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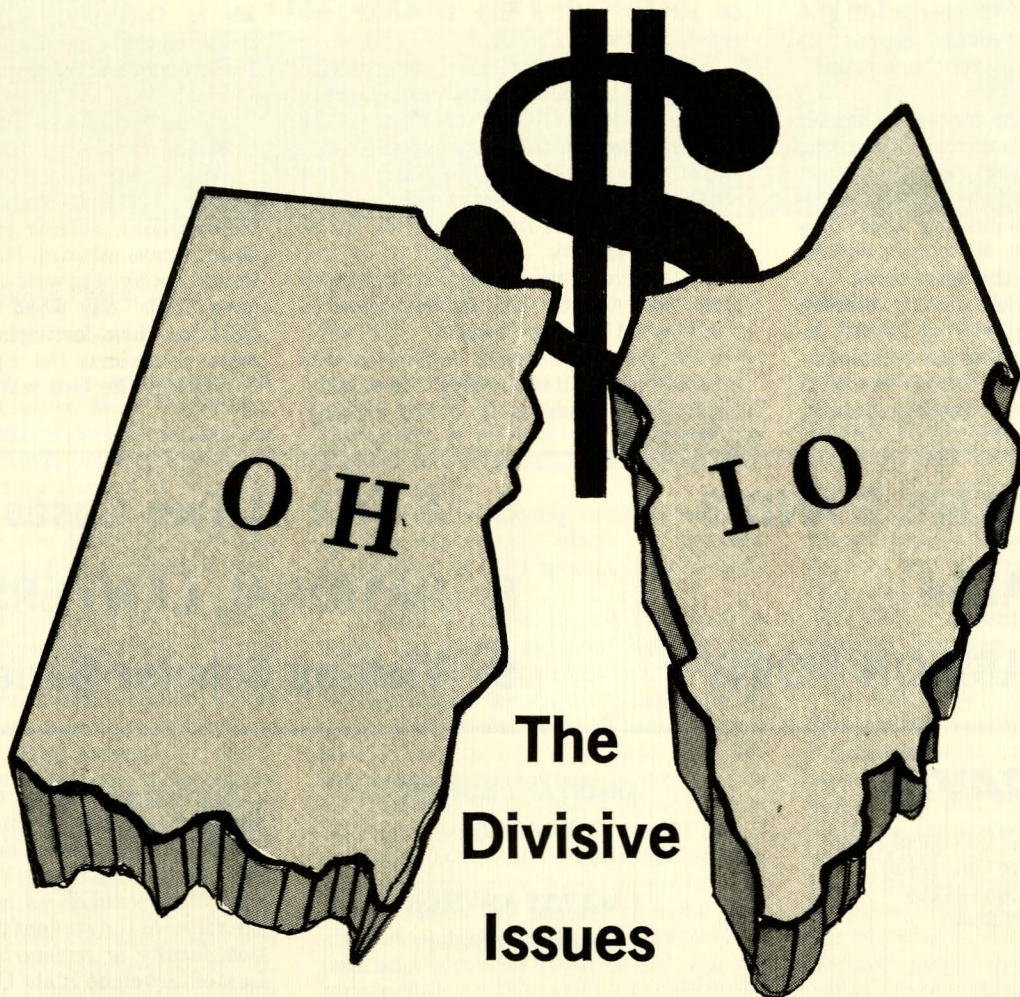
THE GAVEL

Cleveland-Marshall College of Law

Volume 32, Number 2

October/November, 1983

ISSUES 2 AND 3:



COMMENT

When a student enters law school for his first year, one of the many thoughts that enters his mind is "I can't wait to be a third-year student, and have this ordeal behind me."

For the Cleveland-Marshall Class of 1984, that time has finally arrived. But when friends and neighbors ask, "When will you be finished?", the question is not so easily answered. Should we tell them May 11 (the last official day of classes for C-M in the academic year), or June 10 (the date scheduled for CSU commencement exercises)?

While CSU remained on the quarter system, Cleveland-Marshall changed from quarters to semesters beginning this academic year. The change to semesters for C-M certainly has its advantages — at least from the students' perspective. For third year students, there is a three-week lull between final exams and the start of the Ohio Bar Review. This break will give everyone a much-needed chance to regroup before studying for the excruciating bar exam.

The other advantage concerns summer and/or permanent employment. Starting this May, Case Western Reserve, along with many other schools, will not have the extra month for job-hunting that they once had. Students at all schools will be available for work at the same time.

The problem does not directly concern any change to semesters, but rather, involves the date scheduled for commencement exercises with respect to such change. At the present time, graduation



ceremonies have been scheduled for June 10 for all of Cleveland State University. For the main campus, commencement will take place just **two days** after final exams, but C-M is forced to wait an **entire month** to honor its graduates.

From the administrative standpoint, it is much easier to have only one scheduled day for graduation. All planning can be accomplished at one time. And since Cleveland-Marshall is a part of CSU, it should be part of CSU's day to honor the graduates.

When students receive information about graduation, they are encouraged to attend, since it is "their" day. Law students have certainly earned their diplomas, and should attend the affair, as this concludes the entire law school program. But why should we have to wait an entire month just to have "our" day? By the time June 10 arrives, the excitement will be all over, as everyone will be engrossed in studying for the bar exam.

Having commencement on June 10 also creates a problem with respect to employment. Some students do obtain employ-

ment out-of-town, which forces them to make a choice. Since the students are encouraged to attend commencement, should they ask their employer if they can start on June 11, which takes away the "head start" advantage gained by the change to semesters? Or should the graduate come back to Cleveland to attend the affair — which may actually be impossible to do. If the trip cannot be made in one day (for example, the student has a job in California), it would be very awkward asking an employer for time off. The student has been working two weeks at best.

Although students cannot be compelled to attend commencement exercises, it is the day in the academic year specifically set aside for them. Students should attend the ceremony, as their years in school will be long-remembered. But C-M graduates should not have to wait an **entire month** to have "their" day when the remainder of CSU has their festivities after only **two days**. Sometimes the easiest way is not necessarily the best way.

—Lynette Ben

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THE GAVEL

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Cover illustration
by **Steven Mills**



Issues Two & Three: Impact on Ohio Schools

by Laura Fallon

On October 4th a news conference was held here at Cleveland State University, and in seven other locations throughout Ohio. The conferences were sponsored by the Inter-University Council of Ohio, the Ohio Technical and Community Colleges Association, and the Association of Independent Colleges and Universities of Ohio. The purpose of these news conferences was to provide a forum for the dispersion of information regarding Issues 2 & 3, and how these issues will effect Ohio schools.

