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MSL

ACADEMIC ENDEAVORS

LAW NOTES

Cleveland-Marshall Law Alumni Association News

*Volume 11, No. 6
Summer-Fall 1985*



IN THIS ISSUE:

*Penalty Enhancement Specifications in
Non-Capital Cases: A Review of the 1983
Amendments to Ohio's Criminal Laws*

*The Motion for Reconsideration
and the
Decision Announced*

LAW NOTES

Vol. 11, No. 6
Summer-Fall, 1985

IN THIS ISSUE

President's Message	3
Dean's Message	4
Penalty Enhancement Specifications	4
Motion for Reconsideration	7
Life Members	8
Alumni Membership	9
Annual Recognition Luncheon ..	10
The Annual Open House	12
Treasurer Retires.....	13
Dinner-Dance	14
Alumni Chapters	15
Tax Seminar.....	16
Class Reunions	17
Alumni Happenings.....	18
Alumni Breakfast.....	21
Faculty Happenings	22
Obituaries	22

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Paul Toppelstein

LAW NOTES, issued by the Cleveland-Marshall Law Alumni Association of Cleveland State University, 1801 Euclid Avenue, Cleveland, Ohio 44115. (216) 687-2368.

Chairperson, Law Notes:

Maria E. Quinn, '79

Editor, Alumni Coordinator:

Sandi Oppenheim

ABOUT THE COVER

Good food, good company, support for the Alumni Association through membership, and a chance to mingle with newly elected officers at the Annual Open House.

OFFICERS AND TRUSTEES Cleveland-Marshall Law Alumni Association of Cleveland State University

1985-86



Members of the Board of Trustees, Cleveland-Marshall Law Alumni Association, 1985-86. From left, top row: John J. Sutula, '53, secretary; Susan L. Gragel, '80, president; Terrence L. Brennan, '78, president-elect; Irving L. Heller, '57, treasurer. From left, bottom row: Steven H. Slive, '76; William T. Monroe, '53; Robert Zashin, '68; Leo E. Rossmann, '29; Leon M. Plevin, '57, immediate past president; Dean Robert L. Bogomolny; David Paris, '77; Ralph Streza, '83; Charles J. Gallo, '55; Richard S. Koblentz, '75; Gerald R. Walton, '80. Missing are: Herbert Palkovitz, '68, 1st vice-president; Bessie Cassaro, '65; Sheryl King, '79; Maria E. Quinn, '77; Richard T. Reminger, '57; Samuel J. Agnello, '68; Ramon Basie, '62; The Hon. Timothy M. Flanagan, '71; The Hon. Leo A. Jackson, '50; The Hon. John T. Patton, '58; Lawrence Rich, '67; Michael T. Scanlon, '59; and Bernard Nosan, '73.

The alumni leaders listed above have made a commitment to represent you. They welcome your input. Please feel free to contact members of the Board of Trustees or the Alumni office at 216-687-2368.

Editor's Note:

We wish to thank alumni and friends who have complimented past issues of Law Notes and who have contributed to the publication through written and verbal correspondence. We hope you will continue to respond to the information in this issue and in future issues of Law Notes.

From the Presidents...

It is indeed an honor to have served as your President this past year. I was fortunate to work with a dedicated board, committed to monthly meetings and discussions on how to better serve our law graduates through our Alumni Association.

I have seen our Alumni Association grow under the leadership of my predecessors, and as your President this past year these efforts have continued. This year has seen continued growth through membership in the Alumni Association and increased financial support for the law school. We now at this time have over 50 life members who have each contributed \$1,000 for the scholarship support through the Alumni Association for needy students.

This past year I have seen our Alumni Association initiate, in conjunction with the law school, a financial drive which commenced this fall. The purpose of this financial drive, for which every law school graduate will be asked to contribute, will be for the support of the scholarship fund for our law school students.

This year we have helped develop

During this year, the theme for the Alumni Association will be "Momentum for the Nineties." We need this Momentum because of sweeping changes in law school education, the practice of law and federal funding for education.

Applications for admission to law school by prospective students are declining throughout the country. In many cases, bright students are losing interest in the profession because they cannot afford legal education or because they do not believe the law is a rewarding, satisfying profession.

While Cleveland-Marshall has not yet suffered declines in applications or lost energetic, high caliber students, it is likely to do so. Our Momentum in 1985 will be directed toward eliminating this potential problem now, and insuring that it does not cause problems in the upcoming years.

The Alumni Association will vigorously work this year to assist in recruiting students for the Day and Night Divisions of the Law School for 1986

two Alumni Association clubs in Columbus and Washington, D.C. where Cleveland-Marshall alumni can network with one another for professional and social benefit.

We have held a number of seminars and the domestic relations seminar continues to prosper. We have added a tax seminar which will take place on October 24, 1985, and will plan another product liability seminar on an annual basis through this Association.

It is my hope that the Alumni Association will continue to grow. I urge all of you to become an Association member whether or not you have time to become involved. The effort is minimal compared to the reward. I believe it is incumbent upon all of us to support our law school. I need not have to remind you that for many of us this was the avenue that opened many doors for social and financial success.

Let us all at this time give our sincere best wishes to Susan Gragel, our Association President for this forthcoming year, and for all of us to continue to work with her so that this forthcoming year can be counted on as

and beyond. Because the students will need scholarship assistance (due to the declines in federal aid for higher education), we will work this year to raise scholarship funds for the Law School and its students.

Our Momentum will also be directed toward the Cleveland-Marshall graduates. New lawyers need employment opportunities. All of us need continuing updates on the technical areas of practice which change so quickly. We will devote substantial efforts this year to developing professional placement opportunities for our graduates and to presenting continuing legal education programs.

Finally, our Momentum will focus on the Alumni Association itself. With the law school, we are purchasing a new computer system to assist us in corresponding with our membership. We will work this year to build an even stronger membership base and more efficient operations that will carry the Association through the Nineties.



Leon M. Plevin
President 1984-85

another successful endeavor by this Alumni Association.



Susan Gragel
President 1985-86

I am looking forward to my year as President. This will be a rewarding year. Please do not hesitate to call on me or any of the officers or trustees at any time.

From The Dean...

While other Ohio law schools are retrenching in response to a precarious educational climate, Cleveland-Marshall is solidifying its position as one of Ohio's leading law schools. The challenges are significant: a national trend toward dropping enrollments, subsistence-level state support, a sluggish regional economy and diminishing federal support to students.

Recent events demonstrate Cleveland-Marshall's strategy. In response to fewer law school applicants, the College expanded its recruitment program. Across the state, law schools admitted fewer students. Cleveland-Marshall successfully maintained both the number and caliber of students entering the College.

A weak local economy and reductions in Federal student aid might have compromised the ability of talented but needy students to study law. Cleveland-Marshall continued to identify gifted students and provide the necessary financial aid. The return on investment was impressive. In one scholarship program alone, the College supported a Magna Cum Laude graduate, a second-year student now in the top five percent of her class and an entering student who completed his first year with an A average.

The law library expanded to meet the increasing research demands of both students and the Cleveland legal community. During the past five years, the collection nearly doubled. The library has been designated a Federal Documents Depository and was recently recognized for excellence in fulfilling this role.

The College's commitment to community has not been deterred. In October, Cleveland-Marshall will co-sponsor the first Midwest Regional Public Interest Law Conference. This fall will also mark publication of the first issue of the *Journal of Law and Health*. In the tradition of the nation's finest reviews, the *Journal* is student-run and is designed to encourage scholarly debate of current issues in the legal/medical fields.

Faculty members continue to distinguish themselves in the national legal community. The past year marked the appointment of a faculty member as Counsel to the United States Ambassador to the United Nations and another was honored as a Fulbright Scholar. It was also a record-setting year in the number of faculty publications.

Recognizing the limitations of subsistence-level state support, the College also initiated its first Annual Fund

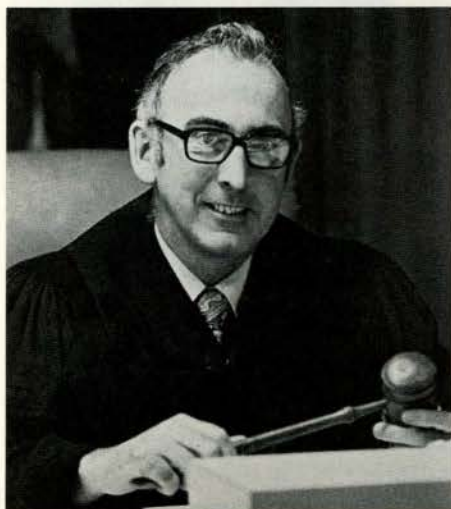


Robert L.
Bogomolny

Drive. Funds generated will support scholarships, library development, academic research and programs that will advance scholastic excellence and community service goals.

A representative of Cleveland-Marshall will be calling you in the near future to ask for your personal pledge to the College. Give generously to support scholarships, library, improvement, evening program development and special programs. Cleveland-Marshall has moved forward by maximizing limited resources and responding creatively to current challenges. Clearly, we have solidified our standing among Ohio's law schools. With generous alumni support, this momentum will continue.

Penalty Enhancement Specifications in Non-Capital Cases: A Review of the 1983 Amendments to Ohio's Criminal Laws



By: Judge Floyd D. Harris, Lorain County Common Pleas Court

Judge Floyd D. Harris received a Masters of Law degree from the Cleveland-Marshall College of Law in 1969. Besides his private legal practice in the city of Lorain, Ohio, he served as Assistant Prosecutor for six years for the city and as Assistant Prosecutor, Lorain County for nine years. Judge Harris has been a Common Pleas Judge, General Division, Lorain County, since 1975 and is a lifetime resident of Lorain, Ohio. He is the author of several articles including "Judicial Immunity and Judicial Liability Insurance" and "Judicial Ethics and Discipline" for the revised JUDGES' HANDBOOK which will be available in 1986.

In 1983 the Ohio legislature made a number of radical changes in Ohio's criminal laws. In the last two years, most of these changes have become second nature. However, penalty enhancement specifications in non-capital cases still cause problems for defense attorneys and prosecutors alike.

Conditions which raise the degree of a crime have been part of Ohio's criminal code for a substantial period of time. The 1983 amendments created three types of conditions which enhance the penalty which may be imposed upon conviction of certain

Continued on page 5

Penalty Enhancement

Continued from page 4

crimes but which do not affect the degree of the crime. These additional conditions are known as the gun specification, the prior aggravated felony specification, and the indefinite sentence specification which is also known as the violence specification.

