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THE GAVEL

Cleveland-Marshall College of Law



ANOTHER C-M GRADUATE



FINDS A JOB!!!!



Correspondence



Dear Sir/Madam,

The extremely simplistic argumentative thrust of Mr. Oleck's "lets give-ourselves-a-pat-on-the-back" article is that these United States should be seen as a bastion of various and sundry freedoms and liberties. If you have any doubts, just look at the People's Republic of China. My letter is not an apology for the People's Republic. Rather, it is a response to the tenor of Mr. Oleck's article which reads as a vindication of the American legal system and the human rights it purports to support.

As a Cleveland Attorney (C.S.U. grad, folks) who practices criminal law I believe that the virtues of the legal system praised in this article are **not** endemic to that system. They are virtues that in general are not shared because they are not offered to America's poor citizens (and to a great extent its minorities as well). When Mr. Oleck's "acid test" asks "How many Americans want to become citizens of other countries?", it asserts the moral equivalent of a love-it-or-leave-it mentality which holds that those Americans who are dissatisfied would rather switch than fight. This is as rude as it is degrading to those 30 million Americans who live below the poverty line.

Today's legal system is as responsible for keeping oppressed people oppressed as it is for keeping free people free. Those civil liberties that are guaranteed in our Constitution are simply dependent upon economic affluence. To suggest otherwise is to imply that the totality of human rights are truly achievable through our political and judicial processes. Yet, of the half a million persons incarcerated in our prisons nearly all are poor, and the thousand plus on death row are all poor.

There can be no equality under the law without socio-economic justice for the population at large. The actions of persons

locked away (and thus wasting away) in our prison system for crimes of violence or crimes against property, while not to be condoned, are not to be lightly dismissed. They are all too often the actions of persons who have been left destitute and frustrated in a system that fosters myths such as property is the reward of hard work, that property is the litmus test of human worth, that property is actually scarce and thus needs to be coveted and ultimately, that property is worth coveting for and needs be protected by the police and judicial systems. Still, Mr. Oleck talks of brainwashing.

Americans can be narcotized by the machismo of articles like Mr. Oleck's. We should be critical of the failure to acknowl-

— The following blurb is not meant as an apology for Professor Oleck's article, but as a response to the "extremely simplistic argumentative thrust" of your "every-American-should-have-a-guilty-conscience" letter.

Correct me if I'm wrong counselor, but your letter reads as a damnation of the American legal system in that it keeps "oppressed people oppressed," that it is responsible for the plight of the poverty-stricken; and that, in so much as poverty, in your assessment, breeds crime, it is the cause of crime. Quite a bold string of assertions, wouldn't you say? You then go on to state that "the poverty in America is endemic to the country." Really counselor?

According to your figures, 30 million Americans, or roughly 7.5% of the population, lives below the poverty line. Did you ever stop to think what the figures might look like if **our** poverty line were used to measure poverty in other countries of the world?

Take India, for instance, maybe 90% of that country's population would fall below

edge the oppressed class of persons in America. Perhaps Mr. Oleck must first be convinced that the poverty in America is endemic to the country. The tenor of Mr. Oleck's article suggests that "freedom" without equality is morally superior to equality without freedom. This is a platitude of pretentiousness.

Mr. Oleck maintains with a nonchalance that borders upon callousness that sometimes "abuses of any law will occur." I believe those abuses to be systemic; they occur both regularly and predictably. The abuses reflect not the aberration of our system but rather they epitomize it.

Respectfully yours,
Alan Rossman

our poverty line. Not a good example you say? The nation is crippled by a restrictive religion, a cast system, and a deplorable scarcity of resources! But what about the crime rate? Or lack of one?

Let's move on to another nation — say Saudi Arabia. Maybe 75% of that country's population would fall under **our** poverty line. Still not a good example you say? There is still a devastating lack of resources, and the oil money does not trickle down to the masses! That's right! The oil money doesn't trickle down — it is accumulated by the country's royal family or diverted to those designated as citizens! It seems citizenship in Saudi Arabia is not a matter of birth but of monarchistic grace. A non-citizen has nothing — no welfare; no education; no governmental protection — nomads in the truest sense of the word. But what of the crime rate among its non-citizens?

We could page through the entire atlas, but why belabor the point. What's the point you ask? The point is that poverty is not "endemic" to America, but to life on

Continued on page 3

THE GAVEL

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Krakowski Interview

by Laura M. Fallon

The Cleveland Municipal Court is the largest municipal court in the state of Ohio, with one hundred and thirty-eight employees, and a budget of 3.3 million dollars. The per day volume of cases filed in Cleveland Municipal Court is tremendous. With a smile, Mr. Jerome Krakowski, the Clerk of Cleveland Municipal Court, acknowledges that indeed they are "quite busy." On the average there are approximately 175 civil cases and 460 criminal cases (including approx. 230 moving violations, 200 misdemeanors and 30-40 felony arrangements), filed each day. Mr. Krakowski estimated that compared with Common Pleas Court, Municipal Court handled approximately 60% more work.

The person responsible for maintaining such a large operation is Jerome F. Krakowski. Mr. Krakowski was appointed to fill the unexpired term of the previous Clerk in November, 1977. In 1979 he was elected to serve out this unexpired term. In 1981 Krakowski was re-elected to serve a full six-year term as Clerk. In the years that Mr. Krakowski has served as Clerk he has initiated a number of changes in the Court including: Foreign Language Information Sheets; Multilingual Service; Payment of traffic offenses by Master Card/Visa; Increase funds turned over to the City of Cleveland General Fund; A new enforcement program for payment of delinquent parking tickets, (including a "Booting Program" where those individuals with numerous delinquent tickets may have their car "booted", where a steel device is attached to the wheel of the car making it immobile).

Mr. Krakowski explains: "When I came in the indexing was 2½ months behind. One reason for this was the fact that they used those big indexing books that were handwritten and they were filing cases at that time at a rate of about 250 cases a day. One clerk could only do about 100 a day ... due to interruptions when other people wanted to use the book. [Consequently], we used four books at a time and the only time we caught up was during the intervals when we changed from one book to another."