Issues 2 & 3 are rather complex issues and this reporter urges every voter to consider the various aspects for themselves. This article will concentrate on the adverse impact these issues, if passed, would have on the Ohio educational system.

The four men conducting the news conference represented the entire educational system in Ohio. The elementary and secondary sector was represented by Dr. Henry Kurdziel, Superintendent, South Euclid-Lyndhurst School District and President of the Greater Cleveland School Superintendents Association. Dr. John Koral, Executive Vice President of Cuyahoga Community College was present to represent such two-year public institu-

tions. Dr. Walter Waetjen, President of Cleveland State University represented the public university's standpoint. And, Dr. Neal Malicky, President of Baldwin-Wallace, represented the private sector.

The Issues' impact on Cleveland State University is of primary importance to many of us as students, faculty and staff of the University.

Dr. Waetjen's closing remarks summed up the devastating effect its passage would have on CSU specifically, and Ohio schools in general.

"If Issue 3 passes, we will be forced to make the choice between lighting our buildings and enlightening our students. No educational institution should have to make that choice. No citizen of Ohio should have to live in a state that has mortgaged its educational future.

"If Issue 3 were to pass, I estimate that Cleveland State University would lose a total of \$70.6 million. Of that amount \$9.1 million would be cut from our annual operating budget (24 percent of state subsidy). Another \$60 million of approved capital improvements would be lost, and approximately a million and a half dollars for quality enhancement would be foregone ...

"Cutting \$9.1 million from our operating budget would require choosing from among unpleasant alternatives. We would seriously consider curtailing enrollment, reducing our workforce, terminating

certain academic programs, increasing students fees, curtailing student services, or closing buildings.

"The financial equation is simple: when state subsidy per student decreases, student fees increase ... Student fees provide 41 percent of total instructional costs in Ohio compared to a national average of 31 percent. Only three states, Vermont, New Hampshire, and Pennsylvania are more dependent on student fees (tuition) as a revenue source for funding higher education. Passage of Issue No. 3 will force student fees even higher thereby threatening to deprive some students of a college education."

In terms of area-wide impact, Dr. Waetjen foresees the passage of Issue 3 as further impeding the already halting economic recovery of Northeastern Ohio. He pointed out that our economy is becoming more service-oriented, and that such an economy requires a higher level of education and training. Waetjen goes on to reason that: "A prime factor in locating an industry is the quality of the educational system in the target area. The better the educational institutions the better the personnel to be hired by those industries or businesses. Therefore, the passage of Issue No. 3 threatens educational quality at the same time that it would

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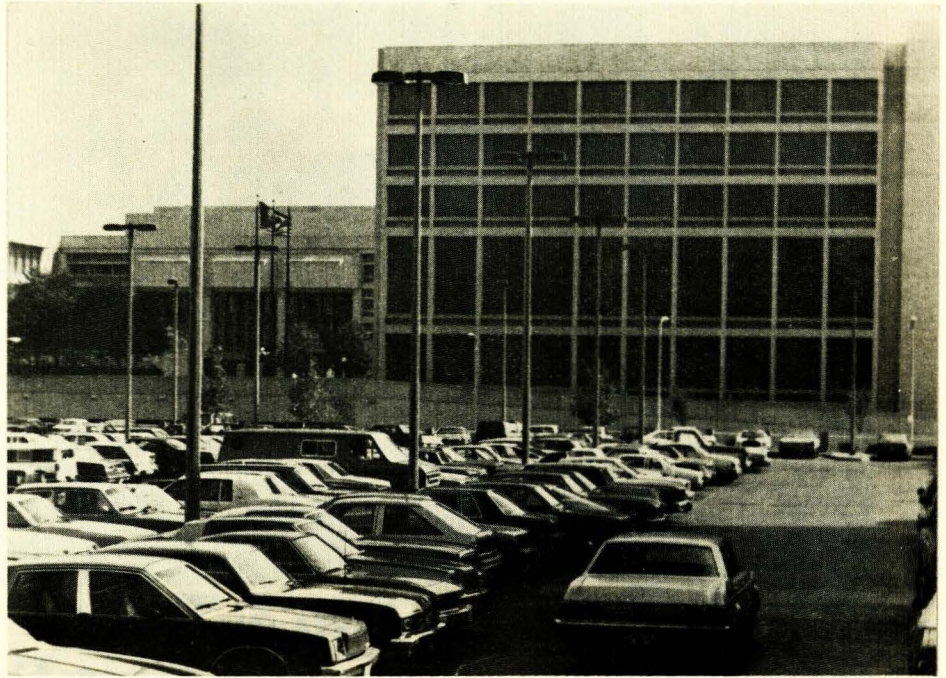
create a less than hospitable economic environment."

Speaking for Cuyahoga Community College, Dr. John Koral warned that, "...if issues 2 and 3 pass, Ohio is at risk. The people of this state must be made aware of this reality before they go to the polls on November 8th."

Dr. Koral stressed the economic impact on the state if these issues were to be passed. "The Board of Trustees of Cuyahoga Community College believes that Ohio is facing one of the most critical periods in its entire history. The state has been buffeted by a nationwide recession coupled with technological change that has left the future of the state's economy in serious doubt. Our ability to compete in the new economic climate of the mid-80's and beyond depends, to a great extent, on how well we can train men and women for the jobs of the future."

Dr. Koral went on to urge the need in Ohio to retrain our workforce in order to compete in the technical and service-oriented job market of this decade: "The prospect of job displacement because of plant closings, and the advent of high technology, faces almost every family in the state in one way or another. Only by gearing up our system of education and training to the needs of the coming decade can men and women of Ohio compete for jobs. The answer to the state's problems is not to eliminate taxes, but to permit Cuyahoga Community College and other centers of education and training to provide the opportunity for education and training in the new climate of high technology and social change."

Two hundred years ago, Ben Franklin stated that: "Nothing is certain but death and taxes." Dr. Malicky does not argue with the first part of Dr. Franklin's statement. But, Malicky does feel that we can try to change the latter. Dr. Malicky, President of Baldwin-Wallace, stressed that the State must be willing to expand programs such as the Ohio Institutional



Grant Program and Student Choice Grants Program, in order to protect and improve the student's access to higher education.

Dr. Malicky noted that 43% of Ohio's high school students go on to college. This figure ranks Ohio 46th out of the 50 states.