Gun Specification—R.C. 2929.71:

Thus, a gun specification applies when a defendant has a firearm, as defined in R.C. 2923.11(B), on or about his person or under his control during the commission of the offense. There is no requirement that the defendant use or threaten anyone with the firearm or even that he show the firearm to anyone. A gun specification may be charged even though the firearm remains unseen in the defendant's coat pocket during the commission of the offense. See also the definition of "possession" in R.C. 2901.21(C).

The gun specification results in a term of three years of actual incarceration which is imposed in addition to the sentence for the crime to which the defendant plead guilty or of which he was found guilty. The three years of actual incarceration for the gun specification can be imposed only if the underlying sentence is an indefinite or life sentence, other than an indefinite sentence for a violation of R.C. 2923.12—CCW. See also *State v. Broadus* (1984), 14 Ohio App. 3d 444. The three-year term of actual incarceration shall be served prior to and consecutively with the underlying indefinite or life sentence. See also R.C. 2929.41(B)(4). If the defendant is sentenced for several crimes and each has a gun specification, the defendant shall be sentenced to three years of actual incarceration on each offense, and each three-year term of actual incarceration shall be served consecutively with the underlying indefinite or life sentences which, however, may be imposed concurrently or consecutively. See R.C. 2929.41(C)(3). However, if the multiple crimes were committed as part of the same act or same transaction, only one term of three years of actual incarceration may be imposed. See R.C. 2929.71(B).

Actual incarceration means that the Court may not suspend a defen-

dant's term of actual incarceration and grant the defendant probation or shock probation. Further, a defendant is not eligible for shock parole or parole until after the expiration of his term of actual incarceration. See R.C. 2929.01(C). In most cases, a term of actual incarceration can be reduced by "good time credit" under R.C. 2967.19. However, the three-years of actual incarceration under the gun specification cannot be diminished by "good time credit;" thus, the defendant will serve every day to the three-year term. See 2929.71(D)(2). Since R.C. 2929.01(C) only prohibits suspending the term of actual incarceration, a defendant would be eligible for super shock probation under R.C. 2947.061(B) at the expiration of the three-year term if the underlying indefinite sentence was imposed for the commission of an aggravated felony. See also *State v. Oxenrider* (1979), 60 Ohio St. 2d 60.

Prior Aggravated Felony Specification—R.C.

2929.11(B)(1), (2), and (3):

The basic sentences for aggravated felonies are as follows:

Agg. F3—2, 3, 4, or 5 to 10 years

Agg. F2—3, 4, 5, 6, 7, or 8 to 15 years

Agg. F1—5, 6, 7, 8, 9, or 10 to 25 years

The Court may, but is not required to, impose the above minimum terms as actual incarceration. In fact, the Court may suspend any of the above sentences and grant a defendant probation or super shock probation under R.C. 2947.061(B), unless the defendant is not eligible for probation under R.C. 2951.02(F). However, if the defendant has previously plead guilty to or been convicted of an aggravated felony or an offense which is substantially equivalent to an aggravated felony, he faces the following sentences:

Agg. F3—5, 6, 7 or 8 to 10 years

Agg. F2—8, 9, 10, 11, or 12 to 15 years

Agg. F1—10, 11, 12, 13, 14, or 15 to 25 years

In addition to the increased minimum terms, the Court is required to impose the minimum sentence as a term of actual incarceration. Actual incarceration has the same meaning as discussed above; see R.C. 2929.01(C); however, the defendant's term of actual incarceration can be reduced by "good time

credit" under R.C. 2967.19. Further, a defendant would be eligible for super shock probation under R.C. 2947.061(B) at the expiration of his term of actual incarceration. See also *State v. Oxenrider, supra*.

In all cases where the criminal code provides that a prior criminal record raises the degree of a crime or enhances the possible penalty, a conviction of the prior crime is required. A conviction is defined as a plea of guilty or a verdict of guilty plus the imposition of sentence. See Criminal Rule 32(B); *State v. Henderson* (1979), 58 Ohio St. 2d 171. Under the prior aggravated felony specification, the defendant must have been convicted of or plead guilty to an aggravated felony. Thus, if a defendant is awaiting sentencing on an aggravated felony to which he has plead guilty and he commits a new aggravated felony, the prior aggravated felony specification is applicable to the second offense, even though the defendant has not yet been sentenced on the first offense.

Indefinite Sentence/Violence Specification—R.C. 2929.12(D) and (B)(6) and (B)(7):

The indefinite sentence/violence specification applies only to felonies in the third and fourth degree. If a defendant is found guilty of a felony in the third or fourth degree, he faces the following possible sentences:

F3—1, 1-1/2, or 2 years

F4—1/2, 1, or 1-1/2 years

If the indefinite sentence/violence specification is applicable, the defendant faces the following harsher, indefinite sentences:

F3—2, 2-1/2, 3, or 4 to 10 years

F4—1-1/2, 2, 2-1/2, or 3 to 5 years

The indefinite sentence/violence specification will apply if any one of the following conditions exists:

(1) During the commission of the offense, the defendant caused physical harm, as defined in R.C. 2901.01(C), to any person; or

(2) During the commission of the offense, the defendant made an actual threat of physical harm to any person with a deadly weapon, as defined in R.C. 2923.11(A); or

(3) The defendant has been previously convicted of an offense of vio-

Continued on page 6

Penalty Enhancement

Continued from page 5

lence, as defined in R.C. 2901.01(I).

Unlike the prior aggravated felony specification, item three above requires a prior conviction—finding or plea of guilty plus imposition of sentence—of an offense of violence. See Criminal Rule 32(B); *State v. Henderson, supra*.

Element of the Offense or Sentencing Consideration:

The first problem which arises in using penalty enhancement specifications is whether they are elements of the offense or merely sentencing considerations.

R.C. 2945.75 clearly provides that conditions which raise the degree of a crime, such as the value of the property in a theft offense, are elements of the offense. Thus, a condition which raises the degree of the offense must be set forth in the indictment, must be proven by the State by proof beyond a reasonable doubt, and a guilty verdict must contain a separate finding as to the existence of the addition condition. If these requirements are not met, the defendant can be found guilty of only the least degree of the crime. See R.C. 2945.75(A).

If the penalty enhancement specifications are treated solely as sentencing considerations, numerous constitutional problems, most notably due process and confrontation, arise. Further, if defense counsel challenges the existence of the penalty enhancement specification, the prosecutor will be required to present the same evidence whether he is proving the specification by proof beyond a reasonable doubt or merely presenting evidence of the existence of the specification at the sentencing hearing. See R.C. 2945.75(B); R.C. 2929.71(A)(2); *State v. Dawson* (1984), 16 Ohio App. 3d 443. Thus, prosecutors and judges would be well-advised to consider the penalty enhancement specifications as elements of the offense and subject to the requirements of R.C. 2945.75.

Indictment—Due Process Notice Requirement:

R.C., Sections 2929.11(F) and (G), 2929.71(C), 2941.141, 2941.142, and 2941.143 provide that an enhanced

penalty may not be imposed unless the appropriate penalty enhancement specification is set forth in the indictment in a form substantially similar to that prescribed by R.C., Sections 2941.141, 2941.142, and 2941.143. Compliance with this requirement provides a defendant with his due process right to be informed of the charges against him. Failure to comply with this requirement means that only the lesser penalty may be imposed.

If an indictment charges a defendant with an aggravated felony or a felony in the first or second degree, there would seem to be no reason to include in the indictment an indefinite sentence/violence specification, as this specification applies only to felonies in the third and fourth degree. However, if the defendant pleads guilty to or is found guilty of a lesser included offense which is a felony in the third or fourth degree, only the less harsh, definite sentence may be imposed because the failure of the indictment to set forth the indefinite sentence/violence specification. To avoid this problem, many prosecutors will include in the indictment an indefinite sentence/violence specification, even though it is irrelevant to the offense charged.

Plea or Finding of Guilty of the Penalty Enhancement Specification:

R.C. 2929.71(A)(2) states that the term of three-years of actual incarceration under the gun specification may not be imposed unless the defendant pleads guilty to or is found guilty of the gun specification. To fulfill this requirement, the "plea sheet," in the case of a plea bargain, must clearly show the defendant's plea of guilty not only to the offense, but also to the gun specification, and the Court must comply with the requirements of Criminal Rule 11(C)(2) both as to the offense and as to the gun specification prior to accepting the guilty pleas. In the case of a jury trial, the verdict form must contain a separate section where the jury can find the defendant guilty or not guilty of the gun specification.

R.C., Sections 2941.142 and 2941.143 which established the indefinite sentence/violence specification and the prior aggravated felony specification do not require that the above

procedures be applied to these two specifications. However, to avoid constitutional problems, the prior aggravated felony specification and the indefinite sentence/violence specification should be handled in the same manner with a specific plea of guilty to the specification or a specific finding of guilty or not guilty of the specification on the verdict form.

If a plea bargain results in a penalty enhancement specification being dismissed by the State, the "plea sheet" should clearly show that the specification is nolle, so as to avoid a confusing record if the plea or sentence is challenged on appeal or by way of post-conviction relief proceedings.

Trial Considerations:

If the best procedure is to view penalty enhancement specifications as elements of the offense, the State will be required to prove the specification at trial in its case-in-chief by proof beyond a reasonable doubt. If the specification is the prior aggravated felony specification or the prior conviction of an offense of violence under the indefinite sentence/violence specification, this procedure will result in at least part of the defendant's criminal record being presented to the jury, even if the defendant does not take the stand and testify. To avoid this problem, R.C., Sections 2941.142 and 2941.143 specifically provide that the defendant may request the trial judge to determine the existence of the specification at the sentencing hearing, thus, prohibiting the prosecutor from introducing the defendant's prior record into evidence unless the defendant takes the stand. The most appropriate way for defense counsel to make this request is by a motion in limine.

The provision for having the trial judge determine the existence of the penalty enhancement specification at the sentencing hearing is not applicable to the gun specification. See R.C. 2941.141.