Not only was the handwritten system (or "Brother Dominic style"), extremely time-consuming and cumbersome to store, it was also very expensive. The indexing books were hand-made and sold for approx. \$2,050 apiece.

Mr. Krakowski, realizing that such a system could not be tolerated, began to investigate the possibility of placing the files on microfilm. "...3-M came up with a good microfilm and micropoint system for us. All I did was divert the \$8000 needed for those books to a lease by agreement and in one more year the system is ours. So instead of dusty old books that lie on the shelves, we paid for the system with no additional monies."

By recording the files on microfilm, the problems of storage and retrieval have been greatly reduced. Also, with the microfilm-micropoint system, the system is indexed by both alpha and numeric.

"Next thing I want to do, — I think some of the larger firms might be interested, — is to put it on microfiche. Then, on a monthly basis send them a microfiche plate so that they could have our index in their office." He feels that this system would be more convenient for both his office and the attorneys. The whole index for one year could be recorded on five plates.

Mr. Krakowski's next project for modernizing the Municipal Court is the computerization of the criminal division. Presently, four of the thirteen judges are on the computer. All the necessary information for each case is entered into the computer, (including the case number, the complaint, subpoenas, names of people to be subpoenaed, names of the officers,...). Then, as the status of the case changes, it is entered into the computer. The dockets and calendars for the judges are also done on the computer. The next project will be getting the subpoenas issued through the computer.

The Clerk's Office is also responsible for assisting people who are filing in Small Claims Court. He explains that the difficulty in the small claims area is being

careful to respect the fine line between practicing law and not practicing law. "We can advise people to a certain extent, but where is that fine line?" He stated that some people come out of small claims and go down to the Clerk's office expecting to collect their money. "We then try to explain the process to them. . . . We show them what the [garnishment] forms look like, tell them where they can be purchased." In order to maintain an unbiased position as to both parties, the Clerk's office provides an instruction sheet to assist in filling out the forms.

"We interview the people and put in simple, non-technical terms what their basic complaint is. Then we ask them to read it and to make sure that it covers the area of complaint. Finally, we type it up for them and have them swear to the affidavit that the facts above are true."

Mr. Krakowski has noticed a recent trend in the court, i.e. that the number of civil cases being filed has fallen by about 3,500 cases in one year. Mr. Krakowski believes that the poor condition of the economy and the high unemployment rate is at least partially responsible for this decline. "Many attorneys feel 'Why file a case when it is non-collectible if you do receive a valid judgment.' So they are waiting until the economy goes back up and people go back to work and then file."

On the other hand, the Clerk's Office has seen an increase in the number of people filing in small claims, especially since the monetary jurisdiction of the court was raised from \$500 to \$1000.

Finally, Mr. Krakowski strongly encourages law students to come down to the Clerk's Office to observe the workings of the office, and to get first-hand information. "They are more than welcome." ■

EDITOR ON LETTER

Continued from page 2

earth, and no matter how noble the idea, poverty will never be totally eliminated. A perfect per capita distribution of the world's limited resources seems even more unlikely. Personal talent, initiative, and yes, even greed, are human qualities which will always command more property for some and result in a disproportionate distribution, no matter what the form of governance or legal system — be it communistic or capitalistic!

Yet counselor, you argue that America should be perfect, that it should achieve that which has yet to be achieved. I suggest that you abandon your American

middle-class conception of a poverty line and realize that this nation and its legal system, even though not perfect, has one of the best batting averages around, which is precisely why millions of oppressed people around the world are clamoring for a chance to become an oppressed person here!

What is "endemic" to our form of governance, and the legal system which implements it, is the tolerance of viewpoints similar to yours. Try publishing a letter of similar critical "tenor" in a state-subsidized university in the People's Republic of China or the U.S.S.R. — without suffering reprisal or sanction!

— Fedele DeSantis

Dean Bell on a Crowded Bar

by Fedele DeSantis

Remember the last time you stumbled into your favorite watering hole? You probably had to stand in line to gain entrance, and, depending on what particular prurient interest the proprietor chose to exploit, you invariably had to fork over two dollars as a cover charge for the featured attraction—male strippers or Betty and her boa constrictor. Remember the mass of humanity scrambling to get into that quaint but minute shack? At any rate, having paid your money, you decided to dive head first into the sardine can, and after hurdling various drunks and wading through throngs of arms and elbows (all the while inhaling the pungent aroma of fermented body odor and sweat) you surfaced in the proximity of a bar stool. Having inventoried your body to make sure your appendages were still attached and your wallet still intact, you noticed, leaning against a congested cash register, a stubby, fat man wearing a vulpine smirk. Being a less than suspicious soul, you attributed the cause of that facial expression to indigestion; but as the beads of perspiration dripped off the tip of your nose and you grew faint for lack of respirable air, you began to wonder whether the bar was too crowded, and whether the fat man was responsible.

As Derrick A. Bell, Dean of the University of Oregon School of Law, concedes, "[T]he impressiveness of statistics supporting those who claim the bar is too crowded" is hard to ignore. In his lecture, "Law School Responsibility for a Crowded Bar," delivered on April 22, 1983 to members of the Greater Cleveland Bar Association and a representative sample of the Cleveland-Marshall hierarchy, Dean Bell commences by stating that there are half a million attorneys practicing law in the United States today, with 40,000 new graduates admitted each year. Between 1969 and 1979 300,000 graduates were admitted, "as many and perhaps more than the practicing total in 1969." From 1920 to 1970 one lawyer served an average of 750 persons; by 1979 the ratio dropped to one lawyer for every 440 persons.

Then, for some reason, Bell digresses and frays the focus of his lecture by addressing what he terms those "charges" most commonly levied against law schools. The "charges" as delineated are that: 1) law schools graduate persons too incompetent to practice; 2) law schools admit persons with poor ethical standards; and 3) law schools are continuing to flood an already crowded market with graduates for whom no jobs await.

