in a prosecutor.

He offered advice to students aspiring to become prosecutors, suggesting they master evidence, criminal procedure, and obtain experience, if possible, in trial work, such as taking a course in trial advocacy. He also stated that participating in the Prosecutor's Office as a law clerk or in the mediation program where students handle the intake of private complaints would be extemely helpful.

Bryan J. Fritz. His sincerity was genuine, his dedication, obvious. I left his office with a firm conviction that we had a good man in the position. Captain Furillo is not totally a fictitious character. Cleveland has its own version of the man in the Muny Court Prosecutor's Office.

LETTERS TO THE EDITOR

It is now December, and the university administration has yet to offer a viable parking alternative after last spring's unannounced elimination of 700 parking spaces to allow for the new soccer field. One form of pacification commuters were urged to accept was the addition of a few small lots on Prospect Avenue. The administration has attempted to calm justifiable fears for personal safety by saying escorts are available. That's fine when I'm leaving campus and am able to phone the escort service, but where are the escorts when I **arrive** on campus as early as 8:15 a.m., and the only parking available is on Prospect? Other "solutions" to the parking problem are: 1) Get here early. (Yes, this was an actual suggestion made by the administration). This is the most absurd, since the entire student body seems to arrive early on Monday, Wednesday and Friday when the problem is at its worst. And why should I have to get here at 7:30 a.m. for a 10:00 a.m. class? 2) Use public transportation. This is in no way a feasible solution because it assumes all students have access to RTA and again, it denies students a choice.

Lately, I've had to park in "P" lot, located at Chester between 20th and 21st streets because I refuse to park on Prospect. Despite the fact that it is unpaved, strewn with glass and bricks, and has only a broken curb for an entrance, I still have to pay 75 cents, as much as for the more convenient, paved lots. In addition, the circulation in my arms and hands has been impaired more than once from carrying books such an unreasonable distance from the law building. I'm sure other students are silently suffering in similar ways. No matter how little time you think you have, sound off on the problem that causes daily frustration. Voice your complaints in a letter or a phone call and help improve CSU's unbearable parking conditions.

Rosemary Torok-Sadid

Graphoanalysis and Document Examiners

by Jimmy Thurston

Many lawyers are using graphoanalysis or handwriting analysis as a tool in jury selection. Graphoanalysis provides lawyers with a method for identifying potential jurors and authenticating various documents. Some cases require broadminded jurors and others more conservative jurors. Such characteristics are what a graphologist may help an attorney to ascertain through handwriting samples or a signature. Graphologists screen prospective jurors to discover which jurors are able to understand a case and those who might be detrimental to the cause being advocated. Also, graphologists examine documents and serve as expert witnesses in trials.

Recently, a two day workshop on Graphology and Jury Selection was held by the Handwriting Analysts International in cooperation with the Extended Campus College of Cleveland State University. The two main speakers were Robert Thorsen, an attorney from Rockford, Illinois, and Vickie L. Willard, a nationally known graphologist and expert dociments examiner and witness.

Thorsen's presentation demonstrated with lecture and overhead projections how through handwriting analysis a lawyer may determine maturity or immaturity, emotional stability, traits related to health, such as possible senility, and intelligence of prospective jurors.

The chief difficulties of using this type of analysis are how to get the information and how to set up the information after obtaining it. In most jurisdictions, it is nearly impossible to acquire jury lists or background questionnaires to get the necessary information and handwriting samples of prospective jurors, unless the jury lists are a matter of public record as they are in Thorsen's county in Illinois. When this information is available, it is possible to evaluate which jurors are strongly opinionated, which might be the potential foreman of the jury, and which potential juror may or may not be beneficial to the cause being litigated.

Jurors are registered voters selected from the particular county in which they reside. Many factors are considered in selecting a juror and chief among them are such things as education, employment, and body language.

Ethnic discriminations based on nationality are not necessarily valid. A trial attorney should observe prospective jurors for attitudes, handicaps, and friendships within their ranks. Usually the first two or three jurors are subjected to more intense questioning to allow the attorneys the opportunity to observe the reactions of other jurors. Experience is the best teacher and soon most trial lawyers develop an intuitive recognition of suitable jurors depending on the case at bar.

Thorsen stressed the fact that jury selection, or the "voir dire" in legal terminology, is an extremely important element in a trial because of the adversarial nature of litigating in court. In many instances, it can prove to be "the frosting on the cake" or the extra "one-upmanship" in advocating a client's cause of action or defense.

In setting-up and evaluating the information, the jurors are categorized and identified by the graphologist and the attorney into five groups as follows: double plus++ plus + douple minus −− minus (—), and inconclusive. Double plus, depending on the individual case and whether the area is rural or urban, would signal an outstanding potential juror, but a candidate for a preemptory challenge and possible dismissal for the opponent. Generally, each attorney has five or six preemptory challenges which he or she may use to excuse a potential juror for no cause or reason whatsoever. Plus (+) would be okay, double minus (——) would be a definite no, minus (—) has some negative quality, and inconclusive would be unsure in one way or the other. These symbols are used because time doesn't permit a more in depth examination. The graphologist usually has less than one half-hour before a trial to make these evaluations and, in turn, pass them along to the attorney.

Have you ever wondered how the authenticity of a signature or a document is verified? Vickie L. Willard explained how a document examiner renders an opinion on the basis of a sufficient number of comparison samples and presents a conclusion to a court of law as an expert witness. Documents are indispensable in today's world, necessary to prove things from birth to death, with a variety of other necessities in between those two extremes such as: marriage, divorce, military status, employment, unemployment, achievements, education and ownership. Most business transactions are embodied in documents. Individuals write checks and sign charge slips and other forms and papers as a matter of course. The signature is a primary key to handwriting because it validates the person and the transaction or agreement he or she certifies as his or her own personal identity. Graphologists believe that the signature shows how one represents one's self to the world, and the handwriting shows personality traits.

