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THE GAVEL

VCL. V No. 6

March 1957

VIVE LE ACCREDITATION!

On February 25 a wire from Oklahoma City was received at a downtown Western Union office in Cleveland. The time was exactly 5:41p.m. At 6 p.m. the wire, addressed to "Cleveland Marshal Law School," was delivered into the hands of its addressee, Dean Stapleton. Though the name of the school was misspelled, there was no mistake as to the meaning of the wire. You should agree as you all have read it. It went:

"Your school has been approved by American Bar Association. Heartiest congratulations. Letter follows.
John Hervey, advisor"

With this message of official recognition the hopes and dreams by dozens of administration, Board of Trustees, faculty, alumni and students who have worked and planned for more than two years to put our house in order for inspection, were realized.

Cf all the comments and congratulations that have rolled in, this one, in a recent letter to the Dean by Mr. Hervey, puts the icing on the cake: "Incidentally, yours was the first school in many years for which approval has been recommended the first time the application was considered by the Council (of the ABA)."

The Cleveland City Council, not to be outdone by telegram senders, drew up a resolution in which they ". . . RESOLVED, That this Council congratulates the members of the Board of Trustees, the faculty and student body, both past and present of Cleveland-Marshall Law School on this great achievement and award which was conferred after years of devoted service and sacrifice given in providing for an unexcelled academic program devoted toward the noblest concepts of American Jurisprudence."

Yes, readers, you can stop asking, "When does it happen?" Cleveland-Marshall Law School, ABA recognized, if you please, is now a reality--a res of which we can all be proud.

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* * * *
YCU ASKED FCR IT

---SO NOW PARKING IS 25¢

THE GAVEL-conducted campaign to get 40 student O.K.'s per night on 25¢ parking is a success. At the request of the Dean, and as a result of the positive response from the questionnaire in the February GAVEL, and petitions passed around the classes, Richard Miller, owner of the neighboring lot, has agreed to institute the quarter-per-night rate.

Ironing out the details, Mr. Miller, in a meeting with the Dean and your editor, explained that the 25¢ rate was effective Mondays through Fridays beginning at 5 p.m., except on special event nights such as night ball games or the Home and Flower Show. On these nights the regular special event rate will be charged.

Window stickers, identifying you as a C-M student, must be applied to your car window before you can exercise the special rate privilege. The stickers are available free of charge at the office.

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BONUS ISSUE - 6 PAGES

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JACOBSON REPORTS ON
LAW REVIEW CONFERENCE

Representing the Cleveland-Marshall Law Review, Soph Aaron Jacobson attended the Fourth National Biennial Conference (Continued on Page 3)

THE GAVEL

The Gavel is published monthly by and for the students of Cleveland-Marshall Law School, Cleveland, Ohio.

Dean Wilson G. Stapleton
 Editor Saul G. Isler
 Associate Editor . . Winifred R. Higgins

PLEADINGS AND PRACTICE

by

William K. Gardner

Having been duly sworn, I might say that my name is "Pleadings." So they call me, but I feel the name is inadequate. "Civil Procedure" would be more appropriate, for I range from coram non judice (court without jurisdiction), to a petition for a writ of certiorari (to certify the record to the Supreme Court). Indeed, I comprise not less than nine principal subjects and twenty-nine sub-topics or "issues." I compete favorably with Honorable Joy Seth Hurd, the distinguished and amiable judge of the Court of Appeals and a trustee of your law school. Among his issue there are forty-five grandchildren, all legitimate. (Judge Hurd said: "This is an understatement." At the last count he had 47.)

I have been asked to write something about him who conducts the course by my name, but that would be immodest and, if praiseworthy, untrue, and since he is as devoted to me as if we were united in lawful wedlock, I would be reluctant to speak derogatorily of him. At this writing, however, he is consorting with "Lady Evidence," whom his wife, Eleanor, thinks is his mistress, but of which I am doubtful. As said by the late Newton D. Baker, lawyer, orator, statesman and scholar, in describing the ideal judge, that he is a man who has neither friend nor foe, and "whose only mistress is the law." So, I am not jealous of Equity, for in the spring the fancy of my sponsor will turn to damnum absque injuria, etc. (Damages), and next fall he will return to me, "Pleading", and our nine and twenty-nine offspring like a mortified and prodigal husband. However, he does have some delusions that he is a sort of Master of the Rolls (an English chancery judge of inferior rank). That is probably due to the caricature of him by Katherine Kent, entitled "Master of the Rolls," which I think looks like old man "Senile Demen-

tia," himself.