After adjudging law schools guilty on all counts, Bell goes on to offer some confusing and irrelevant defenses. As to the charge that law schools are flooding the market, he responds, "[B]ut most of them, do not forget, also pass state bar administered exams, usually the first time." The implication being that if one can pass a bar exam, one deserves to practice—the bar exam at this point in the lecture is recognized as a precise enough standard to utilize in separating the wheat from the shaft. "And to their credit," Bell continues, "state bar boards have not given heed to those voices crying to transform the bar exam from an expensive, time-consuming right of passage, a professional level initiation process which it now is, into a competition-limiting exclusion device by which those already admitted into the lawyers club may determine how many to admit into the closely-guarded guild." During the late sixties and early to mid-seventies the pass ratio for the state of Ohio hovered at around 95%. Need one suggest more?

The Dean then does an about-face and suggests that bar exams do little to accurately "measure lawyerly potential. ..." The bar exam is no longer recognized as a precise standard and thrown out the window along with any semblance of cohe-

siveness the lecture enjoyed up to that point.

After relating a story about the success enjoyed by many Oregon grads who failed the bar exam on their first attempts, Bell proceeds to discredit yet another standard. "Entrance exams administered by law schools . . . are no more accurate, except that like most other standardized tests, they do a simply remarkable job of predicting the socio-economic level of the applicant's parents." The process of selecting those eligible to study and practice law begins to sound like a midnight crap shoot.

Bell continues to skirt the issue by observing that law schools are rapidly becoming "the graduate schools of choice for those whose career goals are not set on law practice, but on social work, education government and business." As to those in search of law-related jobs, the Dean admits that "some certainly are finding it necessary to wait a year and even more to find work; some might even be driving cabs or working in the Post Office, but certainly far fewer than when I finished law school in 1957." The average yearly income for a Post Office employee is \$25,000! Where does one apply?

Continued on page 5



Continued from page 4

Crowded Bar

The Dean addresses the second "charge", the graduation of incompetents, by asserting his belief that the problem is not as bad as it was more than 10 years ago, and that those who cry for an overhaul of legal education "convey a rather shocking budgetary myopia about the economies of law school operation." The counter-cry is for more money — the administrator's cure-all remedy.

"Bastardized versions of Socratic dialogue have long governed the classroom discourse, where students prayed fervently that they would not be asked to participate . . . Students got their degrees by getting as little for their tuition dollars as humanly possible." The Dean also adds, "[T]hankfully these conditions have changed in the last 10 to 15 years." Obviously the Dean was never enrolled in a course recently offered here at Cleveland-Marshall!

Bell emphasizes his approval of the initiative many law schools are taking by moving away from business-oriented curriculums and toward clinically-oriented curriculums, with a view for reform geared toward directing attention on the inequities and injustices of our system. In other words, the same old line — ask not what your law school can do for you, ask what you can do for your law school so that it can achieve social and political reform. One has to wonder whether a law school is the proper forum for such an endeavor? Isn't it the **primary** function of a **law school** to educate and graduate persons competent to practice law? To make them competent interpreters of the **current status** of the law?

At any rate, Bell ventures into a discussion of the third "charge," the graduation of the unethical, with a palpable assertion, "[W]e really don't need rules to tell us . . . that you're not supposed to lie, that you're not supposed to convert funds for personal use, and that you're not supposed to betray your client." However, Bell does go on to admit that "the sense of obligation to the profession and to the public it serves can be improved and that law schools must do their part... . We must start by building self-esteem in students, not simply destroying and reducing them in the first semester of the first year through terror tactics in the classroom, and rather arbitrary grade structures, so that they act and become like oppressed people who will do almost anything to survive — afraid to speak out critically against their superiors. . . ."

In achieving the aforementioned goals the Dean makes various suggestions.

1. Law schools have to stop relying on law school admissions tests. "All they really do is measure a student's parental income . . . the correlation to parental income is almost perfect." The Dean further suggests that the medical school practice of interviewing prospective students be followed, and that psychologists may be engaged to implement questions calculated to identify those with a "potential for integrity." Here the Dean is suggesting that law schools employ the services of a pseudo-science which implements methods that at times are as exact and relevant as a Prospect Avenue palm reader's — that a subjective standard be established.

2. Curriculums need to be overhauled; that courses should be more clinically-oriented even in the first year; that the economic, political and sociological influences that go into the development of the law be recognized and included in teaching; and that a variety of testing measures be implemented so that students can receive credit for "speaking as well as writing ability . . . things they will use to their success after law school."

3. Second and third-year students should assist professors in teaching and providing feedback to first-year students.

4. Externship programs need to be developed; law schools should integrate with the bar to provide work experience as part of the curriculum.

5. Faculty structure needs to be modified. Faculty members should not receive both high salaries and tenure. "We don't need both tenure to protect our jobs and extra money to keep us from going downtown to accept all those jobs they've been begging us to accept. I suggest that tenure or not, faculty members should not be able to stay in a single place for 10 or 12 years." Bell suggests that faculty members "move to some other area of the law, run for the legislature, practice, do something to make an honest living."

The Dean concludes his lecture by addressing the original, and since forgotten, issue for discussion. "Are the law schools responsible for the crowded bar?" "Perhaps," answers the Dean, "but then the numbers, the ever greater numbers, that are well-trained, endowed with a sense of integrity about themselves, in their work, and in their profession can be a source of pride rather than guilt."

Dean Bell should be commended for the tempered and amusingly disarming manner in which he addressed such a touchy issue. In all fairness, the gist of his lecture, as a whole, should have been construed as an attempt to communicate a far-reaching, socially beneficial justification for law schools to continue their present practices; but to the soon to be unemployed law school grad, his talk proved to be nebulous, evasive and fraught with inconsistencies.