Dr. Malicky joined his colleagues in stressing the urgent need for Ohio to educate its citizenry in order to compete in the demanding job market and encourage economic growth in Ohio.

Dr. Henry Kurdziel, representing the elementary and secondary sectors of education explained Issues 2 & 3 as follows: "Issue 2 would require a 60 percent majority vote in each house for the enactment of revenue-raising bills. Passage of this issue would eliminate the 'Majority rule' concept, and it would ultimately mean that a minority of legislators would actually control the level of taxes for state services in Ohio.

"State Issue 3 which would negate any changes in Ohio tax laws that have gone into effect this year, would result in a

\$1.55 billion dollar reduction in state funds. Of that projected reduction, forty-five (45%) percent would be cuts in funding for education. That would mean that Ohio's schools would be receiving \$637 million dollars less in the next budget year (July 1984 — June 1985) than they are now slated to receive under the present tax structure. If Issue 3 were to pass, in Cuyahoga County alone, the cut-back in funding for education would total \$55 million dollars."

Dr. Kurdziel explained that the passage of Issue 3 would have far-reaching effects. "The impact of the passage of Issue 3 would mean more than the repeal of the personal income tax increases that were enacted this year. What would be changed or eliminated would be approximately 85 sections of Ohio law. Among the areas that would be included would be these: income tax credits for senior citizens would be reduced, the raising of the personal income tax exemption from \$650 dollars per person to \$1000 per person would not occur, the reforms in the tax law designed to eliminate the 'marriage penalty' would not be implemented."

He concluded his address with a warning to the citizens of Ohio and urged the citizens to look to the long-range effect of these issues.

"Issues 2 & 3 are statewide concerns ... And, behind them is a giant school bell — already dented from the cut-backs of the last few years — now clanging out a dire warning. If the citizens of Ohio refuse to fund schools adequately, schoolchildren will pay with grimly reduced opportunities." ■

Visiting Scholar Series

Harry T. Edwards, D.C. Circuit Judge for the United States Court of Appeals, presented the twenty-ninth Cleveland-Marshall fund lecture in the Moot Court Room on November 2, 1983. His talk focused on "The Role of a Judge in Modern Society."

Judge Edwards received his B.S. in 1962 from the School of Industrial Labor Relations of Cornell University and his

J.D. (with high distinction) from the University of Michigan Law School.

Edwards has written numerous law review articles and other miscellaneous publications, and is the author and co-author of many books. His most recent books include: **Higher Education and the Unholy Crusade Against Government Regulation** (1980); and **An Introduction to the American Legal System** (1980). ■

BALSA

by Jimmy Thurston

Have you heard of "BALSA"? Not the balsa wood that you used in woodshop class or what is used for life preservers. This is an abbreviation and the shortened name for an organization on Cleveland State's campus entitled Black American Law Students Association. However, BALSA is an anachronism in that it is a life preserver for black students studying law in predominately white law schools across the country.

Cleveland Marshall's chapter is located in the basement of the law building at 18th and Euclid. It is part of the national organization founded in 1967 by students attending New York and Columbia University law schools. Presently, it has chapters located in more than a hundred law schools throughout the nation where blacks are studying to become attorneys. The original purpose of the founders of BALSA was "to articulate and promote the professional needs and goals of black American law students and to influence American law schools, legal fraternities, and associations to work to make the legal system more responsive to the needs of the black community."

Cleveland Marshall's BALSA President, James A. Barnes, wants to rejuvenate the national goals into the local chapter because in recent years the impetus has fallen due to indifferent leadership. Barnes states that BALSA's chief purpose is to improve the academic performance of black students in the law school. Also, it facilitates communication between black and minority students and the administration/faculty, and recommends students to serve on various committees. In addition, it promotes awareness of the black community in the law school while providing assistance and support to black law students. Members of BALSA participate in admission and other school activities. It focuses on the legal, political, social and economic needs of black students with particular emphasis on recruitment and tutorial programs. BALSA believes that blacks should be provided with well qualified black attorneys, and to that end it encourages leadership development. It hopes that at least a beginning toward these goals will result from the unified support that BALSA gives each of its members.

Some other projects BALSA will undertake to implement this school year are raising funds to help send local members to participate in the National Frederick Douglas Moot Court Competition, to provide community-oriented seminars with leaders in the legal profession as guest speakers, to have an awards banquet for members and alumni of Cleveland Marshall, to develop an alumni organization, and most importantly to recruit black undergraduates of Cleveland State and other local schools into pursuing a legal education. Membership is open to all students who agree with the organization's goals.

Barnes, along with other active members, has begun to implement new leadership with renewed vigor in the current academic year. Thus far, since the law school commenced its Fall semester on August 29th, they have had two successful events. The first event was an orientation program for first year minority law students coordinated by Garlandine Jones. The event introduced the new students to the officers and members of BALSA, and the realities of legal study. The number of black students admitted this year was thirteen, in a class of three hundred students. Also introduced on the program were Professor Solomon Oliver and Professor Frederic White, the black faculty members of Cleveland Marshall, along with staff member Kay Benjamin, the Records Officer. Both professors spoke with much candor about making the law school experience a rewarding one and the admonition that to be successful the students would have to immerse themselves in the law without drowning. In addition, representatives from the Norman Minor Bar Association and the Black Women Lawyers Association extended a welcome and informed the students about their respective organizations. All in all, it was good to know that there were individuals who were concerned that young professionals get started on the right track.

The second event was a reception to welcome first year minority law students of Cleveland-Marshall and Case Western Reserve. It allowed the students to get acquainted and mix on a social level at the Watergate Apartments. It was a warm affair coordinated by Esther Lester which permitted all attending to know that the problems are mutual at either school.

Both events were definitely beneficial and they have proved to be life preservers for first year minority law students in integrating them into the law community of Cleveland. ■

CASE ON POINT

by Debra Bernard

In Ohio, persons passing the bar exam must take an oath of office before being permitted to practice law as a professional attorney. The last paragraph of that oath contains a promise that "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice, So Help Me God."

Canon 2-25 in the Code of Professional Responsibility, in pertinent part, states that:

Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. *** Accordingly, legal aid offices *** have been developed *** by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Are the oath and canon merely sets of empty words reflecting theoretical ideals that in reality seldom are realized? Now there is a way for Cleveland attorneys to

more easily participate in aiding the disadvantaged. With the advent of the Cleveland Bar Association's program of volunteer lawyers donating time, money, or both, legal aid for the needy is assured in our community. The ideals of representation and justice for all persons are preserved.

