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Cleveland-Marshall College of Law

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# THE GAVEL

Volume 26, Issue 6

Cleveland-Marshall College of Law

February 17, 1978

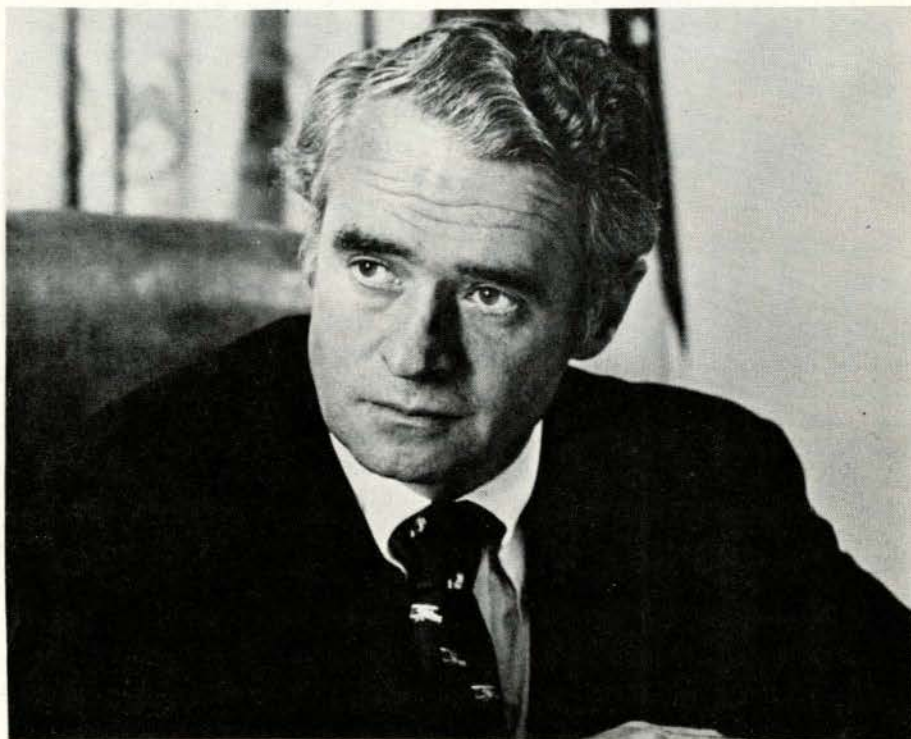
## Legal services for the poor

by Paul Bellamy

Thomas Ehrlich, president of the Legal Services Corporation, came to Cleveland Marshall last week as a Visiting Scholar of the Cleveland-Marshall Fund Enrichment Program. Over the course of two days he participated in classes, seminars and informal discussions in his area of expertise, legal services for the poor.

Ehrlich, who began his career as a law clerk to Judge Learned Hand, is presently overseeing the administration of the Legal Services Corporation, a semi-autonomous branch of the Federal government. In essence, the Legal Services Corporation is given Federal money to distribute to qualifying legal aid programs across the country. Refreshingly, though the Legal Services Corporation is almost wholly funded by the Federal government, Ehrlich does not envision Fed money as providing an adequate long term solution to the problems of providing competent legal representation for the poor.

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## Eagleton backs controversial code

by Mary Jo Kilroy

Senator Thomas Eagleton of Missouri will be the featured speaker Friday, February 17th at 12:30 p.m. in the Moot Court Auditorium. His speech is sponsored by the SBA and the Graduation Assembly Series.

Senator Eagleton, a vice presidential candidate for a brief amount of time, is a member of the Senate's Environmental Committee.

The topic of his speech will be the revised federal criminal code. S-1437. This bill recently was approved by the Senate and is currently pending in the House.

A happy hour will follow the speech, and the Senator will be meeting with a group of students before the speech for coffee and donuts.

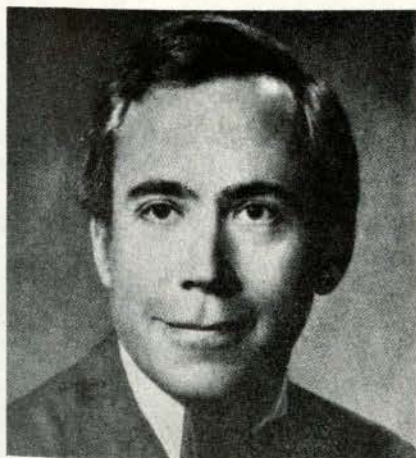
Senate Bill 1437 (HR 6869) is the successor bill to the notorious Senate Bill One. Recently passed by

the Senate, the bill is the target for opposition from organized labor and civil rights organizations. A look into the bill's legislative history and current provisions shows why this bill has created such controversy and has been called "the most far-reaching legislation affecting civil liberties that this Congress will consider."