Perhaps the issue should have been rephrased to: are law schools guilty of overaccepting applicants in order to insure the continued existence of superabundant law schools? Or better yet, are law schools guilty of instilling in law school applicants a false sense of intellectual and educational integrity? Maybe, just maybe, under different socio-political conditions, many of the students, yours truly included, presently enrolled in law schools would be working in the Post Office!
NAAAH! ■

WISE WORDS

On some bright tomorrow, so I hope and pray, someone will write a history of common sense. The gradual development of the prevailing metaphysical, political, theological and economic delusions has been recorded in a vast series of books, but no one has ever thought to record the evolution of the sort of wisdom that really keeps human society a going concern. I'd certainly like to know, if it can be found out, who was the first man to doubt the magic of priests, and likewise who was the first to note the vanity of all so-called philosophical speculation. These fellows were enormous benefactors of mankind, and yet they are as completely forgotten as the lost inventors of the plow, the boat and the wheel. They were the real begetters of everything properly describable as sound information and rational thinking. Their ribald hoots were worth the soaring fancies of all the sages, and ten thousand times as much. Every time anyone says

anything worth hearing today it goes back to them, and every time a new fallacy is launched it is in contempt of them.

But would it be a service to their names to dig them up, resuscitate them, print them? Maybe not. The human race, taking one day with another, has very little respect for intelligence; what it really admires is presumption, effrontery, dogmatism. Its greatest heroes, at least in the domain of ideas, have always been enemies of the plain fact. Consider, for example, the undisputed master theologian of the Western World, to wit, Paul of Tarsus: his basic doctrines, reduced to plain English, become indistinguishable from those of a Tennessee Fundamentalist. If it had not been for the revolt of common sense against him we'd still be trying to speak in the tongues and to cure warts with prayer.

From *Minority Report*
H. L. Mencken

The Follies

by Mike Vaselaney

After a series of setbacks and near-cancellations, the 1983 Follies were staged on May 6. An enthusiastic audience tolerated this conglomeration of songs, skits, and technical miscues for nearly two hours, yet seemed to actually enjoy it. Written, produced and directed by Ralph the Wonder Llama and Skippy the Bush Kangaroo, look for it to open soon on Broadway.

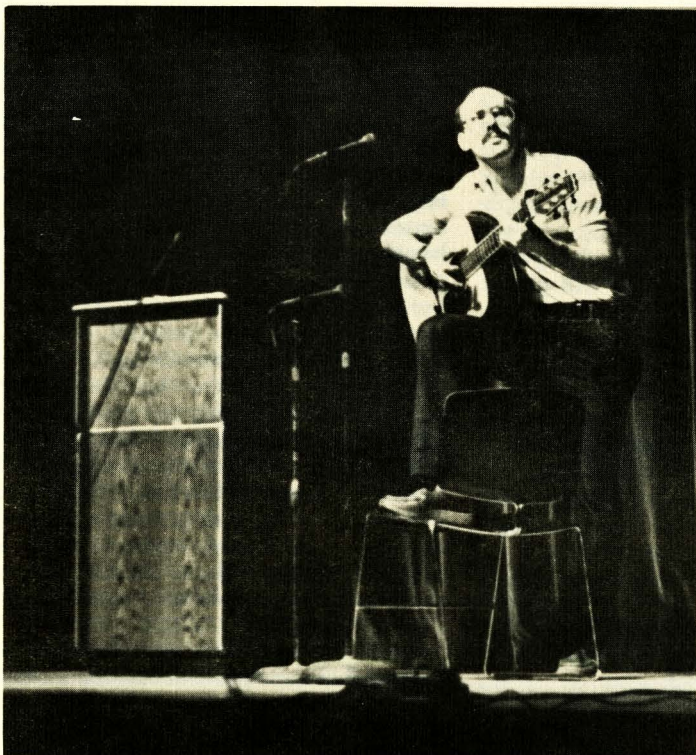
Blowin' in the Wind

"How many times will your eyes start to close, as you count down ev'ry minute of class?
 Yes and how many months will you wait for your grades, praying each night that you'll pass?
 Yes and how many times would you like to tell your prof, to shove the Socratic method up his ass?
 The answer, my friend, is blowing in the wind, the answer is blowing in the wind." (Mike Vaselaney)



Law School Game

"Grantor's heir's remainder's vested,
 Remember that when you get tested,
 Even though you couldn't give a damn today.
 Who cares who got O's conveyance,
 I'd rather see some disobedience,
 And where the hell is Blackacre anyway?" (Mike Vaselaney)



Leave it to Sheldon



"Whatcha doin', Sheldon?"
 "Just grading some exams."
 "You mean you actually read the exams, Sheldon?"
 "Sure, Werbie. Don't you?"
 "Nah. I just give good grades to people I like."
 (Sheldon—Paul Schumacher; Werbie—Steve Sozio)



You Can't Hurry Grades

"You can't hurry grades, No
 You'll just have to wait, he said
 Grades don't come quickly
 It's a joke how long it takes . . ."
 (Sung at several time and speeds by
 Spanky Margolis, Kim Konkol,
 and JoAnn Menster)



The Return of Emily Litella

"That's Rule 59 New Trials Emily, not Nude Trials."
"Oh really — never mind."
(Great faces by Steve Richman and Tamar Kravitz)

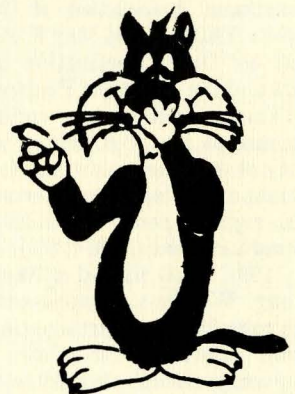
Dating Game

Dean Sierk and Professor West find true love.
(Mike Vaselaney, Jim Mona, Patti Margolis-Shannon)