Manner of Proving Elements of Penalty Enhancement Specifications:

The method of proving the elements of the penalty enhancement specifications is the same whether the speci-

Continued on page 17

The Motion for Reconsideration and the Decision Announced

By: Professor J. Patrick Browne

Perhaps no motion is more consistently abused, misused and misunderstood by both Bench and Bar than the motion for reconsideration or rehearing. To some extent, this misuse and misunderstanding is due to the fact that the motion for reconsideration is not a formal Civil Rules motion, but a "legal fiction created by counsel which has transcended into a confusing, clumsy and 'informal local practice,'" *Pitts v. Dept. of Transportation* (1981), 67 Ohio St.2d 378, at 381. Accordingly, it has not received much attention from text writers and academic scribblers. Indeed, since the inception of the Civil Rules in 1970, only two articles have been devoted to it, and it has received footnote treatment or passing comment in only six others. Thus, to a great extent, the motion for reconsideration remains *terra incognita*.

Since the Supreme Court's decision in *Pitts*, however, two points are well-settled: (1) the motion for reconsideration may be directed to a journalized interlocutory order, and (2) it may not be directed to a judgment or final order. See Cook, *Motion or Application for Reconsideration: At Trial or On Appeal*, 7 LAKE LEGAL VIEWS 1 (No. 9, Nov. 1984).

But there is still one other use for the motion for reconsideration that has not been expressly treated in any article or reported decision: it may be used to obtain the change, modification, suspension or withdrawal of a decision announced.

What is a "decision announced?" Civil Rule 58 indicates that it is a ruling by the court after a bench trial that has not yet been journalized. But the concept of "decision announced" is broader than Rule 58 would suggest; it is any judicial ruling by the court, either after trial or on a motion, that has been made known to the parties in some way, but not yet formally journalized in accordance with the provisions of Civil Rule 58. Thus, a "decision announced" may be found in an oral pronouncement by the judge, a written decision

filed by the judge, an entry on the file jacket, an entry on the half-sheet, or an entry on the docket.

While a decision announced bears some similarity to an interlocutory order, it is not an interlocutory order, and should not be confused with one. Since a court speaks only through its journal, and since, by definition, a decision announced is a ruling that has not been journalized, it cannot be an order of any kind. Rather, it is a ruling that has "interlocutory status" from the time it is made known by the court until the date upon which it is formally journalized. Of course, upon journalization, it loses its "interlocutory status" and becomes either an interlocutory order or a judgment, depending upon whether or not it meets the requirements of R.C. 2505.02 and Civil Rule 54(B). The important thing, however, is the interlocutory status that it possesses before journalization. This interlocutory status presents the party aggrieved by the ruling with a "window of opportunity." While this "window" is open, that party may seek a change in, or a reversal of, the ruling by means of a motion for reconsideration. A review of some of the decisions will illustrate this proposition.

Pierce v. Pierce, unreported No. 869 (4th Dist. App., Ross Cty., Dec. 30, 1981), was one of the first cases to recognize that a motion for reconsideration could be directed to a decision announced. This was a divorce action. After hearing evidence, the judge orally advised the parties that he was awarding appellee alimony of \$200 per month for one year. Before this order was journalized, appellee moved for reconsideration. Upon reconsideration, the court changed the alimony award to \$200 per month until appellee's death, remarriage, or increase in income. When this reconsideration decision was journalized, an appeal was taken. On appeal, appellant argued that the trial court did not have jurisdiction to change the announced award of \$200 per month for one year. Although the



J. Patrick Browne

Professor of Law, Cleveland-Marshall College of Law; B.S., John Carroll University; J.D., University of Detroit; M.S. in L.S., Case Western Reserve University. Professor Browne has taught Civil Procedure, Equity, Insurance Law, Legal Research and Writing, Motion Practice, Remedies, Suretyship, Discovery Practice, Appellate Practice, Workers' Compensation, and Workers' Legislative Protection.

court of appeals ultimately reversed, it rejected this argument, saying:

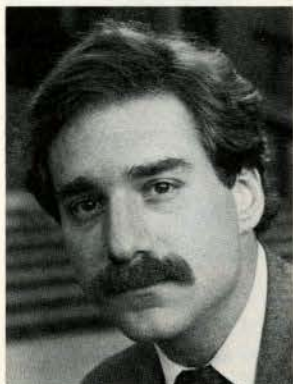
"[T]he initial decision as to the amount of alimony was not a judgment, but a pronouncement of the court as to the judgment it intended to enter . . . [Although] there is no specific provision in the civil rules for a motion labeled as a motion for reconsideration, Civ. R. 7(B)(1) does provide for a motion. Given the interlocutory status of the initial decision as to alimony, the motion, however labeled, was sufficient to allow the court in the exercise of its plenary power to grant the relief requested."

Similar in thrust is *McGee v. McGee*, unreported No. 1725 (2nd Dist. App., Clark Cty., Mar. 3, 1983), a child custody case. After hearing testimony the trial court orally announced that it was awarding custody to the father. Before this decision was journalized, the mother moved for reconsideration and rehearing on the grounds of newly discovered evidence. After a rehearing, the court reversed itself, and denied the father's motion for change of custody. Upon appeal, the Court of Appeals noted:

"An order, or a judgment or decision, is not rendered by an oral pronouncement from the bench or in chambers; nor by mere written minutes or memoranda; nor by a notation on

Continued on page 13

Alumni Association Welcomes New Life Members



DAVID PARIS

B.A., 1974, Ohio State University; J.D., 1977, Cleveland-Marshall College of Law; Alumni Trustee, 1983-present; Chairman, Product Liability Seminar, 1985.

"While in law school I was able to attain not only an outstanding education but the opportunity to meet and mingle with many fine alumni. Like many of my colleagues, I have gained the most important intangibles from Cleveland-Marshall: a job with a fine law firm, where I began working as a law clerk while attending night school; and professional and social affiliations which I cherish dearly. I am indebted to Cleveland-Marshall and, as an alumnus, will continue to support it through the Alumni Association."



PAUL J. HRIBAR

Ph.D., 1937, John Carroll University; LLB, 1941, Cleveland Law School; J.D. Cleveland-Marshall College of Law. Part-time acting Judge, Euclid Municipal Court. General law practice since 1947.

"The practice of law has enriched my life with countless rewarding friendships, an endless stream of interesting involvements with people from all walks of life in a wide variety of challenging situations, considerable financial rewards, and the satisfaction of guiding clients through difficult situations and helping many young people start their legal careers. For all of this I am grateful to our law school and especially for the opportunity to attend evening classes there."



CHARLES J. GALLO

B.S., Loras College, 1950; J.D., Cleveland-Marshall College of Law, 1955; private practice of law, Cleveland, Ohio.

"The Cleveland-Marshall College of Law has afforded me a great deal of opportunity. I have profited greatly from my education and association there. Support through Life membership is a small way of showing my gratitude."



CLARENCE L. JAMES, JR.

B.S. in Chemistry, 1957, Ohio State University; J.D., 1962, Cleveland-Marshall College of Law; member, Board of Overseers, 1968-1977; Alumni Association President, 1970; President, The Keefe Company, Washington, D.C.

"I am honored to become a Life member of the Cleveland-Marshall Law Alumni Association because I am deeply grateful not only to the law school, the entity, but to all of those great individuals who have been associated with it for my professional career: the Wilson G. Stapletons and the Harold Oleaks; the Alice Macks and the Becky Hotes. All are still fondly remembered and very important to me. My support of the Alumni Association is but a very small way to say thank you to them and to the 1970 Distinguished Alumnus who took a chance on me, Carl B. Stokes."



SAMUEL J. AGNELLO

B.S. in Business, 1961, Montana State University; J.D., 1968, Cleveland-Marshall College of Law; Trustee, Cleveland-Marshall Law Alumni Association, 1977-present; private law practice, Cleveland, Ohio.

"It is my feeling that the Alumni Association works in conjunction with the law school and that the Association should have use of the operating funds. The law school was good to me so, by supporting the Alumni Association, both the law school and our alumni benefit."

Other Life Members:

- The Honorable Walter L. Greene, C-M '53
- Aaron Jacobson, C-M '59
- Norman Kamen, C-M '64
- Richard S. Koblentz, C-M '75
- Daniel R. McCarthy, C-M '54
- John J. McCarthy, C-M '54
- Bernice G. Miller, C-M '51, '63, '68
- Peter W. Moizuk, C-M '58
- Marshall I. Nurenberg, Western Reserve University, '53
- Herbert Palkovitz, C-M '68
- Leon M. Plevin, C-M '57
- Franklin A. Polk, C-M '39
- Richard T. Reminger, C-M '57
- Martin J. Sammon, C-M '61
- Paul S. Sanislo, C-M '61
- John J. Sutula, C-M '53
- Donald P. Traci, C-M '55
- Ronald F. Wayne, C-M '78
- Hon. George W. White, C-M '53
- Robert I. Zashin, C-M '68

Alumni Membership Support Continues

Cleveland-Marshall alumni are proud of their roots and continue to maintain support through membership dues in the Alumni Association. Benefits of alumni membership include a free subscription to *LAW NOTES*, the alumni quarterly; law library privileges; free admission to the Annual Open House; and a substantial discount to continuing legal education seminars sponsored by the Alumni Association. The Association also provides its alumni with class reunions, social events such as the Annual Dinner Dance, Browns Homecoming Party, the Annual Recognition Luncheon and other gatherings, and serves as a source for networking, gathering information or assistance through the alumni office, and locating other alumni.

Membership Chairman **Richard S. Koblentz, '75**, notes with pride that "our alumni are all prominent, successful individuals who view the Alumni

Association as an extension of their law school experience. As alumni, we will always be a part of the Cleveland-Marshall family. Therefore," he notes, "support through membership dues is essential for the Alumni Association and the law school to continue with its goals." He emphasizes that, although each law school experience was different, all alumni share the commonality of a degree from Cleveland-Marshall. "This is why the Alumni Association can serve as a common ground for us all," he says.

"Alumni membership support for 1985-86 is already substantial," reports Koblentz, "but we have a long way to go in order to continue serving our alumni." He says that support from out-of-state alumni is gratifying, especially since the Association has embarked upon a new program, area alumni clubs, and urges all Cleveland-Marshall graduates to join.

CLEVELAND-MARSHALL LAW ALUMNI ASSOCIATION ANNUAL DUES JUNE 1, 1985 - JUNE 1, 1986

Please return to the Cleveland-Marshall Law Alumni Association, 1801 Euclid Avenue, Cleveland, Ohio 44115, with your check payable to the Cleveland-Marshall Law Alumni Association. Membership dues are tax deductible and provide good fellowship and good contacts. We hope you will join us!