Senate Bill One was the attempt of the Nixon Administration to codify the Federal Criminal Code. Attorney General Mitchell and Kleindienst together with Senator McClellan submitted their proposal to the Senate in opposition to the report that had been compiled by the Brown Commission which had been studying the criminal code for five years.

The Nixon Administration, which had been embarrassed by leaks and disclosures of their illegal

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# Unique adventures with cross country skiing

by Jim Patnode

In ancient times before there was jogging, the great yellow chairlift ruled the sky, broken legs were signs of affluence, and only a few zanies such as I would dare reverse the process of going somewhere to ski, and would actually ski to go somewhere. Yes, a small but adamant minority toiled tirelessly to prove that man can ski on level Earth and even uphill under his own power. The ancient secret of climbing wax was passed by word of mouth only, however, for it would threaten resort towns, insurance companies, and even the giant oil corporations if it were to leak out.

But with the end of the Revolution of the sixties came the quiet revolution of the jogger. All that was needed was a small technological breakthrough called the waxless ski, and cross country skiing—a national outgrowth of jogging—became chic.

A week ago, the Outdoors Club arranged a cross country ski trip using the new equipment, and Ms. Carol Vlack and I attempted to represent the law school. A brief report follows.

*The People.* What kind of people were attracted by such a trip? Not the lone introverts of the ancient sixties seeking to get away from the rest of mankind—though one or two examples of this variety were sighted. Rather, we were normal signles and couples, generally young. Not so stuffy as to sniff at what is new, nor too radical to accept what is "in". Of course it helps to be athletic, I suppose, but if you can walk you can ski.

*The Location.* Beautiful North Chagrin Reservation. Part of the Metropark System. For practice the

meridian divide of any boulevard will do. Cemeteries are good, but watch out for the stones. But the trails of the Metropark System are just about perfect. Other skiers have packed the snow so your trip is easier. The woods are lovely; unlike downhill on a denuded mountain slope, here you ski in the woods, not past them. And with your love of the outdoors, you share something in common with everyone you meet.

*The New Equipment:* Long, narrow, light cross-country skis have long been available, but the last few years have seen the advent of waxless skis. The plastic bottoms are molded in a fish-scale or step-like pattern that allows the ski to glide smoothly forward, but not back. This makes propulsion much more efficient on level ground and allows the skier to easily walk up a gentle slope. No longer is the air filled with the senseless chatter of self-appointed waxing experts. Rather the laughter of friends enjoying themselves warms you to your toes. (Well, almost to your toes. They're still rather cold.) Its good wholesome fun that harmonizes with nature. The cold air is invigorating, and with a hot toddy you'll sleep peacefully and well afterward. All and all, a very good sport.

*Rent, Buy or Make.* Cross-country is the most affordable skiing there is. New skis, bindings, shoes, and poles can be bought for about a hundred dollars at any ski shop. The same can be rented from Adler's, Ski Haus, and probably elsewhere for about seven dollars a day. For seven bucks, there's no excuse for not trying it. But either reserve well in advance or go on a weekday so you'll get your choice of equipment. Do bring a friend. It's much more fun that way.

For the poor but resourceful student, an old pair of wooden downhill skis can probably be converted for cross-country use. Presently I'm working on two pairs of skis. Watch for a sequel to this article to see how its done.



"Of course \$350.00 is a lot for a suit. But you'll never convince a jury if you're dressed like Bozo the clown."

# Snow 601

by Jack Kilroy

Recently, I received a phone call from an old friend in Philadelphia. He urged me to attend the wedding of a mutual friend which was to take place in North Carolina. I decided that it would be a good opportunity to renew acquaintances and an especially good opportunity to get away from all this snow. I joined my friends in Philadelphia and we drove down to Raleigh.

Ah, the famed Sun Belt! It offered a much needed dose of mid-winter sunshine. Well, it snowed in Raleigh on the day we arrived and the temperature never did manage to get above freezing.

The locals claimed that the two inches of white stuff on the ground was the largest snowfall in memory. I left Raleigh somewhat disgruntled. After leaving Cleveland's record snowfalls, I was in no mood to see it snowing down South.