Wild and Crazy Guys

"Today in America the most swinging girls, beautiful foxes, go to law school to develop their minds to match their bodies. So I gave our names, Yortuk and Jorge Frestrunk, to Dean Bogomolny so we could attend law school as well."
"Bogomolny. Didn't we just have that for lunch?"
(Mike Vaselaney, Jim Garrison, Mary Pat DeChant, Missy Hoffman, and Patti Margolis-Shannon)



National Lawyers Guild on Nuclear Weapons

by **Clare I. McGuinness**

The stocking of fallout shelters with crackers during the early 50's represents the nuclear naivete of the U.S. government during that era. Black humor, in retrospect, that the unscorched would munch saltines waiting for the radiation to blow away. The crackers decayed, and in keeping with the "wastenot-want-not" ethic were shipped to third world countries. The cracker mentality is gone, for few can bear the thought of dining underground while, above, millions are melting. Indeed, we now know that any subterranean snackers too would be cooked. But the nuclear clock ticks on: then it was ten and now it is "four minutes to midnight". **Bulletin of the Atomic Scientists** (April 1982) at 3. A sense of urgency mounts, and the streets are filling with protesters and organizations to fight the madness of nuclear warfare.

Physicians for Social Responsibility and the Union of Concerned Scientists have begun to rouse us from a nuclear stupor by graphically spelling out the genetic and environmental horrors of a nuclear blast. Other groups include Mobilization for Survival, Ground Zero, SANE, and Business Executives Move for Peace, whose spokesman Chicago banker Erwin Salk says simply that the nuclear arms race is "tearing the guts out of our economy just like Vietnam did." **Des Moines Register** (March 27, 1982) at A9 col.1. Even as the nuclear arsenal expands, anti-nuclear groups proliferate. It is reasonable to wonder what the legal profession is doing relative to this issue which vitally concerns the very "fate of the earth."

ORGANIZATIONS OF LAWYERS

Among the organizations of lawyers working to prevent nuclear disaster are: **International Association of Democratic Lawyers** (IADL) — On May 8, 1982, IADL issued its Draft Declaration of Human Rights and the Rights of Peoples to Peace and Disarmament. It is a codification of disarmament law and brings together a variety of legal texts, setting forth a restatement of the legal basis for asserting a human right to peace and disarmament. **National Lawyers Guild** (NLG) — In February 1982, NLG passed a Resolution on Nuclear Weapons, implementation of which calls for NLG participation in international efforts to formulate a specific treaty comprehensively outlawing nuclear weapons, as well as calling for Guild members to provide legal support and

defense of individuals and groups taking part in civil disobedience.

Lawyers Alliance for Nuclear Arms Control (LANAC) — LANAC seeks to educate the legal profession, general public, and policy-makers, about nuclear weapons issues. LANAC devises strategies for employing legal skills to help reduce the nuclear threat.

Lawyers Committee on Nuclear Policy (LCNP) — LCNP has developed cogent arguments that the use or threatened use of nuclear weapons is illegal. Taking into account the recognized sources of international law — treaties, international custom, general principles of law, and judicial decisions — LCNP has detailed the prohibitions against nuclear weapons under existing international law. LCNP members have also developed the theory that current U.S. nuclear weapons policy is incompatible with the Constitution. See Symposium — Nuclear Weapons and Constitutional Law, 7 *Nova L. J.* (1982).

And in the August 1982, the American Bar Association, Young Lawyers Division, Human Rights Committee, passed a Resolution urging the United States to=

initiate action to convene a multilateral conference for the purpose of drafting a convention proscribing and providing sanctions for the development, manufacture, possession, stockpiling, threat of use, and use of nuclear weapons by any state or person."

THE ILLEGALITY OF NUCLEAR WEAPONS

There exist in force many partial nuclear-ban treaties, including the 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty), the 1967 Outer Space Treaty, the 1960 Antarctic Treaty, the 1972 Seabed Arms Control Treaty, and several agreements formalizing limited prohibitions on nuclear testing. Yet, because international law has not generated any comprehensive treaty banning all nuclear weapons, it might seem that there is no legal basis for contending that nuclear weapons are illegal. Thus, one position adopted in certain U.S. documents and military manuals is that a nation may do whatever it is not expressly forbidden to do. But the question of the legality of nuclear weapons cannot be judged solely on the absence of a specific treaty expressly prohibiting their use. A review of documents drawn from the various recognized sources of international law strongly suggests that the threat or the use of nuclear weapons is in violation of legal restrictions on warfare and, further, that any national policy which countenances nuclear weapons is condemned as criminal under the principles of the London Agreement (Charter of the International Military Tribunal, Nurnberg), reaffirmed by subsequent

Continued on page 9

STREET LAW RECRUITMENT RECEPTION

Dan Kalk teaches urban police function at the Law and Public Service Magnet High School; Jo Ettorre led Aviation High School to the Mock Trial championship; Peggy Foley is working to inform Cleveland-Marshall students about Street Law; Lurlia Norris teaches law to youngsters at the Detention Home High School, Sheila Duffy and Jim Bohn are teaching law at Glenville High School; Jim Vargo and Ray Katona are teaching law to staff and patients at Western Reserve Psychiatric Habilitation Center; Eva Dolan has developed school curriculum on writing legislation; Eunice Clavner has created law-related curriculum for high school English classes; Bob Lelkes and Cliff Masch are writing a high school legal research manual; Patrick Joyce directs a Juvenile

Court Diversion Program funded by the county and the court; Roman Mironovich and Karen Leizman have developed materials for a high school drug awareness course.

Cleveland-Marshall students join law students in Boston, New Haven, New York, Los Angeles, San Francisco, Chicago, and Portland in teaching practical law to urban high school students. The involvement of law students in lay legal education began in 1972 when Georgetown law students responded to requests from Washington, D.C. high school students for law information. Georgetown formalized the program into a clinical experience in 1974. The first law school to establish Street Law outside of Washing-

Continued on page 11

Continued from page 8

National Lawyers Guild

A day in Court

by Steve Mills

treaties and General Assembly Resolutions.