The validity of a signature is oft-times the object of dispute in civil and criminal trials. It becomes an issue whether a signature is genuine and is that of a particular person. In turn this becomes a matter for a document examiner, who makes the verification in a court of law.

The document examiner is trained in specific areas of identification and is helpful in proving facts and conclusions based on demonstration and testimony to a judge or jury. For the attorney it is necessary not only to select a competent examiner, but more importantly, a skilled expert witness. The examiner must be evaluated for professionalism, personal appearance and demeanor. Jurors tend to follow "first impressions", and their observations essentially determine the creditability and reputability of the expert witness. In addition, opposing lawyers challenge education, background and experience of the expert witness.

The sample documents used for comparison by the document examiner should be as close in date as possible to the disputed document. This is because some features of writing can change over a period of time due to the writer experiencing illness or trauma, use of medication, or advanced age. The document examiner endeavors through investigation to secure a chronological sequence of samples that commenced prior to the incident of concern. The examiner must secure adequate samples to assure effecive analysis in reaching any decision.

Another consideration for attorney and examiner is the admissibility of evidence and the standard for comparison to be used in the court. If the examination is based on writing that is inadmissible or not authenticated as genuine, it will be difficult for the expert witness to demonstrate his or her opinion to the court and jury. A time and money saving device is for the attorney to determine the validity of each sample before submitting it to the examiner. Also, the opposing counsel may be uncooperative in not wishing to release a document without a court order.

After completing the examination, a written report is prepared for the attorney or the court and it may be instrumental in the settlement of the particular issue. The report is brief because the less stated, the less material the opposition will have for cross examination. The report is divided into the following sections: 1) an itemized description of the submitted documents; 2) the purpose of the examination; 3) the procedures used; and 4) the conclusion.

Thorsen's presentation of what lawyers are looking for in prospective jurors, what types of people to exclude from juries, and the general background of jury selection was informative and of interest to people involved in all aspects of the law and others interested in detective work. It clearly showed how two or three prospective jurors may be dismissed preemptorily through handwriting analysis, which is an additional advantage to the knowledgeable attorney.

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Democratic Government in the United Kingdom

by Professor Lars Mosesson

(These are some home thoughts from abroad: what light they throw on other (nearer) polities I shall not presume to judge.)

The United Kingdom is a unitary state, made up of England, Scotland, Wales and N. Ireland, and headed by a constitutional monarch, Queen Elizabeth II. Although her legislative and judicial powers have been severely limited by law since the seventeenth century, the Queen is still in law and in most formal terms the head of the executive. It is one of the most remarkable features of the UK onstitution that the heart of the executive, where the greatest concentration of institutional political power lies, namely the prime minister (PM) and the cabinet, are neither the creatures of law, nor even recognized except peripherally by the law.

In the USA the federal executive, in the personification of the President, is elected separately from the legislature; must not be a member of legislature; and is not answerable to the legislature for the wisdom of his policies — this last point was stressed during the moves to impeach Nixon. This separation of powers was established by the founding fathers on the premise that the concentration of different types of state power in the hands of one person or group leads to tyranny.

In the UK, on the other hand, the executive **must** be drawn exclusively from the legislature — i.e., the (elected) House of Commons and the (non-elected) House of Lords: this rule was developed as an early restriction on royal power. This "must" is not derived from a legal rule, but from what are called "constitutional conventions," the rules of behavior for those who exercise state power, which are (merely) politically binding. However, it is these conventions which express some of the most fundamental rules in the system. It is a convention in this sense that the monarch must appoint a PM and allow that PM to exercise almost all the executive (and administrative) powers which in law still reside in the monarch: this has been so since the eighteenth century. It is a convention that the person appointed must be able to "carry on the business of government" in the sense of being able to command a majority of votes on major issues in the House of Commons: this has been so since 1841 and ensures it is parliamentary will, not royal will, which determines the government. It is a convention that the PM and other ministers must attend regularly to answer questions about government policy put to them by members of the House of Commons ("MPs"), notably, at the daily Question Time. It is a convention that the House of Commons may **at any time call for and receive** the resignation of the government by a simple resolution to that effect. In such a case the PM would have to offer her resignation to the Queen, who would then usually call a general election, that is, an election of members of the House of Commons, the elected part of the **legislature.** Thus the mechanism for the democratic responsibility of government has been established.

> "It is however, extremely rare for the government to be voted out by the House of Commons, because UK electoral law produces significant distortions, so that the government party will almost always have an absolute majority in the Commons and can rely on party discipline to prevent the imposition of this sanction between elections."

It will be seen that, in **formal terms** whereas the President of the US is responsible to the people qua the electorate **directly** (ignoring the collegiate system) and (only) every four years, the PM of the UK is responsible to the people (other than the electors in her Parliamentary constituency) only **indirectly** and only if either it is 5 years since the previous general election, or she deems it an advantageous time for her government to seek (indirect) reelection, or her government has been defeated on a major vote in the House of Commons: the direct responsibility of the PM (and the other ministers) is to the House of Commons (and their individual constitutents). It is, however, extremely rare for the government to be voted out by the House of Commons, because UK electoral law produces significant distortions, so that the government party will almost always have an absolute majority in the Commons and can rely on party discipline to prevent the imposition of this sanction between elections. The real power to defeat the government thus lies with its own junior members, who may threaten a back-bench revolt.