Dubbed CASE (Cleveland Attorneys Seeking Equity), the program was announced last December and officially begun in March, 1983. Attorneys are asked to take two cases without charge annually, or fund two and one half cases annually, an approximate monetary equivalent of \$250/year. All lawyers in the community are being asked to help.

CASE is a response to severe cutbacks in federal funding supporting legal services to the poor. Expediency and continued attention to the legal problems of the disadvantaged were severely curtailed when Cleveland's Legal Aid Society found it necessary, in response to the federal cutbacks, to close two of its five offices and limit the number of attorneys it employed. But now the CASE program offers renewed hope for prompt and thorough service in resolving the legal problems of the poor.

At the commencement of the program in March, the CASE organization "set its

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“Up or Out”: A Tale of Two Cases

by Steven Mills

As law students, the phrase ‘up or out’ will grow in importance to us as we enter the legal profession. Many law firms have an ‘up or out’ employment policy; usually an associate attorney is given a specified number of years to build a work record with the firm, and at some designated time the partners will either ‘invite’ the associate to become a partner, or ‘give’ the

associate time to find another position. This basically is a rather simple position to understand, as it requires an associate to satisfactorily demonstrate his or her worth to the firm. However, this becomes complicated when, allegedly, an associate has a very good work record and does not receive a partnership offer. A further complicating factor arises when the associate alleges that some form of discrimination was the basis for his or her failure to become a partner. All of this leads to the question:



Should associate attorneys, who believe they have been discriminated against in a partnership decision, be viewed as employees(1) for the purpose of invoking the equal employment protections(2) under Title VII of the Civil Rights Act of 1964?

In a case on point **Hishon v. King & Spaulding**, 678 F. 2d 1022 (11th Cir. 1982), the Supreme Court granted certiorari on January 24, 1983 (No. 82-940). Hishon has asked the Supreme Court to determine whether, in fact, an associate can invoke the equal employment protections in Title VII when an unfavorable partnership decision has been made.

In order to better understand the competing views on the applicability of Title VII, two cases with similar fact patterns and differing results will be examined. **Hishon** was decided in favor of the law firm of King & Spaulding, and against the use of Title VII. **Hishon**, 678 F.2d at 1030. Another case from the Southern District Court of New York allowed the associate attorney to overcome the defendant's 12(b)(1) and 12(b)(6) Fed. R. Civ. P. motions, and permitted the plaintiff to use Title VII. **Lucido v. Cravath, Swaine & Moore**, 425 F.Supp. 123 (S.D.N.Y. 1977).

The facts in both cases are very similar. Elizabeth Hishon and Anthony Lucido both accepted positions as associates in large law firms: each firm had about 50 partners, and each had an ‘up or out’ policy after the first six or seven years. Neither Hishon nor Lucido were invited to become partners, and both were given time to find other employment. Hishon filed a sex discrimination claim with the Equal Employment Opportunity Commission (EEOC), and she was issued a Notice of Right to Sue. Lucido, who believed that he was discriminated against on the basis of his national origin (Italian) and religion (Catholic), also applied to the EEOC and was granted a Notice of Right to Sue. Both filed complaints with their respective District Courts within the statutory 90-day period. Also, each defendant firm attempted to dismiss the action under a 12(b)(1) Fed.R.Civ.P. motion (lack of subject matter jurisdiction).

Three theories were asserted by Hishon in her attempt to find jurisdiction under Title VII. The theories were:

- (1) partners at King & Spaulding are equivalent to “employees” of a corporation thereby establishing the employment context for Title VII’s application;
- (2) elevation to partnership is an “employment opportunity” or a “term, condition or privilege of employment” protected by Title VII; and
- (3) termination of employment as a result of failure to make partner falls within the ambit of an unlawful discharge prohibited by Title VII.

Hishon v. King & Spaulding, 678 F.2d 1022, 1026 (11th Cir. 1982).

The theories in **Lucido** were not exactly the same, but for the purpose of comparison the **Hishon** theories will be used.(3)

THE FIRST THEORY

Under the first theory, **Hishon** attempted to show that the partners were actually employees of the partnership (very similar to a corporation). Therefore, if she could show that the partners were employees rather than owners, Title VII would apply. This would make a partnership offer equivalent to a promotion. However, the **Hishon** court found a Seventh Circuit case controlling; the Seventh Circuit determined that accounting firm partners should not be considered employees, rather, the court determined that traditional partnership principles should be followed. **Burke v. Friedman**, 556 F.2d 867, 869 (7th Cir. 1977). In **Hishon**, the Eleventh Circuit adopted the **Burke** view, as it determined that King & Spaulding is a voluntary association of attorneys in a joint ventureship. **Hishon**, 678 F.2d at 1028.



In **Lucido**, the defendant firm "(C)ontend(ed) that Title VII does not extend to the relationship of partners among themselves, and therefore cannot apply to the process whereby members of a law partnership invite an attorney to become their partner." **Lucido**, 425 F.Supp. at 128. The New York District Court found that Cravath did fall within the definition of an employer under Title VII; also **Lucido** was adjudged to be an employee of the firm, making the use of Title VII available to him.(4) **Lucido**, 425 F.Supp. at 126, 127.

THE SECOND THEORY

Hishon then theorized that a partnership offer is an "employment opportunity"(5) or "term, condition or privilege of employment"(6) protected under Title VII. The **Hishon** Court determined that an employment opportunity can include promotion to a position not covered by Title VII; however, the court again determined that this was not an employer-employee relationship but, rather, a voluntary association in a business partner-

ship. **Hishon**, 678 F.2d at 1028. The Eleventh Circuit, in dicta, stated that if the representation made to the appellant concerning the possibility of partnership was "deceptively made, then perhaps an action in breach of contract or misrepresentation may provide a more appropriate vehicle for the appellant to drive toward a legal remedy." **Id.** at 1029.

Lucido contended that he was discriminated against with respect to his work assignments and training. He then went on to theorize that this constituted "discrimination with respect to 'terms, conditions, or privileges of employment' and 'employment opportunities' under Title VII." **Lucido**, 425 F.Supp. at 127. The District Court permitted **Lucido's** argument to withstand a motion to dismiss for failure to state a cause upon which relief can be granted.(7) **Id.**

THE THIRD THEORY

The **Lucido** court denied the defendant's motions to dismiss **Lucido's** unlawful discharge theory. The court determined that Cravath's 'up or out' policy, coupled with the plaintiff's allegation that his progress in the firm had been impeded by discrimination, stated a triable cause of action that must survive a motion to dismiss. **Lucido**, 425 F.Supp. at 125, 126.