The Declaration of St. Petersburg (1868) provides that the only legitimate aim of military actions is the weakening of opposing military forces. Since neither nuclear warheads nor their fallout can distinguish the children from the soldiers, any such weapon contravenes the basic principle that a civilian population cannot be a military target. The Hague Conventions of 1907, the foundation of the laws of armed conflict, prohibit weapons which cause wanton or indiscriminate destruction, and weapons which cause unnecessary suffering. The preambles to the Hague Conventions of 1899 and 1907 contain the Martens Clause, which sets forth a general rule intended to apply where no specific treaty expressly prohibits a new weapon or tactics. In such cases,

"the inhabitants and the belligerents remain under the protection and the rule of the principles of international law, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience."

The 1925 Geneva Gas Protocol prohibited toxic gases, bacteriological weapons, and analogous devices. The Kellogg-Briand Pact (1928) outlawed all aggressive war. The Geneva Conventions of 1949 reaffirm the distinction between combatants and non-combatants. The experience of massive civilian death at Hiroshima and Nagasaki fully demonstrates that nuclear weapons cannot be confined to military targets. It follows logically that to accept the legality of the prevailing doctrine of "mutual assured destruction" by a weapon which terrorizes entire populations is a denial of the rule of law. Moreover, the inherent tendency of nuclear weapons to wholesale action against entire civilizations is clearly within the prohibitions of the 1948 Genocide Treaty.

As Phillip Berrigan has expressed it, nuclear weapons are like a gun pointed at the head of everyone on the planet. This ominous coercive omnipresence casts a sickening pall upon our enjoyment of the "fundamental freedoms and human rights" guaranteed in the United Nations Charter (and, indeed, in our own Bill of Rights). Under Article VI of the Constitution, treaties to which the United States is a party become part of the supreme law of the land. One such treaty is the Charter of the United Nations, in which nations pledge to promote peace and human rights. It should also be pointed out that, even apart from the incorporation of treaties through Article VI, general international law has long been held to be in-

Cleveland-Marshall played host to the Ohio Court of Appeals, Eighth Appellate District, on May 10, 1983, as the Court held its sessions in the Moot Court Room.

Nine cases were reviewed by the Court during its time at the law school, and all of the sessions were open to the public. Special emphasis was placed on encouraging Cleveland-Marshall students to attend. The proceedings were advertised under the headline of "A Day in Court", and the designation could not have been more apropos for what transpired over the course of the day; the court reviewed actual cases on its docket, and heard oral argument on a variety of subject matter. A summary of the cases before the Court was available at the door for all those attending.

corporated into our domestic law. See *The Paquete Habana*, 175 U.S. 677, 700 (1900). Thus, international law is no mere philosophical abstraction but is legally binding and must be applied by lawyers even in the domestic context.

Nuclear weapons have also come under attack on strictly constitutional grounds. One such argument is that the power to wage a nuclear war is constitutionally defective as an invalid delegation of legislative war-making power to the Executive, and that although past Presidents have engaged in war without congressional approval each instance has been for a limited goal. But even assuming, arguendo, that the Constitution intended the President to possess such unchecked and unreviewable power, it seems unlikely that the authority to wage nuclear war can be constitutionally delegated to "doomsday" subordinates in the Pentagon — still less likely that such power can be delegated to the vagaries of computers interpreting radar

Indicative of the type of case reviewed by the Court was that of the *City of Cleveland v. Carol Lynn Mart*. Ms. Mart, the appellant, was convicted under R.C. 2907.32 (A), which prohibits any person from knowingly presenting or participating in presenting an obscene performance in public or in a place where admission is charged. The Cleveland police obtained evidence in a warrantless police raid of the New Era theatre. At the time of the raid the appellant was an employee of the theatre, and after being charged by the police, the appellant motioned at her pretrial hearing to suppress the evidence obtained during the raid. The suppression motion was denied. The Ohio Court of Appeals, Eighth Appellate District, heard

Continued on page 10

messages (wrongly at times, and to our near annihilation, as a few years ago when a computer erroneously sounded an alarm that that we were under a nuclear attack).

Lawyers are under a special twofold challenge in the face of the nuclear threat. The attorney, an officer of the court, has a quasi-governmental status, and as such bears a certain responsibility for governmental policies. It is instructive to recall the complicity of the legal profession in Germany with the policies of the government. Who knows what horrors might have been prevented if the German lawyers had chosen not to be "thoroughly orthodox, time-serving, government-fearing" toadies? Secondly, the legal profession is peculiarly concerned with peaceful solution of disputes, through the use of reason. It is only fitting that lawyers should use the special skills of the profession to work toward ridding our world of the lurking nuclear threat. ■

NOTES

1. J. Schell, *The Fate of the Earth* (1982).
2. A comprehensive bibliography of relevant international law is available from the Cleveland-Marshall National Lawyers Guild office, LB 025.
3. Charter of the International Military Tribunal, Annex to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement and Charter), 59 Stat. 1544, 82 U.N.T.S. 279.
4. See Memorandum submitted by the Secretary-General, *The Carter and Judgment of the Nurnberg Tribunal*, U.N. Doc. A/CN. 4/5 (1949).
5. St. Petersburg Declaration of 1868, 1 A.J.I.L. Supp. 95 (1907).
6. Hague Conventions on the Law and Customs of Land Warfare (1899, 1907).
7. Protocol Prohibiting the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, 17 June

1925, 94 L.N.T.S. 65; 26 U.S.T. 571; T.I.A.S. 8061.

8. Treaty Providing for the Renunciation of War as an Instrument of National Policy, Pact of Paris, 27 August 1928 (Kellogg-Briand Pact), 46 Stat. 2343, 94 L.N.T.S. 57, entered into force 24 July 1929.

9. Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, entered into force 12 January 1951, 78 U.N.T.S. 277.

10. The language is that of Justice Black expressing fears about the American Bar. *In re Anastaplo*, 366 U.S. 82, 115 (1961) (dissent).