Between 1832 and 1948 the system for elections to the House of Commons was transformed into one based on the principles of the demographic distribution of seats and one adult/one vote/one value; but the mechanics of single-member constituencies and relative majority ("winner takes all") have been preserved. Thus, although it is usual that one party will have an absolute majority of seats in the House of Commons, it is extremely rare for that party to have received an absolute majority of the popular vote. Indeed, a party in government may have received fewer popular votes than another party, or may win fewer votes in a succeeding election and yet win more seats: for example, Thatcher's Conservatives gained a "landslide victory" in 1983 (after the Falkland/Malvinas) in terms of seats, while getting a smaller percentage of the vote than in 1979. (42% of the votes cast, as against 44%.) Moreover, the Liberals obtained about 20% of the vote, but about 2% of the seats — an experience they have had consistently for more than 20 years in general elections. The second largest party, Labour, obtained about 25% of the vote in 1983, but about 30% of the seats; and, since Labour has been alternating in office with the Conservatives over the last 60 years, neither of these parties minds the incongruities of the present system, as their turn for office will come around again soon and in the meantime they will be the "official" opposition in Parliament and elsewhere.

This conservatism in the "front-bench conspiracy" is not surprising, as political establishments will tend to cater for vested interests and resist change which might undermine their power-base. However, openness to pressures for change "from below" is one of the hallmarks of a healthy polity, and one of the special merits of a democracy; and thus the reality of the process of a political decision-making becomes the central issue for democrats.

The main argument used to defend the present UK electoral/governmental system is that the distortions produce "strong government" with reasonably widespread support; while proportional representation (PR) and decentralization would make government unworkable.

A "strong" government may be taken to refer to a government which is willing and able to take decisions when necessary and to implement them. Clearly, this is a vital aspect of any system, but to use this as an argument against PR not only ignores the strength of governments in Sweden and West Germany, where there are forms of PR, it also ignores the actual weakness of policy in recent years in States like the UK, particularly as their economic power has declined and real options have narrowed. Even more importantly, it assumes that such strength is the only or the greatest governmental virtue: thus it ignores, inter alia, the requirements that the laws and policies of the government should be reasonably just, and that the government should be perceived by the people as having the authority which inspires or obligates them to obey, even when they disagree with the laws. If

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Franchising: Regulation Out Of Control

"The Fifth Stage"

(Part 2)

by Steven Mills

The Federal Trade Commission regulates franchises and business opportunity ventures under its 1979 Rule;[14] further, 32 states regulate franchise and business opportunity ventures, while 14 of those states require franchise registration. In other words, there is a great deal of state and federal franchise and business opportunity regulation.

Even though the FTC Rule does not require registration of a franchisor's offering circular, it does provide a prospective franchisee with an abudance of information, and it heavily penalizes franchisors for violations of the Rule.[15] As was discussed in the first article in this series, the Rule only preempts conflicting state language, and permits states to provide equal or greater protection to that of the federal rule. This, then, places a franchisor in a precarious position: it requires that a franchisor meet the heavy compliance requirements under the FTC Rule, while at the same time, the franchisor must research the additional nonconflicting state requirements. As was mentioned in the last article, franchisors argue that the cost of meeting all of these regulations is high.[16]

The above-mentioned state and federal regulations do not necessarily place a great burden on large established franchisors, but these regulations can prove to be costly to new and small businesses.

Philip F. Zeidman, an influential lecturer and author on franchising, has sketched a "life cycle" of franchise regulation based upon regulation in the United States.[17]

> The early stage is marked by limited protection within particular industries that are strategically important and often subject to broader regulations as well (such as automobile manufacturers or petroleum producers).
>
> Typically such laws protest small dealers who have large capital investments and depend upon the products (and goodwill) of their far larger suppliers.
>
> The second stage sees legislation to counteract specific dishonest practices, such as pyramid selling. This stage reflects the novelty of alternative distribution systems, their attraction to marketers interested in maximum "yield" or "leverage," and the problem of keeping the public well informed.
>
> The third stage is characterised by a more general impetus to help small entities which may be cheated or victimized by larger ones. At first, protection may be quite limited — for example, existing principles of commercial or antitrust law may be applied in a way that prevents the franchisor from applying his generally superior bargaining in a socially or economically unacceptable way.
>
> The fourth stage occurs when franchising itself is a more mature phenomenon in the country, and the number of franchisees has increased enough to give them extra political weight. Very broad franchise regulation may result at this stage, where protection of franchisees has come to be viewed as imperative for social harmony. The regulation may take the form of disclosure and registration laws, or substantive legislation, or both.
>
> Finally, the market may reach a point at which the advantages and disadvantages of franchising are videly known, where franchisors are numerous and competitive, where fringe operatiors have been either removed by the forces of the market place or regulated out of existence, and where only the truly naive and credulous invest improvidently in a franchise. At that point, the costs of regulation may exceed the benefits, and the pendulum may swing back to a more **laissez-faire** type of regulation. Simultaneously, the judicial system of the country may have come to recognise franchising as a special case and may treat it in a more realistic fashion.

The author then suggests that he believes the United States has yet to quite reach the 'fifth stage' of the life cycle.[18] I suggest that some recent developments may have pushed franchise regulation into the 'fifth stage'. This can best be explained by analyzing the typical registration/disclosure requirements, and Michigan's new franchise law amendment.

Most states require that the disclosure statement, normally the Uniform Franchise Offering Circular, and all accompanying registration documents be filed with the appropriate state agency. Once the lengthy disclosure document is prepared with all of the state specific changes,[19] the franchisor must prepare the associated registration materials. The typical materials include:[20]

(a) **Sales Agent Identification Forms**
If sales agent registration is required, the franchisor must submit detailed forms that ask for extensive information on the sales agent's employment and litigation involvement.

