Japan Opens Door To Foreign Lawyers
Editor's Note

Lead a life worthy of the calling to which you have been called. — St. Paul in Ephesians 4:1

Does it matter that a U.S. Supreme Court Justice nominee smoked marijuana ten or twenty years ago? Should it?

After a bitter struggle with the Senate and a resounding defeat over Judge Bork's nomination to the U.S. Supreme Court, President Reagan nominated Judge Ginsburg to fill the position vacated by Justice Powell. Only days after Ginsburg's nomination, it was revealed that he smoked marijuana in the sixties and also while a Law Professor at Harvard University in the seventies. The information also leaked that he smoked marijuana as recently as in 1979. Judge Ginsburg expressed regrets over it. President Reagan attributed it to "youthful indiscretion". Under pressure, Judge Ginsburg withdrew his name for the position.

Are we hypocrites for chastising Ginsburg for smoking marijuana, a substance whose use has become socially acceptable? Are we pious enough to throw stones at him? Do we want our Supreme Court Justices to be virtuous and upright citizens with unblemished records? And are we naive to so demand?

A lot of events occurred this year that kept bringing up the issues of moral and ethical standards which to judge our elected officials, public figures, and leaders. The Iran/Contra Affairs, besides addressing perennial Congress-Executive conflicts, brought home the issue of whether some members of the National Security Council can break the law in spite of their good motives. Both Gary Hart and Senator Joe Biden had to withdraw their candidacy for the Democratic presidential nomination after allegations of marital infidelity on the part of Hart and plagiarism on the part of Biden. Sadly, we have grown accustomed to politicians and their crooked deals and unsavory behavior. Is the U.S. Supreme Court any different?

Yes. There is an aura of dignity and prestige that comes with a position and is an integral part of it. Symbolism, in this case, far from being empty, guarantees respect, assures survivability of the system and smooths compliance. It is more than who Ginsburg is and what he did in the past. It is what the position stands for. It is best that judges do not share anything in common with criminals. Judges stand for something. Criminals stand for something else. The latter breaks the law. The former upholds it. Rightly or wrongly, we make role models out of movie stars and sports players. We are offended upon learning of their moral iniquities. It is human nature to look up to people we perceive to be better than ourselves.

Never mind 'we're all humans'. This excuse should not be accepted to overlook someone's shortcomings in meeting requirements. Never mind the incident took place a decade or two ago. In this case between the past and the present there are irreconcilable differences. To look the other way is equivalent to casting aside millennium of adhering to moral and ethical standards expected of courts of last resort. In our hearts and minds, we want our judges to be first among equals.

Richard Loiseau
Jane S. Flaherty

For the past several weeks, I have had students approach me and ask how they can get involved in student life here at Cleveland-Marshall. It's great! When students want to get more involved, the SBA as a whole becomes more productive and responsive to the needs and wants of the student body.

If you have had the chance to check the glass case near the vending machines, you have seen some of the officers and senators in the SBA. Soon we hope to have a picture of every senator. The people most of you are familiar with are the four officers. As President, I try to coordinate everything. Well, what's everything? At Orientation I stated that the Student Bar Association acts as a full service liaison for the student body to the faculty, administration, and community. I have now learned what this means — going to meetings. I learn a great deal at most of these meetings. I am participating in the Dean Search Committee; I take an active role in the Board meetings of our Alumni Association; I am on several Committees at the Cleveland Bar Association, including Law School Liaison (which sponsors The Take a Law Student to Lunch program); I take an active role in the Law Student Division of the American Bar Association for the 6th Circuit; and I represent you and our law school in an official capacity at various functions. My undergraduate work at CSU has proved invaluable to me in understanding the relationship of the law school as a graduate college here at CSU, and also in knowing all the opportunities the main university offers us through Student Life, and the availability of CSU's many facilities like Health Services and Woodling Gym which sports an olympic sized pool and racquetball courts. I also have a weekly meeting with Dean Moody and am thankful that her door is always open to the students. As to my availability, I am usually in my office here at school or at work at the Cleveland Bar Association. Sometimes I can even be found in a classroom or in the library!

