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THE GAVEL

Volume 26, Issue 5

Cleveland-Marshall College of Law

February 2, 1978

Marshall to hire law librarian

by Lee Andrews

Dean Bogolmony took some time out last Friday to talk to *The Gavel* about the state of the school, and about his impressions of C-M after one term in office. In the process we got a view of his style of administrating and of the man himself.

The big news of the day was the Dean's announcement that a new law librarian was to be appointed "momentarily". The new librarian, a woman, is the librarian at a midwest law school, and has considerable teaching experience. Bogolmony called her a very good person, and said "we were lucky to get her". He asked us not to release her name, because contracts had not as yet been signed. She has already given notice to her present employer, and Bogolmony said, "I can't see what could go wrong." He expects her to take the position by this summer.

Dean Bogolmony said that the campaign to raise money for the Law library "is going very well." Bogolmony said that University Trustee, Melvin Arnold, of the Eaton Corporation is spending a great deal of time on the project. He added that the campaign has received "significant" early commitments from individuals and corporations and will go public within a month. The campaign's goal is \$1,000,000; a figure Bogolmony said, that would add 50,000 new volumes to the law school's present 125-130,000 volume collection. A private campaign is necessary, the Dean said, because "there is no education money around." He is optimistic about the campaign because "everyone including President Waetjen wants it to succeed."

Also faring well is the search for next year's faculty. Bogolmony said C-M is looking for three new
cont. on page 5



Divorce, Cuyahoga style

by Paul Bellamy

According to an unpublished opinion of Ohio's Eighth District Court of Appeals the majority of "referee granted" divorces in Cuyahoga County are "invalid as a matter of law" for failure to comply with Civil Rule 53 of the Ohio Rules of Civil Procedure. The opinion, handed down last July in the case of *Graham v. Graham* (C.P. D56315, C. of A. 36318), deals specifically with the mandates of subsection (E) of Rule 53, which requires written reports from referees on all cases referred to referees for the taking of evidence.

Civil Rule 53 entitled "Referees" addresses the powers of referees upon referral to cases, and the special procedures incident to referee submitted cases. Subsection (E) requires that a referee prepare and file a written report on any case

which he or she has heard: "The referee shall prepare a report upon the matters submitted to him by the order of reference. He shall file the report with the clerk of the court and shall mail a copy to the parties." Subsection E notwithstanding, written reports are hardly ever prepared and filed by the Domestic Relations Division, and therein lies the problem.

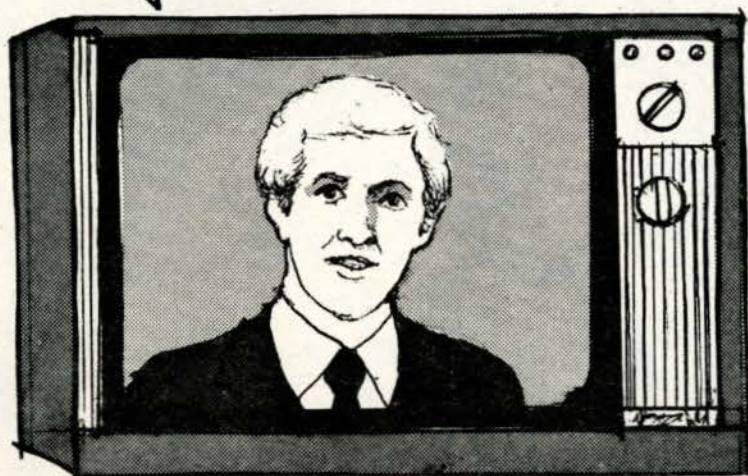
Matters of Fact and Conclusions of Law

In October of 1974, Mary Graham filed a complaint for divorce, requesting custody of the children, alimony, child support, the family residence and a reasonable division of the marital property. The husband, Lowell Graham, filed an answer denying the allegations of the complaint and a hearing lasting

cont. on page 6

Letter

"...Republic Steel up an eighth, Eaton Corporation down a half, TRW unchanged, and Cleveland-Marshall law grades down two and three-quarters."



SBA brings Hayden

by Scott Lee

The big news that came out of the SBA meeting was the unanimous vote the SBA gave to Chairman of The Speakers Committee, Lee Andrews, to provide up to \$1,000 for Tom Hayden and \$750 for Senator Eagleton to give talks to the law school.