(b) **Review of Advertising and Promotional Material**
Any advertising or promotional material which offers franchises for sale must be submitted, within a specified number of days prior to initial use, to the franchise regulatory agency. Certain state required language must normally accompany the advertising.

(c) **Facing Page**
This page provides basic information on the names and addresses of the franchisor, its agent(s), its subfranchisor(s), its principal place of business, and the person to whom communications should be directed. The facing page also provides information as to whether the registration materials are for an initial, renewal, or amendment registration.

(d) **Supplemental Information Page**
This page seeks to know the status of the franchisor's registration in all states; it also asks that a chart of budget form be prepared which estimates the funds that the franchisor will spend in order to satisfy its obligation to the franchisee with respect to promised goods and/or services. This chart must also specify the source of the funds that the franchisor will use to satisfy its obligations.

(e) **Consent to Service of Process**
The out-of-state franchisor must irrevocably appoint an agent for service of process. Often the franchisor simply appoints the franchise regulatory agency.

(f) **Signature Page**
The franchisor must execute a signature page; the signatory certifies that the registration application is true and correct.

(g) **Cross-Reference Sheet**
This sheet allows the franchise administrator of each state to locate provisions in the franchise agreement that correspond to the offering circular.

(h) **Filing Fees**
A fee must be paid for an initial or renewal application. Fees can also be assessed for application amendments.

Michigan's New Franchise Law

Up until June 19, 1984, Michigan had one of the most stringent registration laws in the United States, but the passage of its amended franchise sales law gives Michigan the least burdensome registration law.

In addition to the offering circular and all of the registration documents listed above (Items (a) through (h), Michigan required that the following items also be filed with the state's regulatory agency:[21] (1) A copy of all operating manuals; (2) A list of all Michigan Franchise Sales since

the effective date of the Franchise Investment Law; (3) A copy of the franchisor's articles of incorporation; and (4) An assumed name certificate, if applicable.

On April 20, 1984, House Bill 5119 was signed into law in Michigan (it became effective on June 19, 1984). The Bill amended Michigan's franchise Investment Law, and it eliminated the franchise registration requirements mentioned above. Franchisors must now only provide the Attorney General's Office with two copies of a document, on corporate letterhead, giving the name under which the franchisor will do business in the state, and a corporate officer or principal's signature. A fee of $250.00 must also accompany the notice of intent to do business.[22]

We **have** reached the 'fifth' stage.

The fifth stage in Michigan was entered without neglecting the prospective franchisee. Disclosure documents must still be provided to prospective franchisees, and violations of the act are still punishable.

The Michigan amendment should not be viewed as a mere aberration in the registration/disclosure area. Efforts are also under way in Wisconsin to change that state's very extensive registration/disclosure law. 23

There is also an effort by the National Alliance of Franchisees (NAF), an independent franchisee organization, to work with the International Franchise Association and the National Conference of Commissioners to seek uniform state laws in the franchising area.[24]

It is very difficult to determine if most of the deceptive and fraudulent franchisors have been removed from the market. an element of Zeidman's fifth stage, but I believe it can be asserted that with the FTC Rule, only the truly naive and credulous invest improvidently in franchised operations (another fifth stage element). Therefore, even if fringe operators still exist in the marketplace, the Rule will work to remove them.

The large number of franchisors in the market, and the amount of business generated by franchised operations, suggest that the numerosity and competitiveness elements of the fifth stage have also been met.[25] I would also add another element to the fifth stage analysis that was not explicitly contained in Zeidman's analysis, it being franchisor/franchisee cooperation.

The **Continental Franchise Review** recently reported that Bernie Thayer (Chairman and Director of the National Alliance of Franchisees), featured speaker at the Sixth Annual National Franchise Law Institute (Kansas City, September 7, 1984), stated that there would be a greater cooperative effort among franchisors and franchisees. The NAF's emphasis, according to the article, will be on negotiation/cooperation over its predecessor organization's litigation/confrontation approach. Thayer also stated that the NAF would remain committed to strengthening the franchisor-franchisee relationship.[26]

The stated objective of this article was to determine if there is too much overreaching and burdensome regulation; the above-mentioned registration requirements, and the Michigan franchise law amendment, demonstrate that, between a comprehensive federal disclosure rule and numerous state regulations, there is too much unnecessary regulation in the franchising area. This necessarily suggests that the pendulum of regulation must shift back to a point where franchisees will be protected from unscrupulous franchisors, and franchisors, particularly small and/or new franchisors, will be able to conduct business without the current burdensome state and federal statues, rules, and regulations.

Therefore, assuming we have reached the 'fifth' stage of Zeidman's regulation life cycle, how far back should the regulation pendulum swing? This will be the subject of the third, and final, article in this series.

NOTES

14. 16 CFR Part 436. Final interpretive guides, 44 Fed. Reg. at 49966-49992 (August 24, 1969).

15. "Violators are subject to civil penalty actions brought by the Commission of up to $10,000 per violation. In addition, the Commission may bring an action in federal or state court for demages on behalf of franchises. 44 Fed. Reg."at 49971.

16. A clear statement on the cost of regulation has yet to be issued by the FTC, but OMB was asked to review this question on July 26, 1984.

17. Zeidman, "Regulation of Franchising in the United States: Imlications for International Franchising," in **International Franchising: An Overview** (M. Mendelsohn ed. 1984).

18. **Id.**

19. Zeidman, Ausbrook, and Lowell, 34 C.P.S. (BNA), **Franchising: Regulation of Buing and Selling a Franchise,** A-64—A-68.

20. **Id.** at A-69—A-73.

21. **Id.** at A-73.