Now, like most people, I prefer to talk about myself, that is, "Pleadings." As I have intimated, I run through the entire gamut of civil procedure, from jurisdiction of courts, including Prohibition and Procedendo, Habeas Corpus, Mandamus and Quo (W) Arranto, to appeal on questions of law (in actions at law) and appeal on questions of law and fact (in chancery cases only). This includes jurisdiction of the subject matter (which cannot be conferred by consent) and jurisdiction in personam (the lack of which may be waived, and to avoid which a defendant must stay out of court for all purposes except to object to jurisdiction of his person); limitation of actions; commencement of actions, including service of summons and constructive service, and when a summons may be issued to another county for any defendant when the action is "rightly brought."

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FROM THE SUGGESTION BOX

Suggestion: There are now two coffee machines on the second floor. Casual observation seems to bear out the feeling that the Kwik Kafe machine is not well patronized. The lines waiting for coffee pass completely by the KK machine. If it were on the third floor many students would use it in preference to going down to the second floor. This would relieve congestion on the second floor and tend to equalize the use of the machines. I suggest that this be done.

/s/ Kevin Sheard

A worthy suggestion, Mr. Sheard. We'll look into the matter as soon as possible.
Ed.

I'd suggest that the maintenance department remove the paper cups from the sprinkler heads. The painters overlooked them in some of the rooms (back in 1953?).

The F.I.A. would be most unhappy if they knew they were still there.

/s/ W. V. H.

'Tis done, Mr. Hollander.

Maint. Dept.

LAW REVIEW LABORERSPAID WITH PRAISE

Flowery notices seem to be the order of the day for the C-M Law Review.

William W. Weinstock, Executive Secretary of the Queens County (N. Y.) Bar Association, writes, "Yours is one of the finest law reviews it has been my pleasure to see---full of bread and butter material."

The Defense Law Journal's Editor-in-Chief, Welcome D. Pierson, adds this pat on the back: "If you keep up the pace you have set in the last two issues . . . it will be the outstanding one of the Nation."

This praise has hardly been conservatively administered but it certainly is well deserved. THE GAVEL bows low to Professor Cleck and his hard working staff for the fine job they have done.

* * * *

DARK ERA OF SCALDING WATERCOMES TO A LUKEWARM END

Have you been scalded by the washrooms' hot water taps lately? The hell you have. Last month THE GAVEL, with the Dean's O.K., promised to have mixers installed on all the wash basins, but we've solved the problem of scalding water without going to that expense or bother.

Actually, the solution was not our idea but that of the office's Mrs. Hotes. While your editor was in the midst of phoning plumbers to get an estimate on the mixers, Mrs. Hotes suggested turning down the thermostat on the new hot water tank. We tried it and darned if the water didn't come out just as tepid as you please.

The estimate for installing the mixers ran upwards of \$240, almost as high as your editor's esteem for Mrs. Hotes, whose timely advice cost nothing.

We couldn't have been shown up by a nicer lady.

* * * *

Reuben Payne, 1953 C-M grad, and former assistant librarian at the school, has been named to succeed Sheldon Clark as assistant county prosecutor.

MOOT COURT SIGN-UP A SUCCESS

No less than 19 students have signed up for Moot Court; a real tribute to its instigators, Bob Simmons and Leonard Gilbert, and its faculty advisor, Jack Smith. These boys deserve a lot of credit for a job well done.

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JACOBSON REPORTS (Cont'd. from Page 1)

ference of Law Reviews on the Washington University campus in St. Louis, February 22-23. C-M was one of the few "nights only" law schools of the more than 40 represented.