ANNUAL DUES

- _____ General Membership\$40.00
 - _____ 1982 Graduate.....\$20.00
 - _____ 1983 Graduate.....\$15.00
 - _____ 1984 Graduate.....\$10.00
 - _____ 1985 Graduate.....\$ 5.00
 - _____ Friend of Alumni Assoc.\$40.00
 - _____ Law Review (Vol. 34)\$15.00
- (For dues paying members)

I WISH TO MAKE AN ADDITIONAL CONTRIBUTION TO:

_____ Law Alumni Association School Endowment Fund ... \$_____

_____ Enclosed is my check totaling \$_____ Class Of _____ Phone: _____
Area code

_____ Please use my Mastercard No. _____ Expiration date _____

_____ Please use my Visa No. _____ Expiration date _____

(Name and address, if different than that on this dues statement) _____

OTHER CATEGORIES

- _____ *Life Membership.....\$1,000
(Can be payable \$250.00 per year for 4 years.) Name on permanent plaque in Law College Atrium, Alumni Association Showcase upon receipt of full payment. Free, personalized paperweight upon receipt of first payment.
- _____ *Sustaining Membership\$100.00
- _____ My firm or company will match my contributions to support the Cleveland-Marshall College of Law: \$_____
- _____ Enclosed is the Educational Matching Gift Check or form.
- _____ Please forward form.

*Law Review Subscription is included at no additional charge.

Large Attendance at the 1985 Annual Recognition Luncheon

Each year the Alumni Association recognizes outstanding alumni for their contributions to society, to the legal profession, and for their accomplishments worthy of recognition by the Association. On April 12, the **Honorable John T. Patton, '58** and **Franklin A. Polk, '39**, were honored. Alumni, friends, and members of the legal community gathered together to hear each of the honorees at The Hollenden House in Cleveland.

Judge Patton traced the law school's humble beginnings on Ontario Street and Lakeside Avenue to the prestigious institution that Cleveland-Marshall is today. He said that without the night law school, he, along with many leaders in business, corporations, and the legal profession would not be where they are today. "The night law school is one of Cleveland-Marshall's most important contributions to the community, even today," he said. "Cleveland-Marshall has always made itself available to the underprivileged, disadvantaged and middle-class America. As a result, it has prepared so many to accomplish their goals in the true American dream." Noting that Cleveland-Marshall has produced more judges on the federal, state and local



The Honorable John T. Patton and Franklin A. Polk congratulate each other at the Annual Recognition Luncheon.

levels in the greater Cleveland area than other law schools, he told the group that the law school continues to provide our community with outstanding leadership. "I am proud to be a part of Cleveland-Marshall," Judge Patton said.

Franklin A. Polk paid tribute to the many attorneys he had known and

trained during his practice and alluded to his years of service to the law school and to the Alumni Association. He said that the education he received in law school and the many activities he was involved with all contributed to the success he enjoys today.

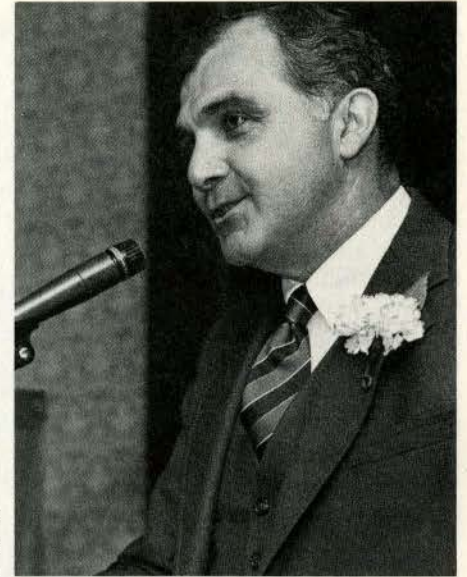
Dean Bogomolny addressed the group on the state of the law school, including enrollment and the status of the night school program. **Chief Justice Frank D. Celebrezze, '56**, told the group that he is indebted to Cleveland-Marshall for the educational opportunity he received and he recognized the outstanding caliber of the two honorees. **Terrence L. Brennan, '78**, said that this year's luncheon was one of the most successful as he thanked the crowd of 440 in attendance. Alumni President **Leon M. Plevin, '57**, thanked Mr. Brennan for the timely fashion in which the luncheon was run. He told the group that Mayor Voinovich had dedicated the day to Cleveland-Marshall's two honorees and presented each of them with resolutions from the Mayor and Commissioner Mary Boyle. "Next year," he said, "we will need to enlarge our facilities."



A crowd of 440 join in honoring Judge Patton and Franklin Polk.



Father Allen F. Bruening, C-M '79, and Dean Bogomolny chat as a well-wisher congratulates Franklin Polk and his wife Julia.



Chief Justice Frank D. Celebrezze addresses the group.



A plaque from the Alumni Association is handed to Mr. Polk with congratulations from Alumni President Leon M. Plevin.



Law students enjoy meeting alumni as they assist with registration. From left: Daryl B. Magdid, Kawsia Maslowski, Todd Andersen, Pat Laran, and Jim Tavens. Not pictured: Nancy L. Hansbrough, Ross Paul, Anne Lukas-Jones.



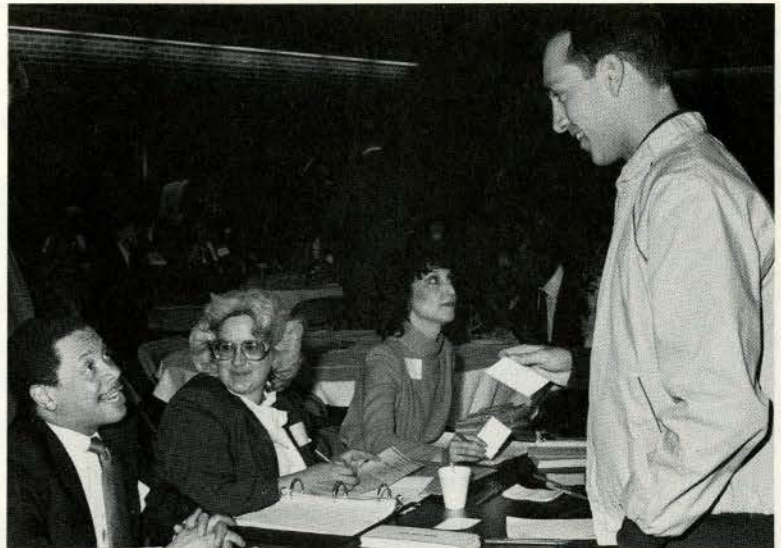
Judge Patton receives congratulations from his son-in-law as luncheon chairman Terrence L. Brennan looks on.



Besides congratulations from the Alumni Association, President Leon M. Plevin informs Judge Patton that the Mayor and Commissioner Mary Boyle send their congratulations to the honorees.

The Annual Open House

This year's Annual Open House, held at the law school on June 13th, was attended by alumni, faculty, students and staff. Admission is simply membership in the Alumni Association, which allows those in attendance to participate in the Annual meeting, election of officers, a cocktail buffet, and to enjoy good company with others in the Cleveland-Marshall family. It is also an opportunity to mingle with the students for employment possibilities and to welcome Cleveland-Marshall's newest graduates into the profession. This year's major event was enjoyed by all who attended.



Law students aid in registration at the Annual Open House. From left: James Thurston, Sheila Reinhard, and Anne Lukas-Jones sign new graduates and other alumni up for Alumni membership. Not pictured are Allyson Huegel, Michael Brown, and Jeff Temis, who also helped.



President Plevin, 1984-85, hands the gavel to newly elected President Susan L. Gragel, 1985-86. He warned her of the work—and the pleasures—involved in the presidency.



Dean Bogomolny thanks Immediate Past President Leon M. Plevin for alumni support during his Presidency.



Leon M. Plevin, President, 1985-85 and former membership chairman, proudly displays the Life Membership plaque which is on permanent display in the law school atrium, Alumni Association showcase.



Leo E. Rossmann congratulates an alumna on receiving one of the many door prizes at the Annual Open House.

Treasurer Retires

After 45 years of dedicated service to the Cleveland-Marshall Law Alumni Association, Treasurer Leo E. Rossmann, '29, retired on his 80th birthday. "Being Treasurer was like a full-time job at times," Rossmann told members of the Board of Trustees as he reviewed a bit of the Association's history.

"Back in 1929, the Alumni Association was just a group of devoted individuals who met periodically without organization," he said. An organized group was formed in 1942, with Ellis R. Diehm as its first official President. "It was in 1955-56, the year I was President, that Association dues were initiated. This was the first time attendance at the Annual Open House was by dues only," he said. This tradition, with election of officers at the annual meeting, is an event alumni look forward to even today, thirty years later.

Rossmann said he has watched funds through membership dues build up over the years, which has enabled the Association to give back to its alumni and to continue support of the law school. "The Alumni Association has established itself as a viable organization in support of the law school," he said. "We now have an office, a coordinator, and finances. We have established Alumni Chapters out of the Cleveland area, annual seminars with outstanding speakers, class reunions, student scholarship, and many events where our alumni can proudly mingle with each other and the legal commu-



Treasurer Leo E. Rossmann, '29, receives a plaque from board member Robert I. Zashin, '68, in appreciation for his years of service to the Alumni Association.

nity at large."

Rossmann said that he attended law school at night while working at Warner & Swasey during the day. He was married and had to support a family at the same time. "I felt I owed a debt to the night school and so I chose to devote years of service to improvement of the Alumni Association." He notes that he has always been concerned about the Association's welfare and, as its Treasurer, paid all bills promptly. "I leave the treasury with substantial funds to continue to further the positive goals of the Alumni Association," he said.

"Involvement gave me the satisfac-

tion of seeing the Alumni Association grow and helping to fulfill its purpose," said Rossmann. "Now, at age 80, I will travel with my wife of 45 years, Miriam, and continue to arbitrate cases at Common Pleas Court." However, if you happen to see Mr. Rossmann at any time, be prepared to know your membership status, for he said that he will continue to encourage Alumni Association membership. "A nominal fee for phenomenal gratification," he says.

This year, the Board of Trustees elected Leo E. Rossmann, '29, Treasurer Emeritus. The Alumni Association is grateful for his years of service.

Motion for Reconsideration

Continued from page 7

the trial docket or motion docket. The court speaks only through its journal, and a judgment or order is not regarded as having been rendered until it is reduced to a journal entry which is journalized. . . .

"When the pronouncement of a judge declares an intent to enter an order upon the court journal, it becomes the duty of the judge to make his pronouncement effective by journalization, unless in the exercise of a sound judicial discretion such intent is altered by him.