ACKNOWLEDGMENT

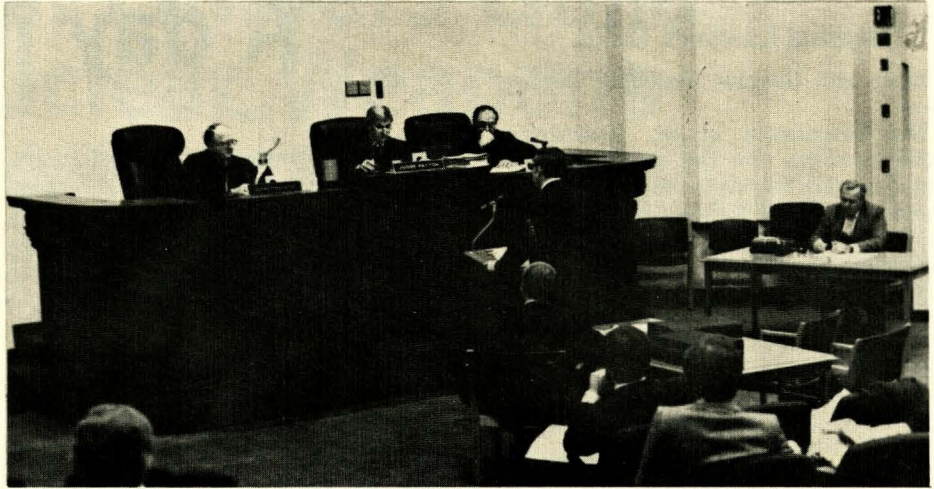
This article has drawn upon "Disarmament as a Human Right", an unpublished paper by Mark Miller, Cleveland-Marshall student and member of the National Lawyers Guild.

Continued from page 9

A day in Court

oral argument on the question of whether a lawful search and seizure had been conducted, and ultimately whether the pretrial suppression decision was correct. A decision, of course, will come at some future date.

The above mentioned case was but one of the nine cases reviewed by Chief Justice John T. Patton and Justices John V. Corrigan, Jack G. Day, Leo A. Jackson, Richard M. Markus, Ann McManamon, Joseph J. Nahra, Thomas J. Parrino and August Pryatel. ■



Day in Court: Moot Court Room 5/10/83, *Arlene C. Federman v. Susan S. Wrights, Gdn. of Warren G. Steffen*, presiding: Judges Pryatel, Patton, Nahra.

EMPLOYMENT CATEGORIES BY RACE AND BY SEX
Cleveland SMSA, 1980

CATEGORY	TOTAL	WHITE	BLACK	HISPANIC	ASIAN	AMERICAN INDIAN	MALE	FEMALE
Executive, Administrative, and Managerial	10.2%	11.4%	4.6%	5.2%	8.9%	4.5%	12.7%	6.7%
Professional Specialty	11.5	12.1	7.9	9.0	30.0	10.1	12.7	13.4
Technicians	3.0	3.1	2.6	2.2	6.7	3.2	2.8	3.3
Sales	9.7	10.7	5.1	5.3	4.7	6.7	8.3	11.7
Administrative Support, including clerical	17.9	17.8	18.8	10.8	12.2	13.4	7.2	32.7
Private Household	.4	.3	1.2	.4	.7	*	*	1.0
Protective Service	1.6	1.6	1.9	1.1	.4	2.4	2.4	.6
Service	10.2	8.8	16.7	13.2	13.1	14.7	6.3	15.5
Farming, Forestry & Fishing	.7	.7	.3	.7	.1	1.1	.9	.3
Precision Production, Craft & Repair	12.5	13.4	8.3	10.0	5.4	11.3	20.2	1.8
Manufacturing	13.7	12.1	20.0	31.7	14.5	20.7	16.2	10.2
Transportation	4.0	3.6	5.8	3.1	1.0	6.3	6.3	.7
Handlers and Laborers	4.8	4.3	6.7	7.3	2.2	5.7	6.6	2.2
TOTAL PERSONS IN WORK FORCE	920,109	752,591	147,951	11,145	6,699	1,167	532,872	387,237

Source: 1980 Census, Labor Force Data, EEO Special File; Prepared by Northern Ohio Data & Information Service, The Urban Center, College of Urban Affairs, Cleveland State University.

Note: The sum of White, Black, Hispanic, Asian, and American Indian is not equal to the total labor force because 'Hispanic' is not considered a race, and because 'Other' has been omitted from this table.

* Less than .1%

Proportionately more Asians than members of any other racial category are employed in professional specialty occupations locally, 1980 census data released by Cleveland State University's College of Urban Affairs shows.

That is one finding of an analysis of employment data by race and sex done by CSU for Equal Employment Opportunity

specialists.

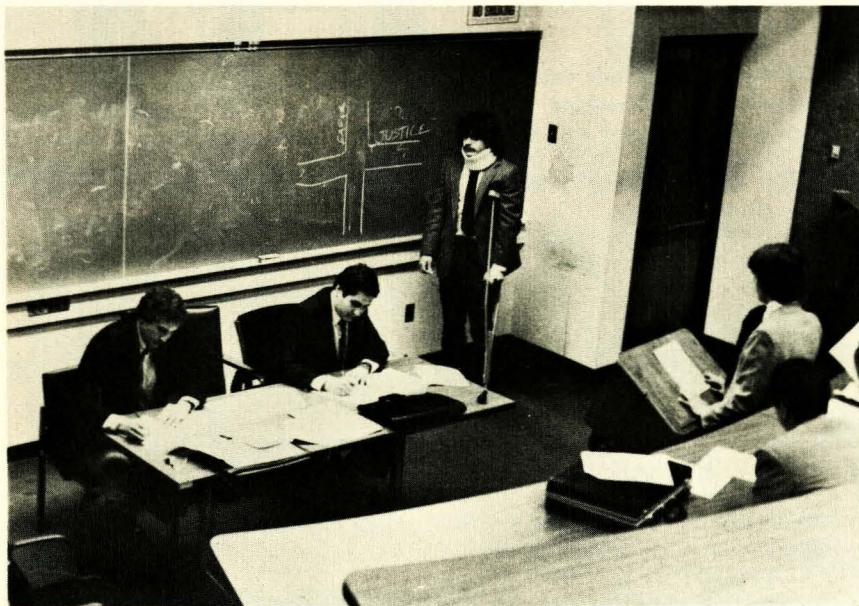
Of the 6,699 Asians in the Cleveland area workforce, 30% are engaged in professional occupations — architects, computer specialists, engineers, scientists, doctors and nurses, teachers, lawyers and artists, as defined by the Census Bureau.