The program consisted mostly of workshop sessions, led by student delegates, in which Jacobson was able to garner some interesting facts on how well-established law reviews are run.

Jacobson found that most reviews were autonomous; they set their own rules, were independent of their schools, and had limited faculty supervision--a healthy situation that our law review is seeking to emulate. He noted that almost all of the reviews have high incentives (as high as six hours credit in some cases) to encourage membership on the review boards. In almost all major schools, few students, outside of review board members, were permitted to submit articles, but where non-board members were permitted to write, the criterion for acceptance was very often the quality of the article rather than any arbitrary scholastic standards.

In Jacobson's opinion, "The criterion of quality rather than of scholastic standing is the best democratic method of seeking articles." This, incidentally, is the method used at C-M.

He noted that, in some schools, law review membership was required for a student to graduate with honors; that the majority accept the idea of legal advertising being used in their reviews, and that many reviews employ a full-time secretary. Some turn out as many as eight issues per year.

Notably missing from the Conference were contingents from Harvard, Yale and Columbia Law Schools. Western Reserve's bid to host the 1959 confab was accepted.

MAKING PRE-DIGESTED CASE OUT-

LINES SOUND LIKE THE REAL THING

This week I shall deal with the finer aspects of Making Pre-digested Case Outlines Sound Like the Real Thing.

The Pre-digested Case Outline, or PCC, or, as others more crass and boorish are wont to label it, the Canned Brief, is simply a literary tool which causes its user to believe that his instructor believes that said user has perused and is now reciting upon an assigned case from said user's underlined casebook or laboriously prepared notes, even though said user knows damn well that said instructor knows, to use the legal vernacular, what is flying.

There is, of course, a knack to using the PCC, just as there is a knack to every other honest method of Getting Ahead. One who is truly interested in this method must diligently practice the art of making copyrighted printed matter sound impromptu when read aloud to a class of eighty including instructor and, possibly, ABA Examiner. Once this is mastered there is little else to learn. May I suggest by way of your accomplishing this, that you secure a copy of the Declaration of Independence or the Settlement Cook Book and read out loud from it; all the while making your voice ring with sincerity as though each word were a gem of thought carved from your very own cerebellum! You'll know you've succeeded when you see your classmates assemble around the mixed (hot choc, coffee, coffee blk) drink machine admiring you while they snicker and refer to you as, "a regular Clarence Darrow."

It may be wise to remember that, in addition to making your PCC recitation sound convincing, you must make it look convincing. By all means, paste--don't clip--paste your PCC into your casebook. Make it appear as though you were using the book. This really looks sharp! No, it doesn't enhance the book's resale value later on, but who cares? PCC users are the type who live for the present. They shine today.

They may not be here tomorrow. SGI

TALKIN' WITH TONY

By Tony Testa

DID YOU KNOW DEP'T: The assembly of the Gumma District of Japan opens its sessions with recordings of symphonies played by the Gumma Philharmonic Orchestra. "Good concert music creates the right mood and atmosphere for the law-makers to work in," said Assembly Pres Kunitaro Shiraishi. Could be the C-M students who have been holding harmonizing session on the third floor on Tuesdays and Thursdays are planning a stay in Japan.

TRUE STORIES: George Gallas was heard to tell the following story to Chuck Noll and Doug Ferguson: "There was a perfectly good reason why I choked on my food at the County Square today. It wasn't the food... I just happened to be sitting with earshot of some gals enjoying a leisurely lunch. One wore the typical white uniform of a doctor's office assistant. All of a sudden they all looked at the gal in white and in unison were heard to exclaim, 'You mean you quit?' 'Why yes,' she said, 'I don't like the way the old Doc's been operating lately and besides, all his patients are sick.'"

HOW MUCH WOULD YOU SUE FOR? The N. Y. Assembly has approved a bill giving a Catskill farmer permission to sue the State because his outhouse was separated from the rest of his property by the New York Thruway. The farmer has to travel four miles and pay a toll to reach his privy.

QUESTION OF THE MONTH? Who stole Prof. Cleck's Tort exam?????????????