22. MICH. COMP. LAWS ANN., Chapter 445, Section 445. 15072. (From Bus. Fran. Guide (CCH) pg. 3220.06).

23. Continental Franchise Review, "Special CFR Report On the Status of State Franchising Laws," January 23, 1984, pg. 3.

24. **Id.**

25. See generally. **Franchising In the Economy 1981-83,** U.S. Department of Commerce, Bureau of Industrial Economics.

26. Continental Franchise Review, Volume 17, No. 17, October 1, 1984, p. 2.

Time is Of The Essence

by **Kassia Maslowski**

Since there are only 24 hours in a day and we are in law school, there is a common feeling that there just isn't enough time to get everything done. But since there is no way to make a day longer, how **can** we do all the things we need to do? Dr. Joseph Volker spoke to this issue on October 18 at the second seminar sponsored by the law school administration and the Women's Law Caucus.

Dr. Volker's first hint for better time management was to make a daily list of the things you have to do. Although this may seem useless, it is very helpful because "it is hard to focus on any one thing long enough to analyze it" in your head. By writing it down you can critically analyze it and leave your mind free to remember more important things.

You can also develop a weekly schedule by listing your "fixed" commitments such as classes and work, and then filling in your "flexibile" time with the other things you need to do. This way you will have a schedule to follow and will avoid wasting time.

To help in making these lists Dr. Volker suggested that you should regularly take a few minutes to write down your goals for work, family, social life, and personal growth. Then go back through your goals and select the priorities. The priorities are things you should try to make time for. If you ignore these things and spend all your time studying, you will grow to resent law school and your concentration will decrease.

Another tip in using time more effectively is to combine activities. He suggested eating with someone you have been meaning to spend time with. This way you are accomplishing a social priority as well as an essential need. Another suggestion was to dictate letters to friends while you are commuting to and from school.

He also emphasized the importance of increasing the amount of regularity in your studying. By working in the same place you will associate that place with studying. It should also be free of distracting things such as bills and pictures so you can better concentrate.

All of these ideas seem very easy yet most of us do not do them. Why? Dr. Volker named five basic reasons: lack of clarity of what is important to you; a bad attitude about planning; the disability to say "no" to others; the desire for perfectionism; and the tendency to procrastinate.

By making lists, prioritizing your goals and breaking large tasks into small chunks, you will find it easier to do what you have to do. Although the day won't get any longer, it will make it seem that way because you are managing your time more efficiently.

Communication is The Word

by **Sandra Kowiako**

Information is powerful, but of equal importance is the ability to access it efficiently. According to Law Library Director Robert J. Nissenbaum, the Cleveland-Marshall library is gearing up in that direction. Nissenbaum, who has been the director since August 17, claims that it is the movement toward computerization of library functions that keeps the Cleveland-Marshall library on par with some of the best law libraries in the state.

Nissenbaum points to a number of additions soon to be seen by students and faculty. Already waiting in the wings are two services which will increase the efficiency of information handling and processing. First, the Harvard-Minnesota Consortium for Computer Assisted Legal Instruction will soon be available. Self-paced learning software will be structured to coordinate with teaching materials and assist in legal education. Two microcomputers will be set aside for student use.

Also in line is a pager system. Students on the library's basement and second floor levels will be able to pick up a phone, talk to someone at the circulation desk, and have a reference librarian come to their assistance. Reference librarians will wear voice-activated pagers that will quickly alert them to students' needs.

Nissenbaum also claims that a number of changes for the future are already in the development stage. Of great importance is his plan to expand by three or four times the present space allocated for accessing the 95,000 microformvolumes, the largest collection of its kind in Ohio. This operation will move to the basement, sending technical services to the main floor for better public service access. In addition, a Lexis terminal will be stationed in the reference area, offering students and faculty a quick-search feature for prompt data retrieval.

Other changes are also planned. More conference rooms will soon be available, and a new lounge area will allow students to relax and mingle with faculty and alumni. Finally, a photocopy service will offer students more study time, and will alleviate bottlenecks at the copying machines.

Nissenbaum also intends to maintain lines of communication with members of faculty, Moot Court, and Law Review, to anticipate needs before they arise, and to provide library materials and services in an efficient manner. He claims that a library can either react to the institution it supports by mirroring curricula, or it can act as a catalyst to provide the institution with direction. According to the director, the Cleveland-Marshall library presently falls somewhere in between these functional roles. Its collection is complete in some areas, but lacking in others.

Students in need of materials currently unavailable at the Marshall library facility can now look into the collections of other law libraries. Cleveland-Marshall has joined its collections with those of law schools that make use of telefacsimile. This communications technology is available at a number of law schools including those at NYU and Columbia, with notables such as Berkley, UCLA, University of Pennsylvania, and Harvard planning to join in the near future. In this system, literature is scanned, digitized, transmitted over telephone lines, and reproduced at its destination.

Nissenbaum feels fortunate in his position at the edge of these innovative technological developments. Computers have been used in businesses and profit centers for a number of years, and are finally making their way into libraries. Not only are rapid advances taking place within individual libraries, but electronic technology is now linking facilities across the nation into vast data-communication networks.

Despite this technological renaissance, the human element will still be a viable force in the library's service structure. Nissenbaum assures students and faculty that the library staff will provide a thorough and profitable learning experience, with communication as the key element.

Moot Court Night Huge Success

by Mary DeGenaro

The Moot Court Board of Governors of Cleveland-Marshall College of Law presented the Sixth Annual Fall Moot Court Night November 8. After successful argument on both sides, the evening's bench of the Honorable Judges Frank J. Battisti, Frank D. Celebrezze, Robert E. Holmes, and Prof. Stephen J. Werber announced the winning team of Sue Ellen McKinney, Joseph G. Stafford and Michael A. Petrecca.