As Vice-President, Harry Bernstein's duties are mainly centered on Social and Publicity work. He is the one to contact regarding social hours or social functions of any kind. He organizes volunteers and oversees the events we sponsor. Harry also chairs and serves on various Committees including Faculty meetings and The Dean Search Committee. He can be reached at the SBA office or at work (Schwartz Distributing).

Steve Yoo, as Treasurer, has many duties. Besides working out the Budget and, of course, appropriations, Steve must see to it that all paperwork is processed, orders are put in, and bills are paid. He also handles budgeting for all future SBA-sponsored events, such as the ever-popular Barrister's Bash. Steve is usually in the office, in the Moot Court offices, or being an awesome law clerk.

The person who handles everything not mentioned above is the Secretary, Tanja Gostic. She can usually be found at her desk writing up memos, or stuffing those memos into mailboxes. She handles all correspondence, communication, and recording. The Secretary is usually the one to find out the answer to questions which no one seems to know the answer to — so, feel free to talk to her when in doubt! She can always be found in one of two places — the office, or at the job she loves so much (!) with Attorney Gary Garson.

I would like to give three cheers to the following people:

***To Cheryl O'Brien, Colleen Sweeney, and Sheila McCarthy of the Women's Law Caucus for their talents and energy in bringing quality C-M sweatshirts and various other school embossed articles to the students for their enjoyment!

***To the National Bar Association Law Student Division for being the first Law Student Division of the NBA. I wish you a long and prosperous life here at C-M.

***To our ABA/LSD Representative Edelle Passalacqua for being appointed the Exec. Governor of the 6th Circuit.

***To the members of the Journal of Law and Health. They are working very hard to raise funding and support to continue publishing the journal and to bring this school a cohesive symposium on AIDS with nationally recognized experts.

***To the law students who display as much respect for their school as they do for McDonald's by picking up after themselves. Keep it up, I hope those students who still believe their mothers are going to pick up after them may learn by your example and keep the lunchroom clean.

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About $19,000 was available to be distributed among student organizations at Cleveland-Marshall this academic year, according to Steve Yoo, SBA treasurer. Requests totaled about $30,000. About $12,000 has been allocated to student organizations and the SBA has kept about $7,000.

Strict dollar amounts were adhered to for this year's budgets. Organizations could receive a maximum of $60 for supplies; $50 for an afternoon social (beer and chips) or $100 for an afternoon and evening social; $50 for a lunch-time speaker or $100 for a dinner-time speaker; $50 honorariums were available for speakers but the SBA was strongly urging organizations to get speakers who would do the event for free because of tight budgets.

### 1987-88 Organizations Budget

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Speakers
40th Lecturer Series

by Colleen Sweeney

Seventeenth Century colonists had Constitutions on their minds, according to Barbara Aronstein Black, Dean of Faculty of Law at Columbia University. Dean Black, the 40th Cleveland-Marshall Fund Lecturer discussed "Constitutionalism before the Constitution," Nov. 5.

Constitutionalism before the Constitution took us back to Massachusetts Bay in the Seventeenth Century. The settlers of this small piece of the continent were building a society based upon their Puritan philosophy. The 'constitution' upon which they built their legal system was formed by the English Parliament. The document was called the Corporate Charter of Massachusetts. The document reflected strong aristocratic assumptions that divided society into the Rulers and the ruled. The governing instrument of this legal system was to be the General Court. This Court had adjudicatory as well as legislative functions.

The Puritan theory of law was based on natural law. Natural law was a pre-existing order founded by God and was discoverable in the Scriptures. Therefore, for the Puritans, human law was to be found and not made.