BITS OF WISDOM: A diamond is one of the hardest substances known to man--especially when he is trying to get it back.... Strong language often indicates weak knees.... Another thing that will steady the nerves is rigor mortis.... Jumping at conclusions is the only exercise that fools take.

YOUR FELLOW STUDENT: The smartly dressed student who drives to C-M in the black Austin-Healy sports car is none other than senior Bob Shearer, Vice Dear of Delta Theta Phi Law Fraternity... First year student Pete Roper was Michael DiSalle's publicity man in the recent Governor's race. Pete traveled the entire State many times over with Mike and it

(Continued on Page 6)

PLEADINGS AND PRACTICE

By William K. Gardner

(Continued from Page 2)

Also, joinder, misjoinder and nonjoinder of parties and causes of action; demurrer (which simply means, "I admit everything your petition states, but 'so what'? It does not state a cause of action. "); that the demurrer "searches the record" (a principle which mystifies almost all students and many lawyers); also that bastardly (spurious) rule known as the "two issue rule," which leaves students in a mental vacuum, and which never had either father or mother. Pardon me, ladies, but you have a chapter in your statutes entitled "Bastardy Proceedings," and then History has its Bastard of Orleans, and our own Alexander Hamilton was said to have been the issue of an unconventional mating.

We recently conducted a jury trial in our class involving a bastardy proceeding, which was ably participated in by two young lady students -- not unattractive-- as barristers--in which there was much hilarity and a little learning.

Reverting back to our subject, we cover res ipsa loquitur in negligence pleading, and res judicata, leaving res gestae, however, to Charlie Auerbach and Norman Miller, who know the parol evidence rule backward as well as forward.

Space will not permit a detailed discussion of other topics which we include, such as the distinction between a general denial and an affirmative defense, trial of issues, by court or jury, directed verdict and its twin brother, judgment non obstanti veredicto (which does not include the weight of the evidence). Also judgments, including nunc pro tunc orders, new trials, bills of exceptions, revivor of actions and judgments, and numerous other topics, all of which will help you to pass the bar exam., and teach you how to avoid such pit-falls as losing perfectly good will contest actions before they are tried, as so many have been lost within the past few years, because lawyers did not know the meaning of "parties united in interest," and many other embarrassing failures on procedure alone. Without having a thorough schooling of civil procedure and evidence you are poorly equipped to enter Judge

Artl's valuable course on Trial Practice.

I leave you with this admonition: Do not underestimate the importance of "Pleadings," for you will learn about the law from 'er, and she will teach you the way to promotion and pay.

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CLEVELAND'S newspapers are well represented at Marshall by active and intelligent men. The Press boasts Ed Lucey, Courthouse reporter, and Tom Brady. Brady was runnerup to Dave Murray for senior class president. Court reporter for the News is Aaron Jacobson, who is associate editor of the Law Review and recently was the Law Review's representative to the National Conference of Law Reviews at St. Louis. Representing the Plain Dealer is the Law Review's editor-in-chief, Marcus Gleisser.

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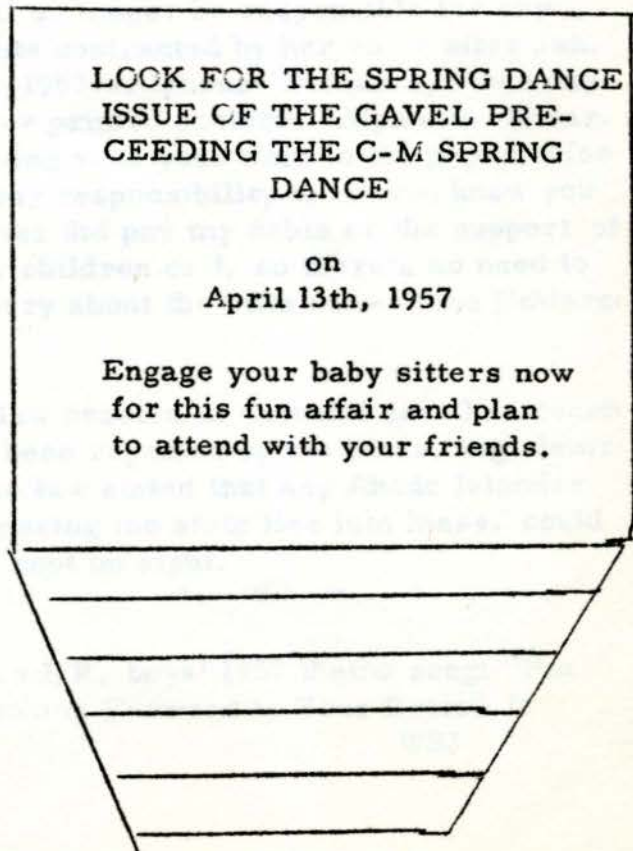
The third volume of Professor Gardner's Bates Ohio Civil Practice has just been published. When completed the set will contain six volumes.