The talks are tentatively scheduled for noon on February 17 for Senator Eagleton and Feb. 22 at 4 p.m. for Tom Hayden. Senator Eagleton is expected to give a talk on either military defense or the environment. Tom Hayden, a former founder of the Students for a Democratic Society, tends to give speeches on such subjects as "Whatever happened to the Sixties". After losing in the Democratic primary race for Senate in California to John Tunney, Tom Hayden is being encouraged to run against Jerry Brown for the Governor of California.

The SBA then passed a resolution allowing Lee Andrews to obtain speakers for the school for less than \$100 without being approved by the Senate. Chairman Andrews said he would use the power in order to get such speakers as Police Chief

Hongisto to speak at the school. At this point Senator Tom Lobe spoke up and said that he noticed that Lee's choice of speakers seemed to have a distinctive political leaning to left of center and since Lee Andrews was spending student's money didn't he have a responsibility to pick a more broad spectrum of speakers?

Lee countered with the statement that Howard Sobel had given him the idea for Senator Eagleton. Later in private conversation, Chairman Andrews stated that the students had given him little input on speakers, so in effect he had no other choice than to pick speakers that he was interested in hearing and inadvertently matched his own political views.

In a more academic matter, the SBA passed a resolution asking the faculty to be petitioned to extend its moratorium on the new honors requirements to everyone entering the school on or before September, 1976.

The new honors requirements basically raise the standards for graduation "with honors" from 3.1 to 3.3. The requirement was passed in the winter quarter of 76-77, but a

cont. on page 8

Letter to the Editor:

While the Cleveland-Marshall administration is continuously recruiting professors who are actively publishing (and who may coincidentally be able to teach) and is strenuously attempting in other ways to make Cleveland-Marshall prestigious, the Cleveland-Marshall administration is allowing its greatest asset to leave without realizing its potential to significantly increase the law school's prestige and without giving this asset proper attention and due refinement.

The greatest asset of Cleveland-Marshall is its 1,100-plus students who are at various stages of completing law school. The production of lawyers who will be prominent in business, government and industry will make Cleveland-Marshall prestigious. Further prestige will accrue to Cleveland-Marshall from graduates who will serve their local community thereby gaining respect and esteem for themselves and their alma mater.

Instead of exerting every energy to hone and refine its greatest asset, the Cleveland-Marshall administration has employed many techniques to create obstacles to impede the advancement of its students. The Cleveland-Marshall administration has allowed "teaching" professors to quit without finding replacements, has reduced the number of course offerings, has dramatically increased the authorized class size in upper division courses, has not encouraged professors to post regular office hours and has not placed much weight on a professor's ability to teach students effectively when hiring a professor.

Cleveland-Marshall administrators, it is in your best interest, as well as in the best interests of the students, that these "obsolete production techniques" be abandoned and that the students are no longer treated as second class citizens of the law school. REMEMBER, today's students are tomorrow's alumni and tomorrow's alumni will assist in the funding of Cleveland-Marshall.

Gerard J. Kovick

Enjoy Cleveland's winter with Outings Club

by Carol Vlack

If you're looking for a way to enjoy Cleveland's winter, try the CSU Outings Club. They are sponsoring a variety of outdoor activities including cross-country skiing, back packing, and mountain climbing.

Charlie Wolfson, the Student Activities Coordinator, explained that the Outings Club was previously a student organization. This year he is developing the club under Student Craft Services. He stated, "We expect to have resources in the future to rent equipment and increase our activities. We try to make outdoor activities available to urban students." His objective is to "turn on urban students to the pleasures of the wilderness and life in the great outdoors."

The following trips are projected for the winter quarter:

Tuesday, Feb. 14, Holiday Cross-Country Skiing trip. Call 687-2058 or stop at UC 301 for specific information on costs.

There are two excursions planned for Spring break, March 17-26: a backpacking trip to the Smoky Mountains and a skin diving trip to

Key West Florida. The skin diving trip costs \$130 and includes transportation and hotel accommodations. There will be scuba diving for those certified, snorkeling, deep sea fishing, and of course, rest and relaxation in the Florida sunshine. For more information contact John Shutik at 361-9072.