However, the Eleventh Circuit, in **Hishon**, determined that all prospective associates are informed of the consequences following an unfavorable partnership decision, and **Hishon** assumed that risk upon joining the firm. Therefore, **Hishon** was fully apprised of the firm's 'up or out' policy, and she should not be able to claim it constitutes an unlawful discharge. The court distinguished **Lucido** by stating:

While discriminatory termination alone may have stated a cause of action under Title VII for an unlawful discharge, **Lucido v. Cravath, Swaine & Moore**, when the termination is a result of the partnership decision, it loses its separate identity and must fall prey to the same ill-fate as her original attempt to apply Title VII to partnership decisions.

Hishon v. King & Spaulding, 678 F.2d 1022, 1029 (11th Cir. 1982).

Circuit Judge Tjoflat, in his **Hishon** dissent, felt that a partnership decision is a decision to terminate if unfavorable, and he would have held that Title VII applied. Therefore, he did not agree with the majority's decision to affirm the district court's dismissal (lack of subject matter jurisdiction).

CONCLUSION

Discovery was limited in **Hishon** due to the sensitivity of the partnership agreement. All of the discovery information involved in the appeal was placed under seal by the appellate court. On March 28, 1983,

the record was ordered unsealed by the Supreme Court.

The decision of the Court will rest on how broadly or narrowly the applicable provisions of Title VII are interpreted and, like it or not, your future lies in the balance.

NOTES

1. Before attempting to look at the competing views on this topic, it is essential to view the applicable sections of Title VII. In the definition section of Title VII the following are essential for a thorough understanding of the issue:

"For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporation, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person ...

(f) The term "employee" means an individual employed by an employer ..." 42 U.S.C. Sections 2000e (a), (b), (f).

2. The applicable sections of Title VII dealing with equal employment are:

"(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. sections 2000e—2 (a), (1) and (2).

3. **Lucido's** complaint asserted two causes of action: "Count I charges the defendant with violating Title VII of the Civil Rights Act of 1964 Count II charges the defendant with breach of an employment contract with the plaintiff." **Lucido v. Cravath, Swaine and Moore**, 425 F.Supp. 125 (S.D.N.Y. 1977).

4. The **Lucido** court said that its decision to allow the application of Title VII did not infringe on the law firm's First Amendment freedom of association and privacy rights. **Id.** at 129.

5. 42 U.S.C. section 2000e (2) (a) (2).

6. 42 U.S.C. section 2000e (2) (a) (1).

7. Fed. R. Civ. P. 12 (b) (6).

NATIONAL LAWYERS GUILD

The American Tradition of Resistance

by Clare I. McGuinness

The history of civil disobedience in America is long, wide, and illustrious. Emma Goldman, a 20th century anarchist, was outraged at all types of human degradation. She spent two years in prison for her activities against conscription in 1917. Eugene Debs led a socialist crusade on behalf of laborers, promulgating his belief that militaristic capitalism sustained Wall Street at the expense of workers. He exclaimed, "...You need to know that you are fit for something better than slavery and cannon fodder." For uttering these words he was jailed for ten years, and his conviction was upheld by the United States Supreme Court.(1)

The 78 year battle of suffragettes for the right to vote was motivated by a need for simple justice, and civil disobedience played an important role. In protests at the White House hundreds were arrested and jailed. Suffragette Julia Emory was arrested 34 times. Their acts, often characterized as "unwomanly", finally won over congressmen who reversed their opposition recognizing that the courageous protests would continue to escalate until passage of the 19th amendment was secured. Disobedience to the law by the American labor movement was motivated by harsh and ugly labor conditions. The Boston Tea Party was a massive act of civil disobedience to the unjust laws imposed on the colony by England. The underlying basis for all of these actions was an ethical concern for those oppressed by law.

From generations of bowed backs, chained bodies, and bruised spirits, emerged a man who crystallized the American experience of civil disobedience. He ignited a fire — and justice roared across the land. The spirit of this man, who taught a nonviolent love which brought down the white supremacy of Jim Crow laws, could be the wellspring that will sustain those who challenge a world currently building superhighways of death and annihilation through nuclear arms. Out of the pain of slavery can come the resurrection of what humanity must become in order to live on. "The choice is not violence or nonviolence, it is nonviolence or nonexistence."(2) This is the classic civil disobedience of Martin Luther King Jr.

In order to understand classic civil disobedience, it is necessary to understand the social/political theology of King. The uninformed may be misled into believing, as were the city fathers during the Montgomery bus boycott (the boycott was in violation of an Alabama anti-labor statute), that communists were at work. Interestingly, that label continues as a scare tactic; the Reagan administration is fond of proclaiming that the people in the antinuclear movement, while perhaps not all communists themselves, are certainly dupes of communists. Of course King read

Hegel, Marx, and Lenin, as have many intellectuals.

King was schooled in an otherworldly fundamentalist religion, but its passivity to the here and now made him squirm. It shook his faith when, as a child, he had to enter a movie theatre by the "colored door" and sit in the "colored section." He fumed at the stereotyping in *Gone With the Wind* that a "good nigger" is obsequious and a "bad nigger" is uppity and impudent. An early hero, A. Phillip Randolph (union leader of the railroad porters), excited this thinking. He kept in mind the 1941 bus boycott by blacks in Harlem, and the CORE sit-ins in Chicago retail stores.

The young King was a religious man and he was on a quest for a religious and philosophical method to rid the world of social injustice. It was the theologian Walter Rauschenbusch who set into motion his thinking that a social gospel could attack the unbridled evil of capitalistic America. Rauschenbusch had taught that the original message of Christianity would replace Darwin's law of the jungle. Any system that exalted profit over sisterhood and brotherhood was to be eradicated. This sounds strangely communistic, but as King studied Marx, Engels, and Hegel, he abhorred the materialistic limits of dogmatic communism. Communism is wrong to the extent that it denies that people have a spiritual nature. Essential to this spiritual nature is freedom. Although King shared the fervor for social justice with which communism began, he insisted that the human person must never be reduced to a depersonalized cog on the ever-turning wheel of the state. He moved from that point through its antithesis: that capitalism also led to tragic exploitation. Thesis and antithesis were both wrong. The synthesis, for King, was the social gospel of Christ.