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LOOK FOR THE SPRING DANCE
ISSUE OF THE GAVEL PRE-
CEEDING THE C-M SPRING
DANCE

on
April 13th, 1957

Engage your baby sitters now
for this fun affair and plan
to attend with your friends.



THE LEX SIDE

OF THE LUX

Chalk these two yaks up to Jack Smith:

The marriage counsellor was explaining to the distraut woman that if she wanted a divorce she'd have to split all her worldly goods with her husband.

"That can be done with our furniture, but how about our three kids?" queried she.

Sagely the counsellor suggested, "Why don't you go back and live with him for another year and then you'll have four children."

"Are you kidding," retorted the woman. "If I had to count on that bum I'd never have had the first three."

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The sweet young thing wanted a divorce.

"Can you claim cruelty?" asked her lawyer.

"Yes," said she.

"Why, does he beat you?"

Without hesitation she replied, "Yes, every time."

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We are convinced that lawyers are going through the toughest period they've ever faced; as witness a funeral notice in the NEWS the other p.m. The notice referred to one of the survivors of the deceased as, "...a son, William E., Jr., an attorney and also a brakeman for the NYC

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THEM WERE THE DAYS: A 1926 case, cited in the Real Property casebook, concerned a restrictive covenant in a deed, restricting the erection of "Any house costing less than \$1,500."

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THE HARDER THEY FALL: In Chicago, testifying in a separate maintenance suit, Harold Schwuchow told the judge he wanted to live with his 5-ft.-3-in., 145-lb. wife, but not until she gained back the 75 pounds she had starved off since June.

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Talkin' With Tony (Con't. from Page 4)

was affable Mike who inspired Pete to enroll at C-M... There is one among us who has been wearing a G.I. shirt to classes. What he probably doesn't know is that he is sporting a WAC's shirt. More buttons.....

A THOUGHT FOR TODAY: As soon as men have understanding enough to find a fault, they have enough to see the danger of mending it. -Halifax.

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EDITORIAL APPOINTMENTS were the order of the day at the Law Review's March 4th meeting.

Appointed co-editors of the Major Contributors' section (outside contributors) were Crville "Buck" Weaver and John Murphy. Marty Welsh is the business mg

These new sections were created: Legal-Medical--Dr. Carl Wasmuth, Chr Student Comments (major articles by students)-- Lloyd Fingerhut, Chrnm., Naoma Stuart, Don Bridinger. Student Notes (digests of important court decisions)--Don Fribourg, Chrnm. Charter Committee--Aaron Jacobson, Chrnm., Paul Granzier, Chuck Noll.

These new sections are composed entirely of Section A sophomores.

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READER RESPONSE: In Patterson, N.J. the NEWS printed an ad: "My wife, Anna DeMarco, having left my bed & board, I will no longer be responsible for any debts contracted by her on or after Jan. 15, 1957--Alphonse DeMarco," two days later printed another: "Alphonse DeMarco having read your item in the paper, I feel it my responsibility to let you know you never did pay my debts or the support of my children or I, so there's no need to worry about the bills now--Anna DeMarco

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A law enacted in Colonial days has recently been repealed by the Mass. legislature. The law stated that any Rhode Islander crossing the state line into Mass. could be shot on sight.

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The I.R. boys' 1957 theme song: "I'm Looking Forward to Your Return."