"We hold that oral pronouncements made by the Trial Court are subject to motions for Reconsideration. See *Pitts v. Dept. of Transportation* (1981, 67 Ohio St.2d 378, 379, footnote 1. . . ."

Gill v. Justice, unreported No. 81AP-413 (10th Dist. App., Franklin Cty., Oct. 22, 1981), involved a written decision overruling defendant's motion for summary judgment. Before a journal entry was filed, defendant moved for reconsideration. Upon reconsideration, the court granted the defendant's motion for summary judgment, and dismissed the plaintiff's action. Upon appeal, the Court of Appeals stated:

"The decision . . . by which the trial

court overruled defendant's motion for summary judgment, was not a final order and was subject to be reconsidered by the trial court. While there is no evidence [sic] rule expressly providing for a motion for reconsideration such as that filed by defendant, it is well settled that a trial court has considerable discretion in deciding whether to reconsider its decision prior to the filing of a journal entry or judgment.

"With respect to plaintiff's argument that the motion for reconsideration was 'procedurally incorrect,' we restate our observation that the Civil Rules do not provide for the filing of a motion for

Continued on page 20

Dinner Dance An Outstanding Event

The Alumni Association's 2nd Annual Dinner Dance was held on Saturday, March 30, at The Hermit Club. Alumni and guests were invited to join Chairman **Richard T. Reminger, '57**, for an evening of "fun, fellowship, entertainment and dancing." The event proved to be all that and more.

The Hermit Club, nestled in the heart of Cleveland, yet hidden from the hubbub of city life, provided a perfect setting for Cleveland-Marshall's distinguished alumni. As a quaint private club founded in 1904, it held all the charm of an au-

thentic English Tudor.

The Club was filled to capacity with attorneys, judges, accountants, stock brokers, insurance agents, realtors, executives, and other members of the Cleveland-Marshall family and their guests. Dancing to "The Sounds of Music," an eight-piece band, provided the finishing touches to a beautiful alumni event.

All who attended are anxiously awaiting the Association's next Dinner Dance, to be held in February, 1986.



Cleveland-Marshall alumni enjoy . . . Good food . . .



Just a glimpse of the many alumni who attended the 2nd Annual Dinner Dance at the Hermit Club.

. . . Great fun



. . . And good company



. . . including, from left, Chief Justice Frank D. Celebrezze, '56, The Honorable John M. Manos, '50, and The Honorable John T. Patton, '58.



"It's all his fault," Mr. Reminger tells Judge Manos, as he explains how Alumni President Leon M. Plevin appointed him Chairman of the 2nd Annual Dinner Dance.

Alumni Chapters Meet

In keeping with the Cleveland-Marshall Law Alumni Association's commitment to lend support to alumni outside of the Cleveland area, the Alumni Association has been working with a core committee in establishing a Columbus chapter.

The following Cleveland-Marshall alumni comprise the executive committee: **Karen B. Leizman, '83**, assistant attorney general for the State of Ohio in the State Departments Section and a member of the Governor's Commission on Child Support; **Vincent T. Lombardo, '81**, assistant attorney general for the State of Ohio in the Civil Rights Section; and **Marc A. Sigal, '83**, staff attorney, Computer Services Division of the Ohio Department of Administrative Services.

On Thursday, October 31st, the Columbus Alumni Chapter invites all interested alumni for cocktails at The Clock Restaurant, 161 North High Street, Columbus, Ohio, from 5:30-7:30 p.m. **Attorney General Anthony J. Celebrezze, Jr., '73**, will address the group. Dean Robert L. Bogomolny will represent the law school.

For further information contact Karen Leizman at 614-466-8600; Vincent T. Lombardo at 614-466-7900; or the Alumni office at 216-687-2368.

On May 31st, **Congressman Edward Feighan** and Dean Robert L. Bogomolny hosted a reception for all Cleveland-Marshall alumni in the Washington, D.C. area. The event was held on the House side of the Capital Building and was attended by approximately thirty-five Cleveland-Marshall graduates. The party, co-sponsored by the Alumni Association and the College of Law, is part of a joint effort to foster stronger ties with our alumni.

Dean Bogomolny discussed the many changes at the law school over the last several years and his expectations for the future of legal education and Cleveland-Marshall. Although Congressman Feighan was unable to attend the reception, he and his staff deserve special thanks for all of their help in making this a successful evening.



1985-86 Alumni President Susan L. Gragel '80, chats with Washington area alumni at the reception.



NBC newscaster Carl L. Stern, '66, chats with Dean Bogomolny at the reception. Among other notables who attended the reception were Colonel T. J. Grant, '35; Rhea C. Hegg, '82; Charles Reusch, '67; and Joseph Vukovich, Jr., '66

SEMINAR ON HANDLING TAX CONTROVERSIES...A-Z

Sponsored by
 The Cleveland-Marshall Law Alumni Association Continuing Education Committee
 in cooperation with the
 Division of Continuing Education, Cleveland State University
 DANIEL R. McCARTHY, '54, Chairman

PROGRAM CONTENT

- Practitioner's role in various types of audits
 - Procedures to get your case to the IRS Appellate Division, Tax Court, U.S. Claims Court or Federal District Court
 - Dealing with IRS assessment, interest and penalties
 - Position of the IRS in the enforcement of collection
 - How the IRS coordinates with other federal agencies
 - Currency transfer reporting requirements and currency law violations
 - Government's position regarding criminal tax investigations and criminal prosecution
 - How to handle collection cases subsequent to audit and cases without audit
 - Role of tax practitioner in criminal tax investigations
 - The Court's view in handling civil and criminal tax cases
- WHO SHOULD ATTEND:** Attorneys, Accountants, CPA's, Financial Managers and other tax professionals

SEMINAR FACULTY

- | | |
|--|---|
| <p>Honorable, John M. Manos
 Judge, U.S. District Court</p> <p>Buckley D. Sowards
 District Counsel, Internal Revenue Service</p> <p>Patricia J. Hallick
 Appeals Officer, Internal Revenue Service</p> <p>Leonard L. Kleinman
 Vice Chairman, American Shipbuilding Co.</p> <p>Sheldon M. Sager
 Partner, McCarthy, Lebit, Crystal & Haiman</p> <p>Daniel R. McCarthy
 Senior Partner,
 McCarthy, Lebit, Crystal & Haiman</p> | <p>Jack G. Petrie
 Assistant District Director, Cleveland Office
 Internal Revenue Service</p> <p>John M. Siegel
 Assistant U.S. Attorney,
 U.S. Department of Justice</p> <p>Edward A. Lebit
 Managing Partner,
 McCarthy, Lebit, Crystal & Haiman</p> <p>David Margolis
 Chief, Organized Crime and Racketeering
 Section, Criminal Division, U.S.
 Department of Justice</p> |
|--|---|



SEMINAR HIGHLIGHT—A noon Luncheon held in the atrium of the Cleveland-Marshall College of Law features Mr. David Margolis, Chief of the Organized Crime and Racketeering Section, Criminal Division of the U.S. Justice Department, who will provide unique insight into the criminal tax area. A graduate of Harvard Law School, Mr. Margolis has been with the Justice Department since 1969, having served with the STRIKE FORCE of the Organized Crime Section in Boston, Cleveland and Brooklyn.

SEMINAR INFORMATION

- Course:** How to Handle Tax
Title: Controversies from A-Z
Date: Thursday, October 24, 1985
Time: 8:45 a.m. to 4:30 p.m.
 (Check-in and coffee at 8:15 a.m.)
- Location:** Cleveland State University,
 Cleveland-Marshall College
 of Law, Room 101, 1801
 Euclid Avenue, at East 18th
 Street, Cleveland, Ohio
 44115
- Fee:** \$70.00 Cleveland-Marshall
 Law Alumni Assn. Members
 \$90.00 Non-members
 Fees include all program
 materials, lunch, coffee
 breaks, and parking permit
- Parking:** Prepaid campus parking
 permits will be mailed to all
 advance registrations
- CEU's:** Tax Courses are accredited
 by Ohio Society of Certified
 Public Accountants.
 Attendance will also result in
 credits toward the Ohio State
 Bar Association College
 membership.

REGISTRATION FORM

Enclosed is my check payable to the
 Cleveland-Marshall Law Alumni
 Association
 in the amount of \$ _____

Please mail seminar fee directly to the
 Cleveland-Marshall Law Alumni Association
 1801 Euclid Avenue, Cleveland, Ohio 44115

- \$70.00 Alumni Association Member
 \$90.00 Non-member

Name _____
 Employer _____ Suite _____
 Address _____
 City _____ State _____ Zip _____
 Telephone No. () _____ Social Security No. _____

*Call (216) 687-2368 to discuss Alumni Association membership or for further information.

Class Reunions Popular...

Members of the Classes of 1980, 1975, 1970, 1965, 1960, 1955, 1950, 1945, 1940, 1935 and 1930 reunited on Saturday, September 14 for a dinner and dance at the University Club in Cleveland. Class reunion chairpersons **Steven H. Slive, '76**, and **Bessie Cassaro, '65**, joined an exciting blend of alumni and trustees who attended this event.

Class committee chairpersons were:

1980: John Joseph Cartellone, Susan Gragel, Chris Guarnieri, Ann Mannen, Howard Mishkind, Gerald Walton

1975: Richard Agopian, Michael Courtney, Jose Feliciano, Steven Froeberg, Richard Koblentz, James Szaller, David Lawrence.

1970: Kenneth Bossin, Loretta Coyne, Robert Hussey, Hon. James McMonagle.

1965: Bessie Cassaro

1960: Hon. Floyd Harris, Don Iler, Pa-

trick Moran, Edward Patton, Dale Powers, Milton Schulman, Hon. James D. Sweeney, Hon. Hans R. Veit

1955: Joseph Bartunek, Hon. Robert Feighan, Hon. Clarence L. Gaines, Charles Gallo, Irene Kotulic, Donald Traci, Hon. George W. White

1950: Sam Bartlo, Stanley Fisher, Walter A. Hoag, Hon. Richard A. Hoose, Hon. Leo A. Jackson, Charles Lazarro, Hon. Ann McManamon, Hon. John M. Manos

1935: Carl Mintz

Peter W. Moizuk, '55, has sent the following challenge to alumni in these classes: "Monday, June 17th marked the 30th anniversary of the 1955 graduating class. What would be more appropriate than to make a donation at this time." He urges alumni from the above classes to make their donations to the Cleveland-Marshall Law Alumni Asso-

ciation and mail to the same at 1801 Euclid Avenue, Cleveland, Ohio 44115. For further information call the Alumni office at 216-687-2368.