The evening's event was the final practice for the teams representing C-M National Moot Court Competition; regional competition began November 15 in Detroit. Counsel for the Respondent was the team of Bernita N. Brooks, Laurie F. Starr and Terry A. Bryer.

Petitioners, while escaping the dicatorial regime in Suri, attempted to enter the United States in July 1981 without immigration documents and were intercepted by the Coast Guard. In February of that year respondant, the U.S. Attorney General, issued a memorandum forbidding parole of Surinese without proper papers. Because of this petitioner's requests for parole to gather evidence to apply for political asylum have been denied. This petition for writ of habeas corpus was brought while petitioners were still in detention facilities three year later.

Petitioners' status was as excludable aliens because they were caught without papers before entering the country, as opposed to deportable aliens caught after entering the U.S. This distinction is important because Constitutional rights are extended to the latter, not the former. At issue was whether respondant abused her discretion by denying petitioners parole, and whether the denial was in violation of international law. Petitioners also attempted to assert that exludable aliens should be granted Constitutional rights.

Both sides argued well, putting forth public policy to support their contentions. Respondants emphasized the recent influx of aliens to the U.S. and the Attorney General's duty to control U.S. borders. Petitioners contended that undue detention goes against public policy and that denial of entry based on national origin is a suspect class which deserves special scrutiny.

All three judges commented on how well each team briefed and presented its argument. Judge Battisti noted that the questions were difficult and the advocates responded to suprise questions well. Justice Holmes reminded the advocates to argue on the law, not on emotions. Justice Celebrezze suggested when advocates responde to a question with the response that the court previously held in a certain way, the advocate should cite the case announcing that decision. Because he was late due to misinformation, Justice Celebrezze reminded all present when they're scheduled to appear before a court that they get there on time!

On that light note, court was adjourned to the atrium for a reception to meet the judges and advocates, and to celebrate another successful Moot Court Night.

Constitutional Democracy:

Let The People Decide

by **Kassia Maslowski**

"Our practices for determining issues of public morality are deeply flawed. We rely too heavily on the Supreme Court of the United States to determine them for us. We give too much responsibility to the Court, too little to other institutions; and we evade our own responsibility as citizens in a democratic polity. The problem is not that too many issues are 'constitutionalized', for many of our most important public moral issues are quite properly treated as constitutional questions. The problem, rather, is that we assume that only the Court is authorized to decide, or capable of deciding, constitutional questions."

This rather shocking, yet thought-provoking topic was discussed by Professor Paul Brest, the 31st Cleveland-Marshall Fund Lecturer, on November 6, 1984, at Cleveland-Marshall College of Law.

The Constitution, although adopted by conventions and legislatures, has historically been left to the Courts to be interpreted. It is often felt that only the courts have the right to decide constitutional questions. However, there is no constitutional provision which assigns such an exlusive role to the judiciary. "On the contrary, it implies that **all** legislators and public officials ... are obligated to interpret the Constitution". (Emphasis added)."

Although there are good reasons for allowing judicial interpretation, the notion of judicial exclusivity is "dead wrong."

There are two main justifications for judicial review: "judges have special expertise in interpreting legal documents", and the court is well situated to make moral judgments beyond the text "because of its insulation from partisan politics and by virtue of the systematic ... procedures by which issues are presented, heard, and decided".

Although there are justifications for judicial review, there are also criticisms. One is that courts lack the authority to address constitutional issues because they really have nothing to do with the Constitution.

The second criticism, the problem of demography, is that courts are highly unrepresentative since they are traditionally composed of "white, male, well-to-do, and professional — members of America's elite". This presents a problem since so many of the moral issues that come before the courts involve groups "few of whose members are judges; and because moral decisions so often depend on knowledge of the circumstances of those affected. The danger is that through ignorance or partisanship, they will be sympathetic to, and further, the interests of some groups while ignoring or frustrating others".

The final criticism, judicial exclusivity, is that since judges exercise a monopoly over constitutional decisionmaking, other citizens and their representatives are excluded. "Constitutional decisionmaking is one of the most important forms of public moral decisionmaking ... (which) is too important to be left to the courts."

Brest argues for a "participatory conception of citizenship" by examining three conceptions of democracy.

The first, consumer conception, involves citizen participation in government to assert and protect their own interests and "citizens being conceived of as consumers in a market in which leaders compete for their votes".

In this conception, citizens are not participants in government, instead they look to their leaders. Although this allows for a high degree of elitism, it demands that leaders ultimately be "responsive to the electorate".

However, this theory is incompatible with the "idea of constitutional decisionmaking as moral decisionmaking" because it "allows no space for public moral discourse or ... for justice".

The classical conception and its theorists "were not primarily concerned with the **policies** which might be produced in a democracy ... (but) with human development". Brest used a quotation from Donald Keim to summarize this theory: "Each actor partakes in a common activity, not as tasks are shared in the division of labor, but in the sense that a common ground is both created by and composed of noninstrumental political actions.' "

However, it is questionable whether this conception "provides any more space for moral discourse than does the consumer conception". If it is to "have any bearing on constitutional decisionmaking ... it must be through political discourse that recognizes the diversity of interests of a heterogeneous society".