King attended a lecture by the pacifist A.J. Muste (Fellowship of Reconciliation) whose words caused him to reflect. At the same time he was trying to come to grips

with his belief that war was wrong, he was disturbed by Reinhold Niebuhr's attack on pacifism. Niebuhr doubted that pacifism, through a campaign of nonviolence, would have softened Hitler's heart and dissuaded him from invading Poland. Can one avoid collusion with Hitler by pacifism? It was Niebuhr who led him from the trap of illusory optimism about people's capacity for good. Collective evil exists. Otherwise decent men and women brutalize, persecute, and kill. Hegel helped him go beyond Niebuhr. Good or evil is not an "either/or" choice. Growth must come through pain and struggle. The point was that capitalism failed to see life as social, and Marxism failed to see it as individual; it was only the kingdom of God that reconciled the two. Grace cures the evil in humanity, if one can open oneself to the possibilities of brotherhood and sisterhood. King concluded that Niebuhr was too simplistic in equating pacifism with passivity. King was thus drawn to the great prophet Gandhi. The key to using civil disobedience for social reform is one's own willingness to suffer. Genuine pacifism is not submission to evil, but a confrontation, taking evil by the horns with love.

King rejected war and taught that the atomic bomb had dictated that we must find alternatives to war. In our world the solutions must be through love and nonviolence. "We must love our enemies or else." Gandhi taught that nonviolent resistance means noncooperation with evil (an idea he refined from Thoreau, who had studied the Bhagavad-Gita and Hindu Upanishads). King sought to formulate Gandhi's satyagraha into a western context. In Greek there are many words for love, three of these are: eros (romantic love), philia (love between friends), and agape (a disinterested love for all humankind). It was this idea of agape upon which King founded his practice of civil disobedience.(3)

The civil disobedience of King has given birth to radical pacifism. No longer is it to be used as simply a tool, but a way of life. Two eminent spokesmen for radical pacifism in the past 20 years are Daniel Berrigan, S.J., and Phillip Berrigan. The Vietnam era, hailed as one of widespread acts of civil disobedience by the Berrigans and others, proliferated a series of nonviolent resistant actions to the war. Direct-action tactics that attempted to disrupt war efforts were often symbolic in nature. Breaking into draft offices and igniting records with napalm sent a message: "better paper than babies."

What is important for us to understand is the intention of the actors to accept the legal consequences of their actions. The unearned suffering is redemptive, and from the suffering comes a transformation in the resister and oppressor. The Viet-

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Visiting Scholar Series

Macneil on Bureaucracy

by Roman Mironovich

Defined more inclusively Prof. Macneil looked at bureaucracy as referring both to a generic form of government (a conceptual view), and to any particular bureaucratic organization. He concluded that, "Thus the Congress, the S.E.C., CSU, C-M, all are bureaucracies, ... and that all of America is a bureaucracy." Macneil qualified this conclusion by stating that, "(America) is an immensely complex bureaucracy." Macneil's utilization of the general concept of bureaucracy and various particular applications reflect on the interlinked nature of bureaucracy in a world in which it is, like it or not, the primary form of social organization.

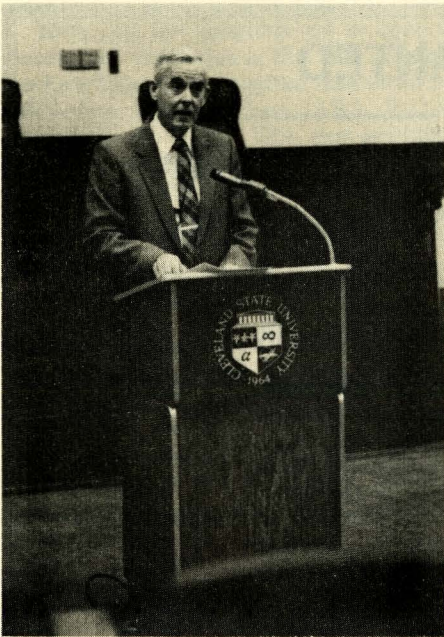
Prof. Macneil listed seven factors as differentiating the modern bureaucratic organization from other forms of human government. The seven are: boundaries, purposes and goals, specialization and fragmentation, planning, control, individual duties and rights, and external bureaucratic effect. These characteristics constitute what Prof. Macneil means by using bureaucracy either as a concept or in reference to a particular organization, and he summarized that "Bureaucracy thus defined is hardly a unique American phenomenon. It is both worldwide and ubiquitous."

On the topic of our over-lawyered country Macneil had an interesting explanation. "Americans have special passions for individualism, legal equality, and perfection," said Macneil. It is the merger of these passions with the development of the bureaucratic world which produces our, "plague of lawyers ... and need for lawyer-like people." Macneil stated that, "When misfortunes become injustices, lawyers can't be far behind!"

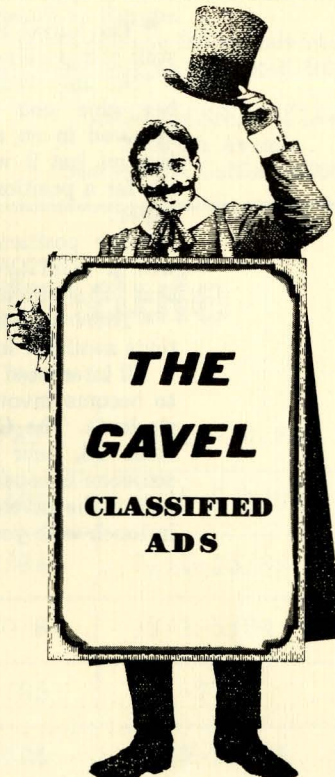
Prof. Macneil criticized the three outlooks of the legal intelligentsia on bureaucracy as three visions of hell. He concluded that neither the liberal mainstream vision, nor the market, law & economics vision offer a solution to our problems in dealing with the bureaucratic phenomenon. Also, the critical legal movement vision is found to be wanting as its devotion to equality obscures the problems that must be solved. Thus Prof. Macneil eliminated the three visions found in our law reviews as lacking the recognition of the limited capabilities of bureaucratic structures, and the willingness to make "the many great sacrifices involved in allowing small, relatively non-bureaucratic institutions to achieve a prominent position in establishing values and exercising power in our society." Although he painted a somewhat bleak picture, Prof. Macneil reasoned that "fortunately, to be alive is to be hopeful, and even total bureaucracy has not yet destroyed that human characteristic!"

(Note: A complete videotape of this lecture is on reserve at the C-M library).