The Outings Club is interested in finding trip leaders for spring excursions. Trip leaders receive all expenses for co-ordinating the trip. If you are interested in finding out more about this opportunity or on any activity contact Charlie Wolfson at 687-2085 or stop by his office in UC 301.

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Students advise dean

The Dean's Student Advisory Committee serves as a liaison between the Dean and the student body of the law school. In order to truly represent the diverse population, we need the input of fellow students relating to matters of concern which should be brought to the attention of Dean Bogomolny. The committee will meet with the Dean periodically to keep him abreast of student sentiments. If you have any suggestions, criticisms or questions relating to C-M Law School which you would like to have brought to the attention of the Dean, please make a note of them and deposit them in any of our mail boxes. This year's Committee members are: Rich Alston, Howard Eichenbaum, Mary Ann Rini, Jeff Winikoff (Chairman) and Pat Younce.

THE GAVEL

Cleveland-Marshall College of Law

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DAVEN DAILY NEWS 1978
More Stories



Women convene in Atlanta

by Sue Edwards

The 9th National Women and the Law Conference will be held in Atlanta, Georgia, April 7-9. This conf. will bring women lawyers, legal workers, and law students together for three days of workshops and discussions. It will be a unique opportunity to share thoughts and ideas drawn from women's diverse and increasing involvement in the law.

Last year, this conference was the high point in many C-M student's otherwise dreary year of law study. Seventeen women (and one man) from among the 1st, 2nd, and 3rd year classes were able to attend. A few of those who went spoke to me about what they considered to be a very worthwhile experience; nearly everyone is planning to go again this year and would heartily encourage any women who can go to do so.

Why should a law student, with an already overwhelming schedule, go to a women's conference? Besides just wanting to get out of Cleveland for a few days, the reasons ranged from making contacts with women in different areas of practice to gaining an overview of the areas women were currently involved in. "I wanted to gain exposure to the professional world, all that I had experienced was student life," commented Lyn Richardson. "I wanted to see some of what is involved in the practice of law."

The conference did give us a glimpse of the real world, but it was also much more. It gave us a chance to look at women's involvement in the law from a national viewpoint. Women from nearly every state, with expertise in many different fields, were able to share their experiences with us. Actually meeting and talking with those who are using the law for creative social change as well as personal enrichment left a lasting impression.

Marie Charvat, a recent C-M graduate, stated that the conference was important to her because it put her in contact with women lawyers who were proud and excited to have so many other women entering the legal profession. "This profession is often extremely competitive, and the support and concern that was

expressed by the women attorneys I met was very encouraging." Marie expressed regret that she didn't attend the previous conferences and is definitely planning on continuing to go to future ones.

Third year student Carol Vlack, who organized last year's trip, saw another "tremendously exciting" outgrowth of that conference in the group relationship that developed between the women who attended. "We were able to share the common experience from those several days for a long time after we returned." Carol added, "Anyone who has never been to a national conference or any women law student who questions what she can do in the legal profession will be encouraged to continue, not only in the law school, but also, to pursue her own interests in areas outside legal work."

That conference showed all of us directions that we hadn't explored, and many that we hadn't even thought of. It allowed us to find out more in special areas of interest.

The Women's Law Caucus is looking forward to even greater C-M representation at this year's conference. The first organizational meeting will be held, Tuesday, February 7 at 11:30 a.m. and at 5:30 p.m. For those who are unable to attend an information sheet will be available as the details are worked out. Check the Caucus office, Room 26 for updates.

Lawyers disbarred

State disciplinary agencies disbarred 124 lawyers last year, the American Bar Association's Standing Committee on Professional Discipline said today.

The committee said another 47 lawyers resigned with disciplinary charges pending, 27 were suspended for failure to pay fees as required, 231 were suspended for other reasons and 74 received public discipline less severe than suspension. This is the first time the committee has released data gathered by the ABA's Center for Professional Discipline.

The figures were obtained on a voluntary basis from the individual state lawyer disciplinary agencies and do not necessarily reflect all actions taken against lawyers. Data on individual cases is retained on a confidential basis for release only to the highest court in the jurisdiction and official state disciplinary agencies who request it.