The 30% figure compares with 12.1% of Whites, 10.1% of American Indians, 9% of

Hispanics and 7.9% of Blacks in the same occupations.

Included as Asians are all persons who gave their race as Japanese, Chinese, Korean, Asian Indian and Vietnamese, among others. The census counts both citizens and non-citizens who resided in the U.S. in 1980. The figures are based on a weighted 20% sample of the population.

Fisher on negotiation



Continued from page 8

ton, D.C. was Cleveland-Marshall in January of 1976. Today, 24 law schools have Street Law Programs.

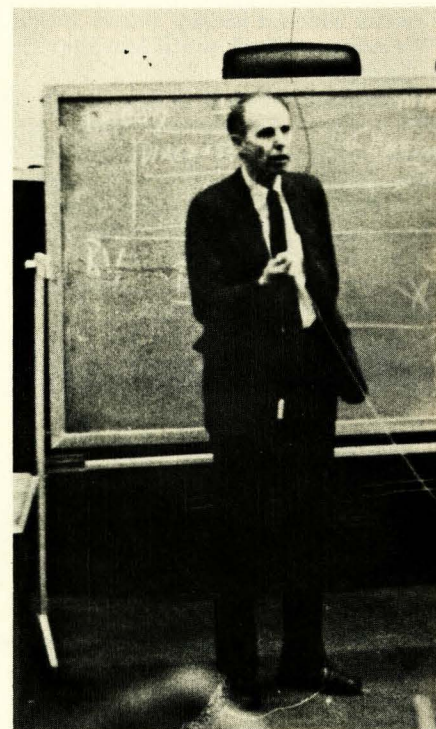
For law students, this program can fill gaps in the traditional law school experience. Training in oral presentation, familiarity with local courts and area leadership are but a few of the possible benefits that can be found. In addition, law students who have participated in Street Law in the past have discovered practical advantages in job-hunting due to the development of their legal skills and their

familiarity with the law of this jurisdiction that has resulted from their Street Law experience. They have also felt that Street Law has broadened their awareness of career options for lawyers.

Street Law is a clinical offering at Cleveland-Marshall. The course is open to second and third-year students. It includes a weekly two-hour seminar and three-hour teaching experience.

A reception will be held for students interested in Street Law at 3:30, June 1st in the Faculty Lounge. Students may also inquire about the program in LB-153.

Press Release



As most people in the legal community know, the majority of lawyers do not settle cases in court — they negotiate. Although this fact is part and parcel of our legal system, it is contrary to what public opinion would want everyone to believe. Professor Roger Fisher silenced any doubters in the audience with his presentation on the theory of negotiation. His talk was held in the Moot Court Room on Friday, April 29, 1983.

Roger Fisher is Williston Professor of Law director of the Harvard Negotiation Project at the Harvard Law School as well as a member of the Board of Directors of the Council for a Liveable World, the Overseas Development Council, and the World Affairs Council of Boston. He has written several texts on international law and has co-authored **Getting to Yes: Negotiating Agreement Without Giving In** (Houghton Mifflin 1981). Professor Fisher spoke thoroughly and eloquently on "Is There a Theory of Negotiation?", and his presentation concluded with a question and answer session. The entire talk is available on videotape at the C-M library for all those interested in improving their negotiation skills. ■



RESPONSES

CSU offers special summer ethnic course

The College of Arts and Sciences of Cleveland State University and Peoples and Cultures of Cleveland will be offering a special summer history course entitled "Workshop on Black and White Ethnicity in America".

Professors Melvin Drimmer and Curtis Wilson will conduct the workshop in a seminar format on three consecutive Saturdays, July 9, 16, and 23 from 9 a.m. to 5 p.m. The course is open both to CSU students and other local residents.

The course is designed to dispel the myth that ethnic groups have disappeared into the great American melting pot. Ethnicity is in fact thriving, organizers say. The focus will be on Cleveland, one of the most diverse ethnic centers in America.

Secondary school teachers and history students will find the course useful as a basis for guidance in teaching and further study. Two hours of college credit, either graduate or undergraduate, may be earned.

Two field trips into ethnic and historical neighborhoods of Cleveland will provide first-hand experiences with the communities being studied. There is an additional \$20 fee for these trips which include an ethnic luncheon.

For more information, contact Dr. William Shorrock of CSU's History Department at 687-3921.

HERE ARE THE STUDENT BAR ASSOCIATION OFFICERS FOR THE 1983-83 SCHOOL YEAR: *

President: David A. Lambros
Vice-President: Brooke F. Kocab
Treasurer: John Forys
Secretary: Sue E. McKinney

Congratulations and good luck!

* Actual vote totals available in the S.B.A. Office.

Judicial Board results

Because of heavy support from the law school students, 5 of the 7 Judicial Board seats will be filled by law students. The law students who won were:

PATRICIA FROMSON
MICHAEL RAE
STEVEN ROSSO
BRENDA TEDESCHI
CHARLES ZAGARA

THANKS FOR YOUR SUPPORT!

"Never measure the height of a mountain, until you have reached the top. Then you'll see how low it was."

Dag Hammarskjold (1905-1961)

"Adam ate the apple, and our teeth still ache."

Hungarian proverb

"He that jokes, confesses."

Italian proverb

THE GAVEL

Cleveland-Marshall College at Law
Cleveland State University
Cleveland, Ohio 44115