The third conception, discursive participation, is "participation that induces us to listen to other people's positions and justify our own". However, the possibility of discursive participation rests on two assumptions: "that people generally want to

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Kocab and Winklhofer Are Moot Court Champs

Congratulations to Brooke Kocab and Sharon Winklhofer who received the first place team trophy and the first place brief award at the third annual Benton National Moot Court Competition on Information Law and Privacy. The competition was held at John Marshall Law School in Chicago, Illinois on October 25, 26, and 27. Miss Kocab and Miss Winklhofer participated in five rounds of oral arguments which involved ninety-five schools from across the nation. Both students argued in front of state Supreme Court justices and Circuit Court judges. Their brief addressed the constitutional ramifications of invasion of privacy issues stemming from the removal of a letter from a student record file, and police eavesdropping and interception of conversations through use of a cordless telephone with an FM radio. Their brief will be published in an upcoming John Marshall Law Review.

Mary Pat DeChant

C—MQC

Cleveland—Marshall Quote Corner

Your law may be perfect, your abiliy to apply it great, and yet you cannot be a successful advisor unless your advice is followed; it will not be followed unless you can satisfy your clients; unless you impress them with your superior knowledge, and that you cannot do unless you know their affairs better than they do because you see them from a fullness of knowledge. The ability to impress them grows with your own success in advising others, with the confidence which you yourself feel in your powers. That confidence can never come from books; it is gained by human exchange.

Louis D. Brandeis,
Letter to Wm. H. Dunbar (1893)

Law, — in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most sordid and most pernicious.

Lord Bolingbroke,
On the Study and Use of History — (1739)

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Then welcome business, welcome strife,
Welcome the cares and thorns of life,
The visage wan, the pore-blind sight
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall,
For thee fair justice, welcome all.

Blackstone,
Farewell to His Muse

United Kingdom

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strength were the greatest virtue, a good case could be made for absolutism; but democrats by definition assert other virtues, and accept the inevitable "inefficiency" or inconvenience of rights against the state, of responsibility of government and of popular involvement in decision making. The benefits of these inefficiencies center on the moral authority or legitimacy which the government has as a consequence. This is not just an optional extra but inheres in the lifeblood of democracy: it must inform the actions of the governors and the governed, determining how the government should respond to challenges and whether the governed should cooperate and obey. It may be possible for a dictatorship to rely on force to **oblige** the governed to obey, but a democracy must appeal primarily to authority to **obligate** the governed to obey.

Granted that requiring consensus is impractical for decision-making in a plural society, we must use majority rule; but it must be a system in which all democrats feel they have some hope or fair chance for expressing and impressing their views, and consequent stake in the system. Once citizens feel that they have no hope of effective participation through the constitutional system, they are likely to become alienated from these processes and either no longer contribute to the political life of that state or turn to extra-constitutional means. It is not absurd to say that, even if a proportion of the IRA and their supporters — and even of some trade unions — are committed anti-democrats of one sort or another, the failure of the constitutional system of the UK to give real opportunities for political expression to certain non-establishment groups causes political disaffection and provides the potential for recruitment to extremist causes.

The government appears to have learned (with the help of the European Convention on Human Rights) that increasing force will not solve the problems of Northern Ireland; but knee-jerk reactions still occur in response to other industrial and social problems. The policies of increasing unemployment, of running down the social, health and education services, of allowing the decay of inner cities and industries outside the South East, and of abolishing the structure of metropolitan government (where opposition parties have been more successful) have been pushed through Parliament with little difficulty: and the courts have declared themselves incapable of reviewing the legality of Parliamentary legislation because of Parliament's sovereignty: thus the government has a free hand to impose its will and continues to act as an "elective dictatorship".

The recent responses by the government to challenges have been increasingly undemocratic. What is sorely needed is a clear commitment to democracy by the establishment of PR, the establishment of regional government with significant powers and, perhaps, the enactment of a (modern) Bill of Rights. The temptation to ignore political opposition to use short-term expedients in social problems and to deny hope to those outside the establishment must be resisted by democratic government. If the democratic system cannot respond to its challenges in a way consistent with its professed bases, it is no longer worthy of our respect and allegiance. Increasing popular participation in governmental decision-making and less arrogance and secrecy by government are overdue. The political establishment must learn to trust the people — and educate and inform them — and seek real authority from them. What democracy needs is not "strong" government, but authoritative government.

Res Pendens

More Parking Available

As of November 8, 1984 two new parking areas became available for university use. The new lots are located on the south side of Payne Ave. between E. 22nd Street and E. 23rd Street and on the west side of E. 24th Street just south of the Agora.

These lots are for students, staff and faculty, CSU registered vehicles only. The charge is the normal 75 cent per day.

This adds another 100 spaces to our parking space inventory.

Students are now authorized to park in "A" lot, the Visitor's lot after 4:00 p.m. daily. This lot is located on the south side of Euclid Ave. immediately west of the Innerbelt bridge.

Please Note ...

Professor Browne is presently gathering material for an article on the new Ohio Civil Rule 4(E), which became effective on July 1, 1984. If any student has had any first-hand experience with the application of that Rule — e. g., writing a brief on its application, or the like — Prof. Browne would appreciate it if you would stop by his office and discuss your experience with him.

Although Browne is interested in any contact you may have had with the Rule — e. g., how did your employer think it applied; what were you told to research; under what circumstances did your employer attempt to apply the Rule, or defend against its applicaton — he is particularly interested in any judicial interpretations of the Rule of which you might be aware.

Library Documents Collection

Cleveland-Marshall College of Law Library has just received a special certificate from the U.S. Government Printing Office for receiving and excellent rating for its Depository collection. The inspection which occurred this past June was the Library's first since its designation as a Depository in 1978.

The Library was evaluated on how the documents were acquired, organized, and maintained. The staffing and physical facilities were examined as was cooperation with the Government Printing Office and with other Depository libraries. The most important factors in the evaluation were documents accessibility and service to the public.