New York led in disbarments last year with 37. Virginia was next with 15 followed by California with 11. No other state had more than five.

The total number of public discipline actions reported by the stat to the ABA center in 1977 was 503 compared to 614 in 1976, 573 in 1975 and 419 in 1974.





Dean Interview

cont. from page 1

faculty. Bogomolny said C-M is looking for three new faculty members and is negotiating with the university to bring in a fourth professor. One advantage to this year's recruiting drive is that the Dean has been given an early authorization to hire. He said that C-M is able to offer competitive salaries which will allow it to get "good people, if not the people we want." (The latter group being in demand by everyone.) Bogomolny praised the students and faculty for giving candidates a "very good impression of the school."

Receiving only a moderate to fair grade was the search for minority faculty. Bogomolny stated that he is pessimistic about the chances of hiring a minority law teacher this year but that the hiring committee would continue in their efforts to recruit qualified minority candidates.

The Dean received us in his office. Seated behind a desk bare of papers the white shirted Bogomolny was fanned by the breeze of secretaries rushing in and out of his office. The scene, had there been a fan circling noiselessly from the ceiling could have been the French commandants office in Humphrey Bogart's *Casablanca*. Or the scene could have been a 70's athletic club as faculty members wandered in reminding the Dean that he had a luncheon date with them. "A good way to have fun and also find out what's going on in the school," said the smiling captain. The fact that we were interrupted by

numerous phone messages and asked to leave while Bogomolny talked to Waetjen's secretary reminded us that we entered the club only on a guest pass.

But students have been second class citizens in academia for a long time. While this may be important, and certainly irreverent, to point out, the visitor would be remiss if he did not also point out the positive. As indicated by the tidy desk and by the relish with which he answers the phone, the man really enjoys his job. And he's interested in what students have to say.

He perked up when we digressed into the topic of the quality of teaching in the law school. I noted that I had some good teachers this year, but I had not been so fortunate in the past. When asked what he looked for in a teacher, he said, "someone with academic interest, someone intellectually alive." He said that he never knew of a good scholar who was a bad teacher. He did allow, however, that some "good" teachers are rather "dull".

When questioned about Harvard's attempt, as reported in the *New York Times*, to encourage faculty in its undergraduate school to put more time in on their teaching and less on publishing, he said: "Do you really believe that? Schools are never run on a one (teaching) or the other (publishing) basis. Law reform work, looking critically at and writing about the law, test litigation and teaching are all what we are all about."

Bogomolny also said "contrary to your article on Professor Sonenfield, I do read student evaluations of teachers." "By and large, they're complimentary." He said he looks for "patterns" but that popularity or comfort level in the classroom, although important with students, are not what he values."

Bogomolny said that he has been impressed by the seriousness of the students and faculty at C-M. His one regret is that he has had insufficient contact with students. He said that he favors contacts made at informal gatherings like the faculty awards party in the fall, to those made at more formal "meet the dean" affairs. One hopes that more students get a chance to meet an interesting man.