Alumni Coordinator Leaves Post

Alumni Coordinator Sandi Oppenheim leaves her position after serving the Alumni Association for over three years. "Working with the Cleveland-Marshall Alumni has been a most rewarding experience," she says. "I wish the Board continued success in building upon the foundation thus begun, and I thank the many alumni who, through their enthusiasm, made my position here so fulfilling."

Penalty Enhancement

Continued from page 6

fication is being proven a trial or at the sentencing hearing.

To provide the first two conditions of the indefinite sentence/violence specification or the gun specification, the prosecutor will be required to present evidence that the defendant caused physical harm to some person or made an actual threat of physical harm with a deadly weapon or had a firearm on or about his person or under his control during the commission of the offense. In regard to the gun specification, defense counsel should note the definition of "possession" in R.C. 2901.21(C) which requires that the defendant have knowledge of the existence of the firearm. If defense counsel challenges the existence of these specifications, the prosecutor will be required to present testimony as to the existence of the elements of these specifications. Of course, defense counsel would have the right to cross-examine the State's witnesses and the right to present his

own witnesses. This procedure must be followed, even though the presentation of evidence takes place at the sentencing hearing under R.C. 2941.143. Failure to prove the elements of these penalty enhancement specifications by proof beyond a reasonable doubt will result in the Court imposing the lesser penalty. See *State v. Dawson, supra*.

R.C., Sections 2945.75(B), 2941.142, and 2941.143 state the method for proving a prior conviction or plea of guilty for purposes of the prior aggravated felony specification and the prior conviction of an offense of violence conviction under the indefinite sentence/violence specification. These sections provide as follows:

A certified copy of the entry of judgment in such prior conviction together with evidence sufficient to identify the defendant named in the entry as the offender in the case at bar is sufficient to prove the prior conviction.

However, Sixth Amendment considerations will also require the prosecutor to prove that the prior conviction was not uncounseled. See *State v. Elling* (1983), 11 Ohio Misc. 2d 13; *State v. Gerwin* (1982), 69 Ohio St. 2d 488. The prosecutor may find it rather difficult to prove that the prior conviction was not uncounseled, as proof of the advise of counsel or of a knowing and intelligent waiver of counsel may not be presumed from a silent record. See *Carnley v. Cochran* (1962), 369 U.S. 506.

Evidence Rule 609(B) provides a ten-year limit on the age of a prior conviction which can be used to impeach a witness. This provision is not applicable to penalty enhancement specifications. Thus, the State may use a prior conviction of an offense of violence or a prior conviction of an offense which is substantially equivalent to an aggravated felony. No matter how old the prior conviction is, to enhance the penalty.

Alumni Happenings...

■ CLASS OF '29

LEO E. ROSSMANN was designated treasurer emeritus of the Cleveland-Marshall Law Alumni Association in June after serving as the Association's treasurer for 45 years.

■ CLASS OF '35

MARGARET TROUGHTON LECHOWICK celebrated her 50th wedding anniversary recently. She happily reports that among her "gifts" were the pride in her children: son *PAUL, C-M '74*, and daughter *Monica*, who graduated from St. Mary's University Law School, opened joint law offices in San Antonio, Texas on April 3rd. Last June, another son, Judge Vincent T. Lechowick, was re-elected to a six year term in California.

■ CLASS OF '50

JULIUS "JAN" JANCIN JR., patent counsel for the IBM Corporation, Washington, D.C., became chairman of the American Bar Association Section of Patent, Trademark and Copyright Law in July for a one-year term. *WILLIAM M. LINSENMANN* retired as senior vice president of the Ohio Casualty Insurance Company in 1984. *MARVIN P. SCHATZ* is a newly elected trustee of the Greater Cleveland Health Association.

■ CLASS OF '52

ROBERT M. RHOADES has retired and resides in Hilton Head Island, South Carolina.

■ CLASS OF '55

DONALD TRACI has been elected president-elect of the Bar Association of Greater Cleveland for 1985-86.

■ CLASS OF '60

MILTON SCHULMAN is a real estate attorney practicing law for the past 25 years.

NICHOLAS J. ZIEGLER, who resides in Deerfield Beach, Florida, visited Alaska in June and reports that one of his daughters, a graduate of the University of Florida law school, is now an attorney.

■ CLASS OF '65

MARTIN A. LEVITIN enjoys the pri-

vate practice of law in New York City after 17 years of corporate employment. His daughter, 25, and son, 23, are both in law school while his wife teaches learning disabled children in Scarsdale, where they reside.

■ CLASS OF '68

KENNETH B. SHUMAKER, director of the Central Ohio Legal Aid Society, has joined the staff of the Licking Countian with a legal column entitled "Did You Know."

■ CLASS OF '70

VERONICA M. DEVER is a member of the Supreme Court Task Force on Child Support and resides in Sandusky, Ohio.

JOHN F. PILCH resides in San Diego, California with his wife Judy. They enjoy the golf, sunshine, and earthquakes, but miss their Cleveland friends.

JEFFREY A. RICH was appointed by the Ohio Supreme Court to the Ohio Board of Bar Examiners in the spring. *JAY A. RINI* has been employed by the U.S. State Department as an attorney advisor for the past 13 years. He has recently been assigned to the American Embassy in Rome, Italy for the next three years.

EDWARD H. SCHAEFER of Bay Village, Ohio, was recently appointed executive vice president of the Building Industry Association of Cleveland and Suburban Counties, a trade association representing the residential home building industry in Northern Ohio.

■ CLASS OF '71

GUY V. NERREN has joined two other Cleveland-Marshall alumni to form the law firm of Nerren, Hagan & Farrell in Cleveland.

■ CLASS OF '72

BASIL RUSSO was sworn in as judge of the Cuyahoga County Court of Common Pleas in February.

■ CLASS OF '74

MICHAEL C. HENNENBERG has recently been elected to the Board of Trustees of the Greater Cleveland Bar

Association. He is also a member of the Steering Committee and Chairman of the Robbery Sub-Task Force of the Task Force on Violent Crime.

PAUL LECHOWICK opened joint law offices with his sister in San Antonio, Texas. He also teaches law at San Antonio College.

JOHN J. O'BLOCK, of Summerville, South Carolina, was recently named controller of that city's Baker Material Handling Corporation.

■ CLASS OF '75

SHELDON N. JACOBS is a staff attorney, office of hearings and appeals with the Social Security Administration, Cleveland, Ohio.

ISHMAEL JAFFREE, a legal services attorney in Mobile, Alabama, challenged a 1981 law authorizing a period of time for meditation or voluntary prayer in the Alabama schools. In June, by a vote of 6-3, the Supreme Court said that such a ruling violated First Amendment prohibitions against government establishment of religion but that a moment of silence could still be provided, allowing students the opportunity to pray if they wished under a law enacted for neutral, non-religious purposes. The ruling represented the first key test of moment-of-silence statutes in 25 states, including Ohio.

RICHARD S. KOBLENTZ and *LYNN A. LAZZARO* were recently elected to the board of the Cuyahoga County Bar. *JUDGE BLAISE C. URBANOWICZ* was appointed to a four-year term on the board of directors of Six County Inc., which provides comprehensive mental health services to nearby communities. He is a probate and juvenile judge representing Guernsey County, Ohio.

■ CLASS OF '76

PATRICK F. ROCHE is the city of Cleveland's chief prosecutor.

STEVEN H. SLIVE was appointed chairman of the Guardian Litem Program of Cuyahoga County which is a program of the Cuyahoga Bar Association's Domestic Relations Court and Juvenile Court of Cuyahoga County.

■ CLASS OF '77

RITA S. FUCHSMAN recently opened her own law office in Chillicothe, Ohio. LAWRENCE H. JAMES is an associate with Crabbe, Brown, Jones, Potts & Schmidt in Columbus, Ohio, specializing in general litigation.

BERNADETTE LARSON opened a new law firm in Ashtabula, Ohio in July handling general cases.

K. J. MONTGOMERY had a baby boy in February. She is assistant prosecutor for the city of Shaker Heights, Ohio.

DAVID PARIS and MICHELLE JOHNSON PARIS, '84, had a baby girl, Laureen, on April 2nd.

■ CLASS OF '78

LINDA BATTISTI joined ATTORNEY GENERAL ANTHONY CELEBREZZE'S, '73, office in Columbus in March. Prior to this appointment she was in private practice.

MAUREEN A. GRAVENS has joined the law firm of Reid, Johnson, Downes, Andrachik & Webster in Cleveland, Ohio.

ALAN LEVINE and his wife Holly became proud parents of their first child, Mindy Beth, on October 17, 1984.

LINDA WEISS is an on-site representative for JMB Property Management Corporation in Cleveland, Ohio, owner of National City Center.

FARRIS WILLIAMS was recently appointed to the Ohio Public Defender Commission by Ohio Supreme Court Justice FRANK D. CELEBREEZE, '56.

MARILYN R. COVER, of Portland, Oregon, was appointed to the Commission on Bicentennial of the Constitution by the Governor of Oregon in May. She is an attorney and legal educator at Lewis and Clark College where she directs the Oregon Law-Related Education Project. She has also directed the Street Law Project at the law school since 1979.

■ CLASS OF '79

MICHAEL MARK MICHALKO of Hinckley, Ohio, was appointed chief legal counsel of the California lottery by the governor in May. He worked his way through law school as an Ohio Lottery clerk and gained a reputation for drafting the legal work that enabled the Ohio Lottery to become the first state

lottery to require computerized equipment.

MARIA E. QUINN and PATRICK QUINN, '82, became the proud parents of their first son, Robert John, on June 5. They also have a daughter, Colleen.

■ CLASS OF '80

MARK GREENFIELD and DIAN SMILANICK, '81, were married on April 27th and reside in University Heights, Ohio. He is an associate with Levine & Associates practicing real estate law. She practices probate law with Jerry Federman.

ALLAN THOMPSON has taken a position with the Bankers Life Company as a financial planner.

■ CLASS OF '81

DENISE J. KNECHT was elected 37th president of the Women's City Club of Cleveland in June. Besides practicing law, she is the publisher of A Pocket Guide to Cleveland and vice president of the Women's Law Fund.