The 28th Cleveland-Marshall Fund Lecture on September 23 provided an interesting and detailed view of bureaucracy. This view was presented by Professor Ian T. Macneil in his lecture on "Bureaucracy, America, and the Legal Profession." Professor Macneil proposed that the term bureaucracy should be viewed without the limitations which are often imposed on it as a private or public (good or bad) bureaucracy. His entire lecture was consistent with several clearly defined irrefutable propositions and definitions.

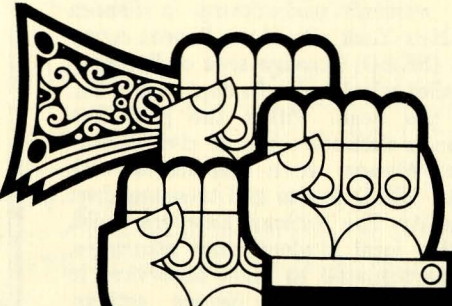


"Bureaucracy is a particular form of governance of human affairs, one dominated by reasoned and detailed planning," said Macneil. Therefore he reasoned that bureaucrats would be "any individuals participating in the affairs so governed, and thus defined they are a far larger class than the term commonly implies." Although the term bureaucrats usually evokes a picture of paper shufflers, as defined and utilized by Macneil, the term includes everyone from a carpenter, to a plumber, to the supervisor and city planner. Most significantly the term bureaucrat includes everyone as a consumer, and thus, "We are all bureaucrats, most if not all of the time."



Three Lines For \$3.50

The Gavel office is located in room 23, near classroom 12.



The American Tradition of Resistance

continued from page 8

nam protesters were appalled that the "silent majority" had become so inured to human suffering that we could become more indignant over the napalming of draft files than over the searing of human flesh. People seeking social change are often discouraged by the immovability of the power elite (e.g., the Pentagon) through political channels. Those war resisters who went to prison saw their imprisonment as a witness against death through war. It has occurred to nearly everyone to wish that humans were afoot during WWII who would have broken into German war offices and burned the lists of Jews scheduled for deportation to death camps.(4)

The women's peace movement of the early 1900's focused on motherhood as life-giving and war as the enemy of life. The model of the International Women's League for Peace and Freedom was hewed from the motif of motherhood. This concept has grown and split into a new movement of radical peace feminists who view the militaristic machine as a fortress of patriarchy, which will only break down when patriarchy itself is dismantled.(5)

Now we have entered another era of civil disobedience: confrontation with the evil of nuclear war. Protesters, in addition to tax and draft registration resistance, trespass on nuclear facilities, and at times hammer warheads and pour blood. For example, in 1982, the Berrigans and six others (Plowshares Eight) were convicted of trespass and of damaging first-strike nuclear warheads at the King of Prussia General Electric Plant in Pennsylvania. The case is presently on appeal and arguments on behalf of the Eight were made by Ramsey Clark. A similar action took place this summer in Wilmington, Massachusetts, when seven members of the Atlantic Life Community entered AVCO (weapons manufacturer) and made their way to a Pershing II missile room. They damaged two warhead mounts with hammers and poured blood on blueprints. The group is being charged with criminal trespass and malicious mischief.

The women's peace camp in Seneca Falls, New York, site of the Seneca Army Depot (SEAD) (storage area of Pershing II missiles scheduled to be deployed to Europe) has been, within the past five months, a summer scene of civil disobedience. Women wove themselves with yarn to SEAD fences and trespassed on the facility. The National Lawyers Guild, including local students and attorneys, have participated as legal observers in many of the recent Seneca actions.

Through these actions the rich nonviolent agape of Martin Luther King Jr., is still a catalyst, not only to the brotherhood and sisterhood of races, but also to nations in a torment of hate.

NOTES

(1) *Debs v. United States*, 249 U.S. 537 (1919).

(2) See A. Toynbee, *A Study of History* (1934—1961).

(3) See S. Oates, *Let the Trumpet Sound; The Life of Martin Luther King Jr.*, 1982.

(4) See *The Berrigans* (W. Casey, S.J., P. Nobile ed. 1970).

(5) *Women's Peace Movement*, unpublished paper by Kate McGuinness (1983). ■



"Yes—that's the man!"

HELP WANTED

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All interested students are encouraged to become involved, including first year students. **The Gavel** office is located in room 23, near classroom 12. Stop by, someone is usually in the office. Or put a note in the envelope on the door. We'll get in touch with you.

THE GAVEL

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

THE BOOKSHELF

A recently published book co-authored by attorneys Christopher G. Wren (Harvard University) and Jill Robinson Wren (Boston University), has already begun reshaping the way legal research is taught to law students. **The Legal Research Manual: A Game Plan for Legal Research and Analysis** presents a step-by-step explanation of legal research techniques instead of following the conventional approach of other texts, which focus on descriptions of law books' physical characteristics.

Although **The Legal Research Manual** was not published until mid-June 1983, it

is already being used this fall as an assigned textbook at several law schools, including Georgetown University, Northeastern University, New York University, University of Wisconsin, University of Connecticut, and Case Western Reserve University.

The Legal Research Manual is published by A-R Editions, an academic book publisher at 315 West Gorham Street, Madison, Wisconsin 53703. If unavailable at Barnes & Noble, the book may be ordered directly from the publisher by sending \$8.95, plus \$1.90 for postage and handling to A-R Editions, Dept. P. ■

FOR LAW STUDENTS:

More than 100 positions will be open to recent law graduates in the 1984 European Law Internship Program conducted by McGeorge School of Law (ABA, AALS, Order of the Coif). The post-graduate program, which offers internships in private firms, companies and public agencies throughout Europe, leads to either the Diploma in Advanced International Legal Studies (one semester) or the LLM-Transnational Practice (two semesters).

Participants in the 1984 program will benefit from a special arrangement made by McGeorge School of Law with the International Bar Association (IBA). More than 3,000 members of the IBA will convene in Vienna in September 1984, and participants in the McGeorge program

will participate in the conference with delegate fees, transport from the McGeorge campus in Salzburg to Vienna, and lodging in Vienna provided by the school. McGeorge interns will host an official reception for the IBA delegates.

The law school also will offer summer programs in 1984 in Edinburgh, Scotland; Salzburg, Austria, and Budapest, Hungary. The various 1984 programs mark the beginning of the school's second decade in Europe.