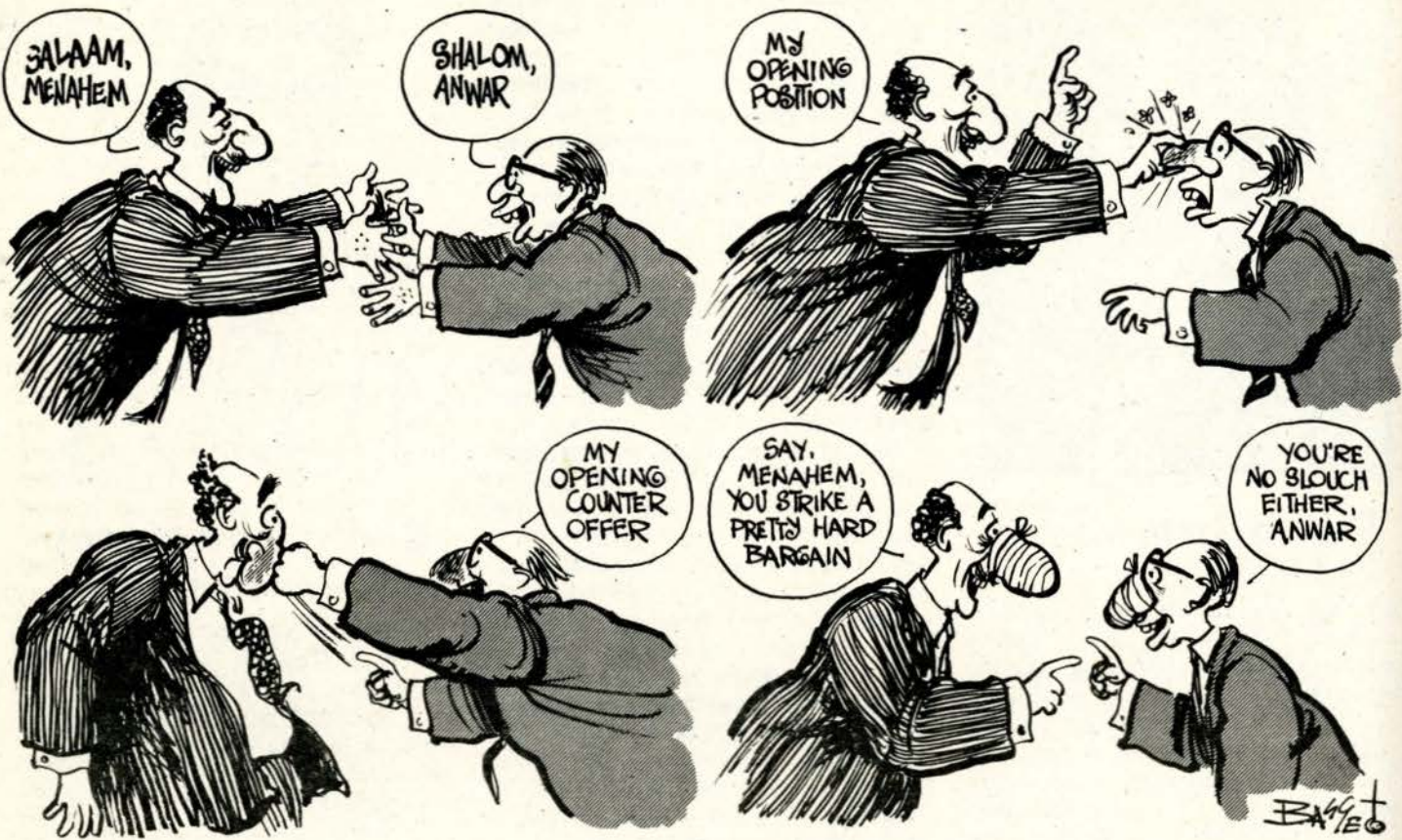
Civil rights group forms

The Law Student's Civil Rights Research Council (LSCRRC) will be sending one of its co-ordinators to Cleveland State to talk about starting a chapter at Cleveland-Marshall College of Law.

LSCRRC is primarily a vehicle to help get meaningful summer employment for law students interested in civil rights, civil liberties, poverty law or consumer law. Students can apply for internships with existing programs sponsored by LSCRRC, e.g., the Anti Death Penalty Project, the Native American or Migrant Workers Rights Projects, programs dealing with battered women, immigration, etc. Students can also submit their own proposals for summer projects. If their proposal is selected the project will be funded and they will be hired for the summer to implement it.

The target issue for this year's LSCCR program is "Minority Admissions: Recruitment and Retention". The summer internship program will be linked to activities dealing with this problem. In light of this year's theme, the Case Western Reserve LSCRRC Chapter will be having a seminar in the spring dealing with the Bakke decision and its impact on law schools and their admissions policies.

LSCRRC's Peter Joy will be at Cleveland State on February 1st to answer any questions you might have concerning your future role in LSCRRC. Place and time will be posted.



DIVORCE

cont. from page 1

from May 16th to June 4th, 1975 was held before a referee of the Domestic Relations Division of Common Pleas Court. At the conclusion of the hearing the referee orally announced her disposition of the matter, finding in favor of the wife. On August 1 and 14, the husband filed objections to the referee's oral disposition. On November 3rd the referee filed a document captioned "Findings at Fact and Conclusions of Law." Without taking further evidence on the matter, the court entered judgment, its judgment being essentially identical to the oral decision of the referee announced at the close of the hearing on June 4.