So we returned to Philadelphia and I prepared to go back to Cleveland. What happened next? Fifteen inches of snow fell on the Northeast in one day! A record for that area, they said. Nobody moved for two days (believe it or not, Philadelphia's snow removal operations seemed more inept than Cleveland's).

What is the point of all this? Well, while I was snowed in for two days, I had a brainstorm of an idea (or maybe a snowstorm of an idea). Why don't lawyers get involved in snow?

Listen, lawyers have their hands in virtually everything. You name it and lawyers have their hands in it--except snow. For those of you who are influential (I won't name names, we all know who you are) this is Cleveland-Marshall's big chance. There hasn't been a major innovation in legal education since Harvard adopted the dreaded Langdell case method in the 1800's.

Listen, law schools in Texas have developed special curricula in Oil Law. Washington law schools offer special programs in government law. Law schools in port cities offer

special focus on Admiralty. But lawyers have had their hands in oil, government and Admiralty for a long time. Cleveland-Marshall can prove that it is truly innovative and take advantage of its unique climate at the same time developing programs in Snow Law.

Aside from icy sidewalk personal injury cases and a landlord's duty to clear snow from common areas, there has been little development of Snow Law. Is a ring found under one of Cleveland's mountainous snow drifts merely lost or is it treasure trove? The Kucinich administration has stated that driving on Cleveland's streets is assumption of the risk of damaging a car from potholes but some might say that even going outside in Cleveland's winter should be negligence per se, others would say that it should be no more than evidence of negligence, yet others would call it "little n." If a snowstorm is an act of God, why doesn't the ACLU get an injunction to force the government to keep snow from falling on state supported schools? Come on Cleveland-Marshall, think like lawyers! There must be thousands of ways in which lawyers can profit from our arctic climate. Besides, a few classes in Snow Law would really enhance the always meager winter course offerings.



## THE GAVEL

Cleveland-Marshall College of Law

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*The Gavel, Cleveland-Marshall College of Law, Cleveland State University, Cleveland, Ohio 44115. (216) 687-2340.*

## Clinic trains defenders

The Cleveland State University Legal Clinic has become integrally involved in aiding the recently established county Public Defender's office in the training of their personnel. Professor David Barnhizer, director of the CSU Legal Clinic, who in large part suggested various phases of the defender training program is serving as educational consultant in the hopes of establishing a viable and effective long term method of providing quality trial advocacy training for the young defenders.

On January 19-22, 1978, the first phase of the Public Defender Training Program was initiated. In an intensive four day workshop, attorneys working for the Public Defender as well as other young attorneys from the community who are engaged in criminal advocacy work, tested their trial skills through a series of role playing exercises. The attorneys presented various parts of a criminal case including voir dire, opening statements, direct examination, cross examination and closing statements and were critiqued by some of the prominent

members of the Cleveland bar and judiciary. This method closely follows the National Institute of Trial Advocacy model which had proved so successful in training many top litigators in our country. Several CSU law students portrayed the roles of witnesses and jurors, and Dean Bogomolny served a brief stint on the bench, portraying a judge in one of the sessions. This workshop has provided the CSU legal community with an opportunity to become involved in the Cleveland bar at large in a useful and meaningful manner. Recognizing the need for continuing legal education, particularly in the area of trial skills, the university has proved to be of valuable benefit as a facilitator of such ongoing training.

The next phase of the training program will involve another four day workshop scheduled for March 2-5, at which a full scale trial will be litigated by the young attorneys and again critiqued by experienced trial attorneys and members of the judiciary.

Additionally, a series of seminars are planned dealing with pretrial skills including counselling, negotiations and interviewing. The final phase of the program will be the development of manuals to be used by the Public Defenders office. These manuals will cover local



NO, NO... READ THE HUMPHREY-HAWKINS BILL AGAIN.

practice and procedure, trial evidence, resource readings and training materials, and are presently being researched by CSU clinical students. A Public Defender Newsletter is also being planned as part of the ongoing educational program which highlight recent legal developments of interest to members of the bar engaged in criminal litigation.

## Civil rights jobs

Any person who is interested in a Law School Civil Rights Research Council summer job project can find model projects which have been funded in the past, on reserve in the law library.