F. SCOTT WILSON has joined the corporate staff as attorney-aircraft contracts of British Aerospace, Inc., Washington, D.C.

■ CLASS OF '83

PAUL BRICKNER, an administrative law judge with the U.S. Department of Health and Human Services in Cleveland, has published a book review of Brandeis and Frankfurter: A Dual Biography by Leonard Baker in 60 Notre Dame Law Review 621-627 (1985), and is on temporary detail to the U.S. Department of Labor.

MARYE. PAPCKE and PAULA CASTLE HARRIS have formed the partnership of Harris & Papcke in Cleveland, Ohio, concentrating in personal injury, domestic relations, and small business law.

PETER W. MARMAROS joined the firm of Reminger & Reminger in May. CHARLES D. OSMOND of Shaker Heights was promoted to trust business development officer in the Personal Financial Services Department at Hun-

tington National Bank in June.

■ CLASS OF '84

PETER BERSON is assistant district attorney, Government Fraud Division, in Philadelphia, Pennsylvania.

TAMAR G. KRAVITZ is in private practice associated with SHELDON G. RABB, '62.

■ CLASS OF '85

WILLIAM FOLGER was recently hired as athletic director by the Huron Board of Education. He will also teach American History at Huron High School.

News For Alumni Happenings

Name: _____

Class of: _____

Address: _____

Phone: _____

News or Comments, Hobbies or Interests:

Please mail to the Cleveland Marshall Law Alumni Association, 1801 Euclid Avenue, Cleveland, Ohio 44115.

The Women's Law Caucus invites all Alumni to mingle at a Wine and Cheese Cocktail Hour beginning at 5:00 p.m., on December 5 in the Law School Atrium.

Motion for Reconsideration

Continued from page 13

reconsideration. However, trial courts, in the exercise of their discretion, do consider such motions when filed prior to the filing of a judgment in the case. . . . The appropriate course of action for plaintiff to have taken upon receipt of defendant's motion for reconsideration was to have filed a memorandum contra the motion for reconsideration, which memorandum could have raised procedural and substantive issues."

See also *Busy Beaver Building Centers, Inc. v. Musgrave*, unreported No. 82AP-510 (10th Dist. App., Franklin Cty., Jan. 25, 1983), which involved a written decision granting summary judgment and instructing prevailing counsel to prepare a journal entry to that effect. Before this journal entry was filed, counsel for the losing party moved for reconsideration on the ground of surprise, claiming that he was never served with a copy of the motion for summary judgment. Upon reconsideration, the trial court adhered to its previous decision, and entered summary judgment. On appeal, the Court of Appeals affirmed, but recognized that a motion for reconsideration would lie in these circumstances.

In *Buckeye Federal Savings & Loan Association V. Green*, unreported No. 81AP-785 (10th Dist. App., Franklin Cty., Mar. 25, 1982), the trial court overruled plaintiff's motion for summary judgment and entered the decision on the court's half-sheet. Plaintiff moved for reconsideration. The court stayed its decision and scheduled a hearing. After rehearing, and upon reconsideration, the court granted the plaintiff's motion for summary judgment. On appeal, the Court of Appeals recognized that a motion for reconsideration would lie in these circumstances. And see *Nold v. Worthington Hills Country Club*, unreported No. 79AP-757 (10th Dist. App., Franklin Cty., Dec. 6, 1979), which also involved a motion for reconsideration directed to an entry on the court's half-sheet.

But even though a motion for reconsideration can be directed to a decision announced, it does not follow that it should be. It should not be made if it simply repeats points that have already

been made and rejected. As Kent puts it:

"We tend to look on these motions as containing the implicit message—sometimes it is quite explicit—that an egregiously erroneous decision has been made and the Court is being given an opportunity to correct it. The briefs accompanying these motions usually restate, with a little more passion, the arguments that have already been rejected." See Kent, *Odds and Ends*, 49 CLEVELAND BAR JOURNAL 280 (No. 11, Sep. 1978).

When should the motion be made? Because the motion is essentially open-ended in that there are no prescribed grounds for it, it is impossible to give a definite answer to this question. A general guide can be found in paragraph 2 of the syllabus of *Matthews v. Matthews* (Franklin Cty. 1981), 5 Ohio App.3d 140, 5 Ohio Bar Rpts. 320, 450 N.E.2d 278, where it is said:

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. (App. R. 26, construed.)"

This test will have equal application to the motion for reconsideration in the trial court.

Of course, as the decisions in *McGee* and *Busy Beaver* indicate, grounds for the motion for reconsideration may be "borrowed" from Civil Rules 59 and 60(B).

In sum, while there are no prescribed grounds for the motion for reconsideration, and no specific guidelines for its use, it must generally present to the court some fact, some argument, or some legal authority that has not been previously, properly and/or fully considered by the court, or it should ask the court to do something that it did not do, but should have done. If it simply reiterates that which has already been fully and properly considered by the court, it is frivolous, and the making of such a motion should subject the movant's attorney to the imposition of sanctions. See, e.g., Rule 11(G) of the Rules of The Court of Common Pleas, Cuyahoga County.

But the chief risk in directing a motion for reconsideration to a decision announced is not the unlikely risk of being slapped on the hand for frivolity; it is the risk of failing to meet an obligation, or the risk of losing some valuable right, as a consequence of the false sense of security which flows from the making of such a motion.

Above all, it must be remembered that a motion for reconsideration does not in any way stay the proceedings until it is decided by the court, or suspend the time in which other action must be taken or performed.

Suppose, for example, that the defendant moves to dismiss the action for failure to join an indispensable party. After an oral hearing on the motion, the court announces that it is going to deny it. Thereafter, defendant moves for reconsideration of this decision announced. Without ruling on the motion for reconsideration, the court enters an order denying the motion to dismiss. Defendant now has 14 days in which to answer the complaint. See Civil Rule 12(A)(2)(a). The pendency of the motion for reconsideration does not suspend the running of this 14-day time period. *First National Bank of Toledo v. Michaelis*, unreported No. L-81-089 (6th Dist. App., Lucas Cty., Nov. 6, 1981). Therefore, if the defendant does not answer within that 14-day period, or move for an extension of time in which to answer, he will be in default; under these circumstances, he cannot wait until the court expressly rules on his pending motion for reconsideration. See *First National Bank of Toledo, supra*.

The danger is even more acute if the decision announced will ripen into a judgment upon journalization. In this instance, it is the right to appeal from that judgment that is in jeopardy. Suppose that the defendant moves to dismiss for failure to state a claim upon which relief can be granted. After an oral hearing on the motion, the court announces that it is going to grant the motion to dismiss. Before this decision is journalized, plaintiff moves for reconsideration. Thereafter, the court enters an order granting the motion to dismiss, and dismissing the action. Some 40 days later, it enters a second order denying the motion for reconsideration. The plaintiff promptly appeals

from the order granting the motion to dismiss. How will he fare on appeal? His appeal will be dismissed as untimely. As it is said in *Carr v. Fritz Baumann & Son, Inc.*, unreported No. 80AP-113 (10th Dist. App., Franklin Cty., June 5, 1980):

"App. R. 4(A) requires that in a civil case the notice of appeal, required by App. R. 3, shall be filed with the clerk of the trial court within 30 days of the date of the entry of the judgment, or order, appealed from. Unless the notice of appeal is filed within the perimeter of this rule the appellate court has no jurisdiction in which to act. App. R. 4(B) specifically provides that the court may not enlarge or reduce the time for filing a notice of appeal. App. R. 4 provides for only two motions which, if timely made, suspends the running of the time for the filing of the notice of appeal. The first is for the filing of a motion for judgment notwithstanding the verdict under Civ. R. 50(B), and for the filing of a motion for a new trial under Civ. R. 59. Plaintiff's motion for reconsideration . . . did not toll the time for the filing of the notice of appeal and cannot be used as a substitute for a motion for judgment notwithstanding the verdict, or for a motion for a new trial. See *Kauder v. Kauder* (1974), 38 Ohio St.2d 265.

"Although the results of this decision may be harsh for the plaintiff, this court has no other alternative but to sustain the motion to dismiss plaintiff's appeal filed by defendant . . . for the reason that the court lacks subject matter jurisdiction over this appeal."

A slight variation of the above hypothetical will emphasize the danger of using a motion for reconsideration without careful consideration of all the options available. Suppose that after a trial on the merits to the court sitting without a jury, the judge announces that he is going to find for the defendant. Before that decision is journalized, the plaintiff moves for reconsideration on the ground that the decision is against the manifest weight of the evidence and contrary to law. Without ruling on the motion for reconsideration, the court enters judgment for the defendant. Forty days thereafter, the court enters a second order overruling the motion for reconsideration. The plaintiff promptly appeals from the order

granting judgment for the defendant. What result? The same as in *Carr, supra*; the untimely appeal must be dismissed for lack of subject matter jurisdiction in the appellate court. See PERSONAL INJURY LITIGATION IN OHIO, Chapter 31, Section 31.10, pp. 31.08-31.09 (1984).

But a motion for new trial can be made after a decision announced but before entry of a judgment. *State v. Huntsman* (1969), 18 Ohio St.2d 206; *Latimer v. Morris* (1971), 27 Ohio App.2d 66. In the situation described above, the grounds for the motion for reconsideration are also grounds for a new trial. See Civil Rule 59(A)(6) and (7). Thus, the plaintiff could have moved for a new trial rather than for reconsideration, and had he done so, the motion for new trial would have suspended the time for filing the notice of appeal from the judgment for the defendant until such time as the court ruled on the motion for new trial. *Scales v. Progressive Builders, Inc.*, unreported No. 44597 (8th Dist. App., Cuyahoga Cty., No. 4, 1982).

In this case, could the motion for reconsideration have been considered a motion for a new trial? There is some early authority for the proposition that a motion for reconsideration can be "converted" into a motion for a new trial. See *North Royalton Edn. Assn. v. Bd. of Edn.* (1974), 41 Ohio App.2d 209. However, since the Supreme Court's decision in *William W. Bond, Jr. and Assoc. v. Airway Development Corp.* (1978), 54 Ohio St.2d 363, *Pitts v. Dept. of Transportation* (1981), 67 Ohio St.2d 378, and *State, ex rel. Batten v. Reece* (1982), 70 Ohio St.2d 246, it is generally held that such a conversion is no longer permissible; one sinks or swims by the designation on one's motion. See, e.g., *Stuart v. Stuart*, unreported No. 43515 (8th Dist. App., Cuyahoga Cty., Jan. 21, 1982), where it is said:

"In *Pitts* . . . the Supreme Court held that a motion denominated a motion for reconsideration could not properly be treated as a motion for new trial, regardless of the grounds upon which the motion was made."