Information on the various international programs may be requested from:

McGeorge School of Law
3200 5th Avenue
Sacramento, California 95817 ■

CASE ON POINT

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sights" at recruiting 1000 attorneys from a broad spectrum of legal practices. As of July, 1983, the goal was surpassed with 1160 attorneys donating time or money to the program. Pledges and donations to the Bar Association's Charitable and Educational Fund at that time totals \$81,575. By mid-August, 1197 attorneys joined the effort. September saw the ranks increased by 18 lawyers, bringing the total number of volunteer attorneys to 1215. In addition, at least twenty-five firms to date have volunteered legal or financial assistance to the CASE program.

Cleveland-Marshall College of Law has at least two professors who have volunteered for the CASE cause, both of whom expressed a shy, smiling reluctance to be identified. Both professors stated they joined the CASE program because they felt it was their professional and ethical duty to do so. They stated that the CASE program offers a fairly simple method for fulfilling the obligation that every attorney has in helping those who cannot afford legal services. One professor stated he intends to contribute to CASE on a yearly basis. The other stated that he hasn't yet looked that far ahead but may also do the same.

Thanks to the efforts of many Cleveland attorneys, legal aid for the indigent continues in our community. ■

Lawyers make a living out of trying to figure out what other lawyers have written.

Will Rogers

Semester schedule

* The tentative schedule through Summer of 1985 is published below. The schedule is fixed (finalized) through Spring Semester of 1984. Some changes may be made in the summer terms for 1984 and 1985.

Fall '83	8/29/83	12/9/83	12/10-14/83	12/15-23/83	12/24/83-1/8/84
Spring '84	1/9/84	4/24/84	4/25-5/1/84	5/2-11/84	5/12-20/84
Summer '84	5/21/84	7/10/84	7/11-15/84	7/16-21/84	7/22-8/19/84
Fall '84	8/20/84	11/30/84	12/1-5/84	12/6-14/84	12/15/84-1/13/85
Spring '85	1/14/85	4/30/85	5/1-7/85	5/8-17/85	5/18-26/85
Summer '85	5/27/85	7/16/85	7/17-21/85	7/22-27/85	7/28-8/18/85

**CSU Film Society will be showing
the following films throughout
Fall Quarter 1983:**

La Dolce Vita; Nov. 4, 5; 7:30 p.m. and 9:30 p.m.
The Wild One; Nov. 11, 12; 7:30 p.m.
On the Waterfront; Nov. 11, 12; 9:30 p.m.
Baby Its You; Nov. 18, 19; 7:30 p.m. and 9:30 p.m.
Lords of Discipline; Nov. 25, 26, 27; 7:30 p.m.
Taps; Nov. 25, 26, 27; 9:30 p.m.
Return of the Pink Panther; Dec. 2, 3; 7:30 p.m.
The Pink Panther Strikes Again; Dec. 2, 3 3, 9:30 p.m.
Raiders of the Lost Ark; Dec. 9, 10, 11; 7:00 p.m. and 9:30 p.m.
Mr. Magoo's Christmas Carol (animated); Dec. 16, 17; 7:30 p.m. and 9:30 p.m.
*

All films will be shown in the UC Auditorium (UC6). Cost is \$1.50 for members and \$2.50 for non-members. Parking is free!

If you have any other questions please call 687-2244.

The National Lawyers Guild will present several speakers during November. All events are free and all students, faculty, and staff are invited.

— Professor Barry Kellman will speak on "Attacking the Weapons Industry — Legally" Thursday, Nov. 3, at 4:00 PM, in the Faculty Lounge, room LB 132. Professor Kellman has been researching the question of the illegality of nuclear weapons.

— Professor Arthur Kinoy of Rutgers University Law School will speak on the on-going struggle for civil rights and civil liberties Tuesday, Nov. 8, at 4:00 PM, in room LB 11. Professor Kinoy, a long-time constitutional litigator, is co-founder of the Center for Constitutional Rights.

RES PENDENS

— A forum on Police Misconduct and the Civilian Review Board, co-sponsored with People United Against Repression, will be held Saturday, Nov. 19, at 1:00 PM, in the Moot Court Room. Victims of police violence, their attorneys, and community activists will speak.

— Father Daniel Berrigan, known for more than 15 years as a non-violent, anti-war and disarmament activist, is tentatively scheduled to speak here Wednesday, Nov. 30. Father Berrigan is currently facing charges stemming from a non-violent action in which protestors damaged nuclear warheads as a matter of conscience.

For further information, please contact the National Lawyers Guild in room LB 25.

Sidney Kraus, chairman of the CSU communications department, will make his directorial debut on the campus in November with a production of "Dark of the Moon" by Howard Richardson and William Berney.

Performance dates are November 11, 12, 13, 18, 19 and 20. Tickets for all performances are \$4, \$3 for students. Curtain times are 8:30 p.m. Fridays and Saturdays, 7:30 p.m. Sundays.

Reservations for the plays may be made at the CSU box office by calling 687-2109 weekdays afternoons during the season.

The annual Christmas Puppet Show produced by Eugene Hare will be offered November 26 and 27 and December 3, 4, 10, 11, 17 and 18.

Performances are at 2 p.m. in the Factory Theater. Tickets are \$2.

Panel Announced for Moot Court Night

The Cleveland-Marshall College of Law Fall Moot Court Night will be Thursday, November 10, 1983 at 7:30 p.m.

Guest judges include Anthony Celebrezze and Albert Engel, judges of the U.S. Court of Appeals for the Sixth Circuit, and William Thomas, senior judge in the U.S. District Court for the Northern Ohio District. The case to be argued involves interpretation of the Securities and Exchange Act of 1934 and the Racketeer Influenced and Corrupt Organizations Act. The competition will be the final practice round for the moot court team which will represent CSU at the National Moot Court Competition.

The competition will be held in the Moot Court Room, and is free and open to all.

Advance Research Marketing has prepared a Two Map first edition Travel and Information Kit for anyone planning to attend the 1984 olympic games in Los Angeles, California. If anyone is interested in obtaining information regarding lodging near game sites, or any other information, remit \$2.95 (cost of material and handling) check or money order payable to 1984 Games Map and enclose a self-addressed stamped envelope to: 1984 Games Map; c/o Advance Research Marketing; 150 So. Glenoaks Blvd.; Suite 9240; Burbank, California 91510. Anyone wishing to attend the games should make his/her reservations as soon as possible, as it is anticipated that the demand for commercial lodging will exceed the supply by January 1984.

Worth Remembering

"You can't smile and think at the same time."

Tom Landry

THE GAVEL

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