The LSCRRRC regional director, Elise Farrell from Case Western Reserve Law School, will answer any questions which people have concerning summer projects or the summer job applications. She will be available on Monday, February 20th from 2:30-3:30 p.m. in the Women's Caucus Room here at Cleveland-Marshall.

Any person who wishes to submit a summer project or summer job application may submit the completed materials to Dean Janice Toran.

Want better conditions,  
more control over caseloads

## Lawyers unionize at OSLSA

by Jack Kilroy

The attorneys and staff of the Ohio State Legal Services Association have been active in a unionization effort for the past several months. OSLSA, the management organization which coordinates a main office in Columbus and four branch offices in rural southern Ohio, seeks to provide legal services to indigent clients in civil matters. Twenty-two professionals as well as a clerical support staff are employed by OSLSA.

According to former *Gavel* editor Rita Fuchsman, who is an OSLSA staff attorney in the Chillicothe branch office, the unionization drive is part of a nationwide trend towards the organization of legal services personnel. Fuchsman noted that legal services attorneys have

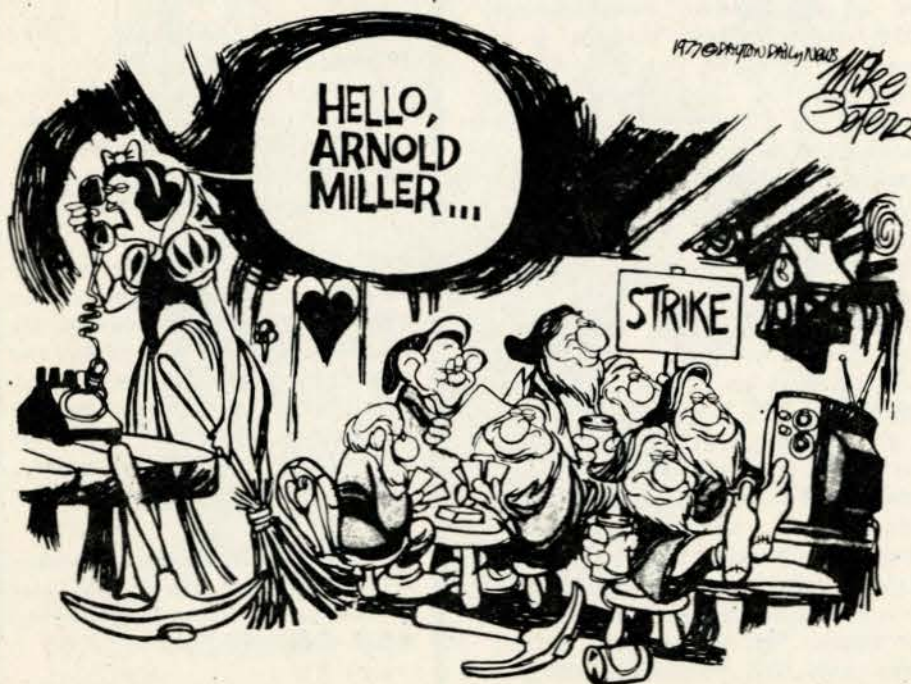
unionized in a wide range of locations including: Camden, New Jersey; Richmond, Virginia; Detroit Michigan; and New York City.

The idea of forming a legal services union received a good initial response at OSLSA. With a bargaining defined as the 22 professional staff, 14 attorneys signed union authorization cards. Although management could have immediately recognized the union as the exclusive bargaining agent at that point, they decided to force an election. While preparing for the election, however, two developments caused a delay. First of all, OSLSA management decided to challenge the definition of the bargaining unit in what Fuchsman termed "another delaying tactic." Secondly, the union decided to amend their own definition of the bargaining unit by including the clerical staff who had requested to be included after being impressed by the concept of the unionization drive. The inclusion of clerical staff was not related to the management challenge since OSLSA sought to make the unit smaller. Since the bargaining unit has been amended, more than 50% of the clerical staff have signed authorization cards.

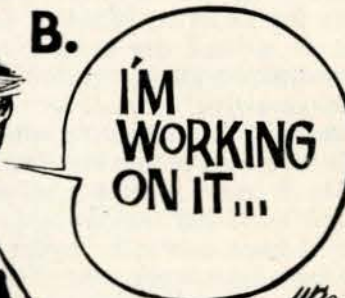
Although most unions focus on economic issues, Fuchsman stated that the union at OSLSA is more concerned with the poor working conditions, lack of management sensitivity towards staff input on policy matters, control of caseloads, management interference in the attorney-client relationship, a grievance procedure that is unworkable and the fact that they have a "disgusting boss."