Lowell Graham appealed, assigning three errors in the lower court proceedings. However, the Court of Appeals addressed only the first assignment which alleged that Mr. Graham was prejudiced by the referee's failure to file a report pursuant to Rule 53 (E). Mr. Graham argued that since a report

was never filed, the court had no record to consult when considering his objections. Thus Mr. Graham's objections could not be given due consideration by the court prior to judgment. The Court of Appeals agreed that Mr. Graham had been prejudiced by the referee's failure to prepare and file a report. But rather than remanding the cause back below on that issue, the court went on to hold that the judgment from which he was appealing was a "nullity" and therefore not a final appealable order within the meaning of O.R.C. 2505.02.

Holding that the "Findings of Fact and Conclusions of Law" filed by the referee was not a report within the meaning of Rule 53(E). The court went on to state: "The requirements of Civil Rule 53(E) are designed so that 'the judgment is...that of the court, rather than the referee... The referral to referees is not to be construed as granting referees a right to render judgment which has not received the independent analysis of the court...' *Logan v Wilson* 45 Ohio App. 2nd 132(1975). When the court does not take evidence in addition to that

taken by the referee, the referee is the sole trier of fact. Absent a report from the referee in such a case, the trial court has no visible means of gaining an evidentiary basis on which to render judgment. A substantial procedural due process question exists where the decision maker (here the trial court) has no evidentiary basis whatever on which to render judgment." The Court of Appeals then went on to state that "Where further evidence is not taken by the court, neither party may waive the report of the referee." The report, said the court, is required not only to aid the parties but also to provide a procedural due process basis for the judgment itself. Without that basis the judgment is "invalid as a matter of law."

Graham Crackers

Though few would doubt the legal "correctness" of the reasoning and holding in the *Graham* opinion, the practical problems presented by a literal application of its holding are immense. *Graham* seems to hold that the absence of a referee's report in any given case renders a subsequent final judgment invalid as

cont. on page 7

Divorce

cont. from page 6

a matter of law. Further the parties cannot waive the requirement of a report, thereby correcting any due process deficiencies. The *Graham* decision did not limit itself to the facts of that case or specifically exclude retroactive application of the holding, and since referees have heard up to 80% of the Domestic Relations' docket in recent years, with the required reports being the rare exception rather than the rule, the validity of literally thousands of divorce judgments is now subject to some question.

Taking the hypothetical of a wife suing a husband for back child support payments, assume that the original divorce was heard by a referee. Assume further that the referee never prepared and filed a report prior to judgment as has been the prevailing practice (or non-practice) at the Domestic Relations Division. Applying the holding of *Graham*, the final decree of divorce ordering, among other things, the support payments, is a "nullity" and "invalid as a matter of law." *Graham* seems to hold that not only is the support order upon which the wife is suing legally worthless, but that she was, in fact, never divorced from her husband in the first place!

Mary Graham attempted to appeal the Court's ruling in her case but the Ohio Supreme Court denied cert. last November. Thus the

Graham decision is still good law, at least in Ohio's Eighth District. Further, until such time as *Graham* is limited or further clarified by the Court of Appeals, the potential problem of inequitable retroactive application of its holding shall remain.

To date, the Division of Domestic Relations has not formulated a consistent practice for referee handled cases. The four Domestic Relations judges have failed to reach a consensus on the exact scope and meaning of the *Graham* holding save that it appears to require referee reports in all *contested* cases. However, aside from the contested cases for which reports are now being prepared, whether or not a referee's report will issue depends upon the judge initially assigned to the case. If *Graham* is read in its broadest sense, the Domestic Relations Division is still granting divorces that are "invalid as a matter of law" for failure to comply with Civil Rule 53(E).

It has been suggested that since the *Graham* opinion was unpublished it doesn't carry a great deal of authority. Yet the Court of Appeals has since cited *Graham* in support of some of its subsequent decisions. What will be done to relieve the confusion and who shall do it remains to be seen. In the mean time, the legal status of literally thousands of interpersonal and property relationships hangs in the balance.



"Look, Jeffery, I know how much law school means to you, but could you try not to use terms like *res ipsa loquitur* around the house?"