Thus, while a motion for reconsideration may be used to obtain the change, modification, suspension or withdrawal of a decision announced, it must

be used with great care, and it should not be used if some other motion, such as a motion for new trial, would properly lie. Further, if a motion for reconsideration is directed to a decision announced, and that decision is thereafter journalized without any ruling on the motion for reconsideration, the party who moved for reconsideration should assume that the motion for reconsideration has been impliedly denied, and he should take whatever steps are necessary to fulfill his obligations under the Civil Rules, and/or protect his rights under the Appellate Rules. On the other hand, as *Pierce v. Pierce, McGee v. McGee, Gill v. Justice*, and *Buckeye Federal Savings & Loan Association v. Green* indicated, the motion for reconsideration is not without its uses; in those cases, the motion for reconsideration was granted, the decision against the movant was withdrawn, and a decision for the movant was entered. Accordingly, the motion for reconsideration should neither be used precipitously as a reflex action to an adverse decision, nor should it be rejected out of hand. Like any other procedural device, it can be used to good effect if it is used with care and consideration.

Bar Breakfast Well Attended

The Law Alumni Association sponsored a Bar Breakfast at the 105th Annual Meeting of the Ohio State Bar Association in Columbus on May 10th. Co-chairmen **Susan L. Gragel, '80**, and **Lawrence James, '77**, reported a great turnout. Members of the Columbus Alumni Chapter and alumni from throughout the state of Ohio attended. Dean Bogomolny addressed the group, who enjoyed good conversation and a chance to become reacquainted.

"Our Bar Breakfast is another event that alumni continue to look forward to," said Susan Gragel. She said that the Association hopes to sponsor a breakfast annually.

Faculty Happenings . . .

Professor J. Patrick Browne's article "Being and Nothingness: Commencement and the Application of Ohio Civil Rules 3(A) and 4(E)" was published at 33 Clev. St. L. Rev. 245 (1984-85).

Professor Robert S. Catz's article "Federal Habeas Corpus and the Death Penalty: The Need for a Preclusion Doctrine Exception" is included in a symposium on the death penalty in the University of California at Davis Law Review.

Associate Professor Michael H. Davis's article "Death of a Salesman's Doctrine: A Critical Look at Trademark Use" appeared at 31 Ga. L. Rev. 1 (1984).

Professor David F. Forte has served this past year as Counselor for Legal Affairs to the United States Mission to the United Nations and on March 5, 1985, he was appointed alternate representative of the United States of America to the United Nations Security Council. In addition, his article "Islam and Politics" was recently published at 11 Teaching Political Science 158 (1984).

Assistant Professor John Makdissi's "Islamic Law Bibliography" will be published in a forthcoming issue of the Law Library Journal. His "Formal Rationality in Islamic and Common Law"

is due to be published in the Cleveland State Law Review.

Professor Alan Miles Ruben was in the Peoples Republic of China during the month of May where he visited universities at Peking, Shanghai, Xian, Nanking, Hanchou and Guanchow and conferred with lawyers in each of these cities with respect to international trade and investment opportunities in China.

Associate Professor Steven H. Steinglass's article "Wrongful Death and Section 1983" will be published in a forthcoming issue of the Indiana Law Journal.

Professor Victor L. Streib's article "Executions Under the Post-Furman Capital Punishment Statutes: The Halting Progression from 'Let's Do It' to 'Hey, There Ain't No Point in Pulling So Tight'" appears at 15 Rutgers L. Journal 443 (1984).

Assistant Professor Forrest B. Weinberg was a principal co-author of "Bankruptcy" in ASSET BASED FINANCING: A TRANSACTIONAL GUIDE (Matthew-Bender 1985) (with Mercer, H.D.).

Assistant Professor Robin L. West's article "Authority, Autonomy and Choice: A Comparison of the Role of Consent in the Jurisprudence of Franz Kafka and Judge Richard Posner" will be published in a forth-



Left to right, Chen Ze Zheng, Director, Shanghai, Lawyers Office for Foreign Economy and Trade and Lei Han, former director, with Professor Ruben.

coming issue of the Harvard Law Review.

Associate Professor Frederic White's book OHIO LANDLORD TENANT LAW was published by Banks-Baldwin in 1984.

Associate Professor James G. Wilson's article "The Morality of Formalism" will be published in a forthcoming issue of the U.C.L.A. Law Review.

Obituaries

ROY DOERING, '18, died recently at the age of 93. He had practiced law with his brother Milan L. and sister Grace, a former assistant law director of Cleveland and the first woman law professor in Ohio who taught at John Marshall Law School.

MAX K. DE WITT, '26, died in March of heart failure. Specializing in probate matters, he enjoyed working with adoptions. He was past president of the Strongsville Savings Bank, a former member of Strongsville City Council, and former justice of the peace.

CHARLES T. MURPHY, '31, recently died of pneumonia at age 81. After his retirement from the Cleveland

court system, where he had worked for 48 years as a bailiff and as a referee, he worked as a part-time referee for the Lyndhurst Municipal Court and continued his law practice. In 1954, he received a public service merit award from the Cuyahoga County Bar Association.

FRANK SPIEGEL, '56, died in July at age 69 in Scottsdale, Arizona, where he had maintained a limited law practice since retiring in 1981. He began his early career as a pharmacist and maintained financial interests in several drugstores after establishing a general law practice in 1956.

ROBERT STARKS, '67, died in June of cancer at age 60. Since graduating law school until he became ill this

year, he worked with Kelley McCann & Livingstone. Prior to that he was a certified public accountant with Coopers Lybrand in New York and Cleveland.

STANLEY MUSZYNSKI, '79, died of a heart attack in March at age 75 at his home in Shaker Heights, Ohio. He escaped from his Polish homeland, where he was known as one of the leading criminal lawyers, the day Hitler's army arrived, immigrated to the United States, and graduated from Cleveland-Marshall as the law school's oldest graduate. He specialized in international law and was with the firm of Yulish-Twohig and Associates in Cleveland.

First Annual Public Interest Law Conference

Ramsey Clark, former U.S. Attorney General and now with the firm of Clark, Wulf, Levine and Peratis will be the keynote speaker at the first annual Midwest Regional Public Interest Conference to be held at Cleveland-Marshall on October 11-12, 1985. Co-sponsored by Cleveland-Marshall and The Housing Advocates, the conference will focus on the responsibility the private bar interest groups and the judiciary have to the practice of public interest law.

Among the panel discussions will be a day-long session devoted to the issue of statutory attorneys fees that permit lawyers to accept cases from clients with little or no resources. Other sessions will feature discussion of recent developments in substantive law, including subjects such as affirmative action, products litigation, fair housing and Section 1983 Tort Actions.

Other speakers include Alexander Polikoff, executive director of the Business and Professional People for the Public Interest and Nan Aron, executive director of the Alliance for Justice, a national coalition of public interest law firms. Aron will discuss current efforts to insure the quality of the federal judiciary and the legislative status of the Equal Access to Justice Act which provides for attorneys' fees to successful litigants against the federal government.

The Conference will also offer area law students the opportunity to learn more about career options within the field of public interest law. Participating firms and agencies may elect to interview interested Cleveland-Marshall students.

A workbook summarizing the conference and containing a bibliography of sources of recent developments in public interest issues will be published. The workbook is free to conferees and available to others at \$20 per copy.

Use the attached coupon to reserve your opportunity to participate. There is only limited space available.

Interscholastic Moot Court Competition Begins

The Moot Court Board of Governors advises that this year's interscholastic activities will begin on October 24, as our team participates in the Benton National Moot Court Competition in Information Law and Privacy held at John Marshall Law School in Chicago.

Alumni and friends are invited to the Annual Fall Moot Court Nite on October 29 at 7:30 p.m. in the Cleveland-Marshall Law School Moot Court Room. Our National's Moot Court team will present oral arguments before a distinguished panel of federal and state judges. The case is of interest to the Cleveland community as it involves the constitutional right of a cable television company to establish a franchise in a city contrary to the limitations imposed by the city. Arguments will be followed by a Wine and Cheese reception in the Atrium.

This year's Board will strive to improve upon the outstanding national reputation earned by prior boards. During the 1984-85 academic year C-M teams defeated schools such as Indiana, Yale, St. John's and William & Mary. C-M won the Benton and the Cardozo Entertainment/Communications Moot Court Competition in New York. Our teams also took the prize for first place brief in these competitions and received the runner-up outstanding advocate in the Cardozo. Another team received the runner-up best brief award at the F. Lee Bailey competition in California.

Professor Steven Werber urges all alumni to join the Board on Moot Court Nite so that you can show your support while watching an outstanding oral argument.

**FIRST ANNUAL
PUBLIC INTEREST LAW CONFERENCE
October 11 and 12, 1985
Cleveland-Marshall College of Law
Cleveland State University, Cleveland, Ohio 44115**

Fee: \$75/two days \$50/one day \$15/student \$20/workbook only

Name: _____ Address: _____

Law Firm/Agency/Law School _____

I am an Attorney _____ Law Instructor _____ Student _____ Other _____

I wish to Attend the Conference _____

I wish to receive more information about the Conference _____

While attending the Conference I would be willing to interview students _____

I only wish to receive the Conference Workbook _____

Enclosed is my check for \$_____ made out to Cleveland State University.

Return to: Ms. Sandra Natran, Cleveland-Marshall College of Law, Cleveland State University, Cleveland, Ohio 44115

We Hope You'll Join Us...

October 11-12, 1985

- Public Interest Law Conference
Cleveland-Marshall College
of Law, Cleveland, Ohio

October 29, 1985

- Moot Court Competition
Cleveland-Marshall College
of Law, Cleveland, Ohio

October 24, 1985

- All day seminar: "Tax
Controversies A-Z"
featuring David Margolis

as the keynote luncheon speaker
Cleveland-Marshall College
of Law, Cleveland, Ohio

December 11, 1985

- All day Domestic Relations Seminar
Cleveland-Marshall College
of Law, Cleveland, Ohio

December 15, 1985

- Women's Law Caucus
Cocktail Party
Cleveland-Marshall College
of Law, Cleveland, Ohio

*For further information call the alumni office at 216-687-2368
or return the tear sheets enclosed in this issue.*

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