Although some have charged that unionization will hurt the client, Fuchsman explained that better conditions will make happier attorneys and thus improve the quality of services. Furthermore, increased attorney input into policy will help clients since it is the attorneys who are constantly in touch with the needs and problems of clients. Finally, it was pointed out that if the attorneys have control over their caseloads, they would be able to better prepare their clients cases.

Finally, Fuchsman was asked whether it was "unprofessional for attorneys to unionize." She responded, "No, attorneys, just like every other employee, have common interests and common grievances and it is always best to work in a group."



## UNEMPLOYMENT LINES



1977 CARTOON DAILY NEWS

## Center helps 'leftovers'

by Mary Jo Kilroy

How does a person with a low income avail himself of affective legal assistance? If one's income falls below a set standard set by Legal Aid, counsel can be obtained from the Legal Aid Society. However, Legal Aid only affects the poorest of us. An income that is above their cutoff point may still not be sufficient to pay out a retainer.

Those that know of The People's Law Center on the Near West Side, however, are in a better position. The center's doors opened this fall, after planning by Bob Begin, a recent Marshall graduate and other members of the local and legal community.

Begin, a Catholic priest as well as a lawyer, has long been concerned with the legal rights of the poor. He helped found and operate the Community Bail Fund, which provides bail for indigent persons as

well as working towards reforms of the bail system.

This experience gave him a look at how justice is distributed in our society. Many of those bailed out received appointed counsel. But for some, solving the problem of bail left the problem of finding retainer money.

In the civil area, many from the Near West side could not litigate landlord tenant, credit, domestic relations and other problems because they had too much income for Legal Aid, but not enough to hire counsel. At times Legal Aid was simply too busy to see them.

The People's Law Center, operating out of a storefront on Lorain Ave. donated by St. Ignatius, is staffed by Begin, volunteer lawyers, law students, and para-legals. They are open during the evening from 7 to 9 p.m., Monday through Thursday. The drop-in center with which they share space will make appointments if people call or stop by during the day.

Lawyer Tony Walsh, one of the volunteers, said the work is done

without any fee 95% of the time. They are frequently getting "Legal Aid Leftovers" as clients, since the Legal Aid quota system cuts off intake once their caseloads reach a certain point.

The work was described by Walsh as "very worthwhile." Most of the problems are solveable, and the legal assistance very necessary. They frequently see the results of other lawyers mistakes, or opposing counsel taking advantage of a litigant's pro se status. One example given by Walsh was a person who was ordered to pay \$160 alimony and child support per week, leaving him only \$30 left for himself. This situation is unworkable for the man and unless corrected might lead him to skip out on his child support payments altogether. The client had been without counsel at the time of his divorce, showing the importance of the Center's ability to represent those who would not otherwise seek a lawyer.

The Center encourages law students and lawyers to join their project. The phone number is 631-4741.



## Ehrlich

In his speech entitled "Future Roles for Lawyers" Ehrlich noted that the private bar must make a significantly higher contribution to pro bono work if the poor are ever to stand on an equal footing with the more fortunate before the courts:

"Much more Federal funding is needed for legal assistance to the poor. I hope and fully expect that over the next few years that funding will increase substantially. Legal assistance will never be available to all who need it, however, unless private lawyers recognize that they are different than carpenters and

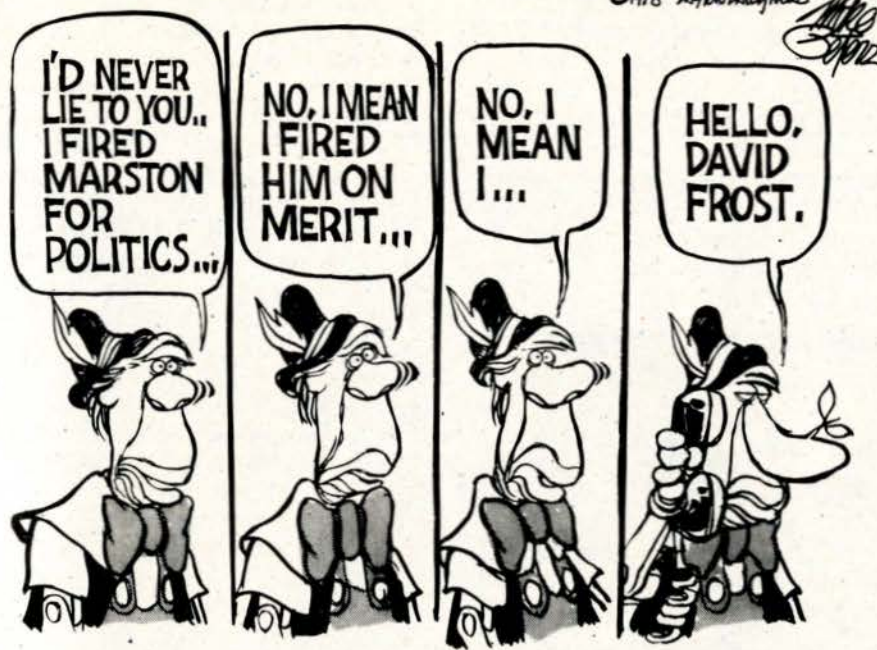
that they should, therefore, provide some of their time and talents pro bono to that end. Many do so now—but a minimum amount of pro bono service is needed from all private lawyers."