SUMMER LAW STUDY

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Alcala Park, San Diego, CA 92110

ABA funds Guild by Jack Kilroy

The Peoples' Law School of the National Lawyers Guild has received a grant of \$500 from the American Bar Association's (ABA) Law Student Services Fund (LSSF). The LSSF will supplement funding already received from the Campaign for Human Development which is affiliated with the Catholic Church.

The Peoples' Law School, established over a year ago by the Cleveland chapter of the Guild, presents classes on law in Cleveland neighborhood centers. The workshops, led by lawyers, law students and community organizers, are directed towards "demystifying" the law in areas which most affect the community. By teaching neighborhood leaders their rights under the law, as well as the limitations of the law, the Peoples' Law School provides valuable help to neighborhood organizations in their self-help efforts.

In the past, the Peoples' Law School has presented its program at the Near West Side Multi-Service Center, at the Hough Multi Service Center, to the Buckeye-Woodland Community Congress and to the St. Clair-Superior Coalition. Plans are underway to present the program, which will last for 8-12 weeks, to the Collinwood Community Congress.

Students who are interested in teaching classes or in helping to administer the program should contact Lee Andrews or leave their name at the Guild office.

Wilkinson, Wyzanski postponed

Ed. note: The articles printed below were written without prior knowledge of last Thursday's blizzard. We apologize for the incorrect dates. Frank Wilkinson will be rescheduled and will visit Cleveland-Marshall in the near future. The Bar Association is attempting to reschedule Judge Wyzanski who may appear at Marshall in the spring.

Nearly two years ago the Bar Association of Greater Cleveland, at the initiative of its committee for liaison with the two local law schools, undertook to establish a program which would bring distinguished figures in the national legal community to Cleveland as guest lecturers. It was envisioned that these visitors would spend a day at each of the two law schools and would make a major presentation at a Bar Association luncheon. After extended negotiations, the Cleveland Foundation agreed to fund the program at a rather generous level for a period of three academic years, commencing with the 1977-1978 academic year. The program is known as the Halle Lectureship Program in Law.

The first of these lectures is the Honorable Charles E. Wyzanski, Jr., Senior United States District Judge, District of Massachusetts. Judge Wyzanski will visit Cleveland Marshall on Thursday, January 26,

1978. His itinerary will include class visitations and an informal gathering in the atrium with students and faculty prior to the start of evening classes.

Students are strongly encouraged to avail themselves of this opportunity to meet informally with one of the most distinguished active American jurists.

Frank Wilkinson, Executive Director of the National Committee Against Repressive Legislation, will appear in Cleveland, Friday, January 27 to address a public meeting to be held here in the Moot Court Auditorium at 8:00p.m. His address is sponsored by the Student Bar Association, the National Lawyers Guild and the ACLU. Mr. Wilkinson, who has written and lectured extensively across the country, will speak on the imminent dangers to individual freedoms posed by major new legislation: specifically the Federal Criminal Code reform and the Wiretap Bill.

Frank Wilkinson, whose leadership in opposition to repressive legislation dates to the "McCarthy Era", was imprisoned in 1958 when he challenged the House Unamerican Activities Committee. Mr. Wilkinson currently is the chief lobbyist opposing passage of the massive Federal Criminal Code reform bill (S. 1437).

S. 1437 will be on the Senate floor

for full debate shortly after the Senate reconvenes later this month. This bill, like its predecessor S. 1, features many repressive provisions that would largely impede on freedoms of expression and assembly, labor's right to strike, and reporters' rights to investigate government activities. This bill, if passed, will have a dramatic impact on individuals' rights within our justice system.

SBA meeting

from page 2

moratorium on the change was extended to the graduating class of 77. The original petition asked for a continuance of the moratorium for only the graduating class of 78, but was then amended to include those who entered the law school in the fall of 75 and 76. Some of those who voted against the amendments felt that the students were asking too much, since the entering class in 1976 had only taken one test, when the rules were changed. Others felt it was a matter of principle; that it was not fair to change the rules in the middle of one's legal education.

In other news, Terry Brennan announced that he has been talking with SAGA about opening up a table of donuts and coffee in the morning and sandwiches in the afternoon. An amendment to request the faculty to allow the students to take up to 12 hours credit Pass/Fail was tabled.

The Gavel

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