And Now The News...

by **Patrick Sweeney**

New Courses offered this summer:

LAW AND POETRY: Law 591; Topics include the illegal uses of the iambic pentameter, evaluation and criticism of the traditional policy considerations in favor of alliteration, the use of the footnote in the poetry of Ezra Pound and its implications for legal brief writing. The course will emphasize the practical applications of law and poetry such as a seminar on how to quote T.S. Elliot in your appellate briefs without appearing snobbish.

LAW AND PSYCHOANALYTIC THOUGHT: Law 701; Anatomy of the id, ego, and superego and the UCC implied warrianties of fitness; legal implications of unresolved conflicts incurred by improper toilet training; exploration of sublimation and how you can use it to increase your billable hours; practical advice on what to do when your client incessantly requests to "see your briefs".

Administrative Announcements

Although there are not as many "Monday" holidays next semester as there were this semester, the administration decided that a normal schedule next semester might confuse students. Accordingly, the following changes will be implemented: during the second week of classes all Monday classes will meet on Wednesday, except that the Monday 1:00 p.m. classes will meet at 1:15 p.m. on Tuesday, while the Thursday classes will stay the same except that Thursday will be designated Friday; any classes lost in the shuffle will meet on Sunday at noon.

Furthermore, during the week of February 4 all second-year students will be third-year students.

In an effort to curb the statistically poor bar passage rate of Cleveland-Marshall graduates, the faculty and administration passed the following ammendment to the Academic Regulations: "In the event that a Cleveland Marshall graduate fails the Bar Exam, the University will deny he/she ever attended Cleveland-Marshall and Ms. Kay Benjamin will be directed to burn all records, transcripts and other memoranda evidencing such attendance."

Other Events

Professor John Makdisi, whose courses include property and comparative law, has just written a law review article tentatively entitled, "The Rule of Perpetuities and the Buddhist Concept of Rebirth: A Re-evaluation Of What Is A Life Being At The Creation Of The Interest." West Publishing Co., which has employed Prof. Makdisi's talents for their forthcoming edition of the Hadith, complete with Keynotes, has shown interest in the article.

Next month's Cleveland-Marshall Fund Visiting Scholar will be Cyrus B. Cerebral. Professor Cerebral graduated from Harvard College at the age of 12; he attended Yale Law School and received his L.L.M. from Stanford Law School while studying classical violin and taking courses at the Berkeley School of Dentistry. Upon graduating, Mr. Cerebral worked as a full-time associate for two large Wall Street firms simultaneously, in addition to clerking for Supreme Court Justice Powell on weekends and tirelessly donating his extra time and energies to the Legal Aid Society. Occasionally he would visit his wife and children. Professor Cerebral is now the Steven Emanuel Professor of Law at Columbia University School of Law where he teaches Workers Compensation Law.

From the President's Desk

With the end of the semester just around the corner I would like to remind you that the Student Bar Association is working, and will continue to work, for the needs of the law school student. On October 7, 1984 the first meeting of the S.B.A. Senate was held. Five committees were established, including a committee to address the unbearable parking situation. A second meeting was held on October 28, 1984 in which Michelle Raia, the chair of the Parking Committee, gave an outline of the Committee's plan. The plan included a meeting with the Main University's Administration together with our own. Different colored parking stickers exclusively for law students, and a university crackdown on those other than C.S.U. students using the lot located next to the law building were discussed at the meeting.

It was also brought to the attention of the Senate that many students feel that the library should extend its evening hours. Randal Strickler, a second year day representative, informed the Senate that Mr. Nissenbaum, the Library Director, is conscious of the concern and is doing his best to work out a plan in an effort to remedy the situation. The Executive Committee reinforced student concern by sending a memorandum to Mr. Nissenbaum outlining the problem and is expecting to hear from him in the very near future.

In addition to the Red Cross Bloodmobile and numerous Happy Hours, the S.B.A. has sponsored a successful Monday Night Football Party, a night out at the Comedy Club and along with Delta Theta Phi, a Raquetball Party. Upcoming events include the Barrister Bash, a Ski Outing, the S.B.A. Talent Show and the Spring Olympics.

Further, because of the persistent efforts of Nancy McDonnell, the Law School Directory was completed by Halloween. Quite a change from a year ago when the directories did not come out until the second semester.

Before I close I would like to take this opportunity to encourage students to participate in the Law School's **Street Law Program**. At first I was apprehensive: the idea of teaching high school students, the discipline problems, the interest, etc., were troublesome, but now that I have experienced it I can honestly say it is an experience I would not trade for the world. Liz Dreyfuss, Judy Zimmer and Jodi Gerson deserve a great deal of credit for the number of hours expended in an effort to help youth in today's society. Not an easy job. Thank you ladies.

In closing, I want to wish each of you success on your exams, and encourage you to participate in your student government. Your help is greatly appreciated.

Tony Bondra
S.B.A. President

Graphoanalysis and Document Examiners

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Willard's presentation was also informative, distinguishing graphologists from document examiners. Graphologists have not been permitted to testify as experts to personality traits except in a limited number of cases (approximately 8) because the law does not validate this type of testimony as of yet.

Constitutional Democracy

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be able to justify their own conduct to others", and "that citizens are capable of considering issues from the moral point of view even when their own interests are at stake". Although it is unknown what effect this will have on the terms of debate of constitutional issues, it must be recognized that there is some possibility of moral discourse since everyone is capable of understanding and acting on some public issues from the moral point of view.

In summary, Brest lists three reasons for believing that citizen participation in constitutional discourse and decisionmaking is desirable: 1) it can bring relevant perspectives and information to the decisionmaking process that would otherwise be excluded; 2) "it can educate the public"; and 3) "participation in the basic political decisions of one's society is an intrinsic good".