Further, Ehrlich noted that "mass delivery systems" will play a significant role in meeting those future legal needs of the poor, as well as society as a whole. "Legal services delivery will shift toward new forms of collective care. Group and prepaid plans and legal clinics are current examples—ones that are now expanding rapidly in spite of substantial resistance by the organized bar. Our profession is being carried, kicking and screaming toward the aggregation and collective-service era, but that era is surely coming."

Finally Ehrlich had a bit of advice for graduating law students: "Most of you in law school have a half-century or more in which to do some professional gear shifting. I, for one, hope you will not be afraid to do so...The law offers an extraordinary range of opportunities to do what you want in ways that provide real satisfaction. Don't settle for less—in your first job and in all your jobs. Don't take the easiest, most comfortable position unless you are sure it is really what you want."

## Warning on security

Because of a recent incident in a parking lot adjacent to the Law Building which took place during early morning hours, we want to remind all faculty, staff and students to use special caution whenever entering and leaving the parking lots. Try to avoid unlighted portions of the lot and any situations which appear suspicious. Whenever possible, do not go out to the parking lot unaccompanied. An escort from Campus Security can be obtained by calling Extension 2020.



## Campus based green

by Marlene Shettel

In the interest of institutional uniformity, the College of Law will be using the Financial Aid Form of the College Scholarship Service to analyze eligibility for financial aid for academic year 1978-79. Applications are available at the Law Building, Room 120. Applications filed after May 1, 1978 will be designated late and honored only if funds are available. Both the student and his or her parents should complete the FAF so that family resources can be analyzed. "Family" in the context of financial aid includes those financially supportive of and/or dependent on a student.

A student is eligible for campus-based aid if the family resources fall short of the modest but adequate standard budget assigned to the student's particular circumstances. Entering students are eligible for tuition waiver, grants, and National Direct Student Loans. Upperclass students in good standing are also eligible for employment under the College Work-Study Program at a current rate of \$3.25 per hour up to 20 hours per week. Part-time students are rarely eligible for campus-based financial aid because such students are expected to be employed full time, and this employment usually meets the

standard budget.

A student not eligible for campus-based funds but whose adjusted family income is less than \$25,000 per year may be able to obtain a Guaranteed Student Loan from a bank at 7 percent deferred interest. This type of loan is also available to cover unmet needs of students with insufficient financial aid due to the limitation of available federal and state funds and to replace the parent's contribution imposed by FAF Analysis on dependent students.

Campus based financial aid is about 20 percent grant and 80 percent self-help. In 1977-78, \$84,000 in Ohio tuition-waivers and about \$16,000 in private and restricted grants accounted for the "free money" in the \$544,000 campus-based aid available. The balance was federal self-help, such as National Direct Student Loans and College Work-Study jobs. Graduate students are not eligible for BEOG, SEOG and OIG grants. In 1977-78 to date, an additional \$265,000 in self-help has been provided by student-initiated bank loans. Through the above programs 25% of the students in the College of Law are receiving financial aid. A total of 248 present students applied for campus-based aid and 66 of these did not meet federal need criteria.

## CSU theater

Several amazingly talented people have gathered together throughout this trying month of blizzards to present an unusual theatrical event currently playing at the CSU Factory Theatre, at 24th and Chester.

The production is **Tom Jones** and the director and co-author is Joseph J. Garry, Jr. Perhaps Cleveland's best known director, Garry's productions are noted for their originality, and have played New York, Washington, D. C., and Great Britain.

He wrote the script along with Tom Riccio, a CSU English student, basing it on the Fielding novel of the same name. The script writing process was somewhat fluid with changes made as it developed in rehearsal. Garry described the process as one of "layering" with additions made as sets, lights, and music came into play.

**Tom Jones** is billed as a "play with music" but is not a musical comedy in the Broadway sense. Although there are songs, for the most part the music underscores the production, becoming an integral part of the performance.

To fit the concept of the play, period compositions were rearranged by Lucille Gruber. As a professional harpsichordist, Ms. Gruber has performed throughout Europe, and her New York debut was held at famed Alice Tully Hall.

Gene Hare of the Cleveland Playhouse brings his imaginative eye to CSU, where as artists in residence, he is designing sets and costumes.

The set for **Tom Jones** is described as an "environmental space," enclosed on four sides by seating. The playing area is not limited to the stage, nor the audience to the seats, however, as cast members move through the aisles, and spectators watch from the rafters and the floor.

**Tom Jones** is scheduled to run Feb. 17, 18, 19. Performances are at 8:30 Friday and Saturday, and 7:30 on Sunday. Tickets for students are \$2.00 and reservations (which are recommended) can be made by calling ext. 2109 between 1 and 5 p.m. Try not to miss it.

# Eagleton

activities, included provisions directed at repressing the freedom of the press and the sanctity of reporters' sources.

Annoyed at demonstrations against the war, the code provided for criminal penalties for demonstrators at federal installations, courthouses, and other government functions. The Smith Act was revived.

Organized labor was also a target of the codification, with pickets and boycotts falling under the extortion provisions.

As S. 1 became widely known massive opposition forced the McClellan committee to postpone its passage until this year. As McClellan pointed out, Stop S-1 became a catchy slogan and a memo indicated that public opinion should be de-fused by changing the number (to S. 1437) and reaching compromises with the liberal leadership, primarily Senator Kennedy.

The new image of S. 1437 promises that it does nothing more than reorganize an unwieldy federal code, delete innocuous provisions such as the crime of shooting federal carrier pigeons, and modernize the federal marijuana laws.

Yet groups in opposition say otherwise. For instance, from Balsa, "the passage of 1437 poses a threat of legislation harmful to the interests of Black people." One example cited is the section that would make it a crime "to demonstrate to influence a judicial proceeding." They point out that had this been in effect on October 3rd, it would have made criminals of 1600 predominantly Black students who marched 2 miles in protest of the so-called reverse discrimination Bakke case.

The Illinois AFL-CIO in their resolution in opposition called S-1437 "the greatest threat to organized labor since Taft Hartley". The bill extends federal jurisdiction to punish strikers who put their employees in fear or who threaten to place them in fear that the strikers will improperly cause "economic loss or injury to his business. Every strike may cause economic loss. The



bill does not define when it is "improper." Section 1722 (extortion) makes it a crime for "threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged." The bill adds a defense "that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the cause of a bona fide labor dispute. Under this provision, a walkout over safety issues or a wildcat strike could be termed *non* bona fide.

Labor also cites as dangers the criminal contempt (1331), sabotage (1111), obstructing by physical interference (1302), blackmail (1732), and other provisions as allowing

federal interference and criminal sanctions to be applied to activities of organized labor depending on the interpretation the courts choose to give broad provisions.

The sentencing provisions also fall short of promised "reform." Under current law, a prisoner is eligible for parole after serving 1/3 of the sentence. S. 1437 provides for a presumption against parole. Disparities in sentences would not be eliminated. A newly created Sentencing Commission, whose recommendations are not subject to Congressional ratification, would have the responsibility for drafting sentencing legislation.

The government would also be permitted to appeal sentences it regards as too lenient, causing double jeopardy problems. Evidence that would be inadmissible under the exclusionary rule may be considered in passing sentence, according to the ACLU.

These organizations and others mention other parts of this bill that are too numerous to mention. The code itself runs to 684 pages and is extremely complex. The serious questions of public policy it raises throughout, however, were only given five days of public hearings before the judiciary subcommittee on criminal laws, chaired by Strom Thurmond.

The full committee's amending procedure consisted of Senator Kennedy's acceptance of "non-controversial" amendments without quorum, serious debate, or vote. The balance of the more than 70 other amendments were voted on during 3 days of intermittent meetings.