Given this profound religious commitment in the Puritan society, one wonders how this is to be reconciled with the strong aristocratic element of the Corporate Charter. Yet, in the conversion of the Charter into a civil constitution, a democratic element is introduced. The General Court is broken down into two levels: Magistrates and Deputies, or in Dean Black's words: the have and the have-nots. The Magistrates were men of wealth, elected to lifetime terms and had judicial and directive powers. The Deputies were the elected representatives of the people. Unlike the Magistrates, they were not men of wealth and in England would not have been able to vote, let alone maintain a position in the government.

These two levels of the General Court eventually divided into legislative and adjudicatory functions. Dean Black points out that the reason that these formerly powerless people, the Deputies, were given a voice in the government is unclear. It may be attributed to societal pressure. It is also interesting to note that the Puritans believed the authority of the Deputies could be traced to the Charter. Dean Black said the English Parliament had no intention of granting the people a voice in the government. One may wonder where the textural basis was for the Deputies.

Dean Black said she has studied this society for, what seems like, 170 years. Part of her resistance to leave that time is her commitment to the study of legal history as well as a desire to delve into the complexities of a legal system. She says: Once you begin to realize how complex this isolated society was, it is very difficult to accept the 'history' that is passed on in law books today. Dean Black challenges us to look into the past and in that process we may be able to shake ourselves from myths that interfere with our analysis of legal systems.

Dean Black also is a George Welwood Murray Professor of Legal History. Her publications include: "Aspects of Puritan Jurisprudence; Comment on Berman, Revolution and Law: II, The Puritan Revolution and English Law," 18 VAL. U.L. REV. 651 (1984). She is also the President of the American Society for Legal History.

Filiano Speaker Series

by Greg Foliano

History Professor Linda Grant De Pauw of George Washington University asked her audience in Cleveland-Marshall's Moot Court Room to decide whether during the bicentennial celebration of the United States Constitution we have much to celebrate.

De Pauw, who is the author of numerous books and articles, gave her address Oct. 28 as the second speaker in Cleveland State's Constitutional Bicentennial Lecture Series.

"In 1787 the great majority of the people were excluded by the writers," De Pauw said.

According to De Pauw, 85 percent of the population of the country was excluded by the original document. These were the ones De Pauw termed the "unfree."

De Pauw put the unfree into five classes which included: infants, blacks, women, poor whites and Indians.

"It never really occurred to the founding fathers that Indians should have rights," De Pauw said.

Also, De Pauw stated that at the time of the ratification of the Constitution the median age in the United States was 16. Youth made up one quarter of the total taxable people in the country. According to De Pauw, the rights of these children were totally controlled by their parents.

"Liberty and property were closely (Continued on page 5)
Courtroom Psychology

By Lisa Long

The Psychology of the Courtroom lecture series concluded with lectures from Professor Michael Saks and Professor Neil Vidmar. Professor Saks teaches at the University of Iowa College of Law and is the editor of Law and Human Behavior, considered the pre-eminent journal in the field. Professor Saks spoke on recent studies of the courtroom process. Studies have found that distractions, to draw the jury's attention away from the other side as they argue, may not always work. Louder distractions may work in your favor, but will not be tolerated by the judge. Smaller levels of distraction were found not to affect the jury, because the use of the word male in the document would have been redundant.

The only class of the "unfree" which the Constitution even addressed was the blacks, who made up 20 percent of the population. According to De Pauw, most of the blacks were enslaved and dependent upon their owners. The writers mentioned the blacks in the original document in the three-fifths rule for population counting and in a provision stating there would be no slave trade laws for 20 years. Even in the northern states where the class of free blacks numbered 1,000 the vote was closed, De Pauw stated. Until the 15th Amendment the vote remained closed for these citizens.

"There was no reference in the Constitution to women," De Pauw said, "except as mistresses. The document referred exclusively to men, therefore the fault doesn't lie with them, but with our living generation."

De Pauw received her undergraduate degree from Swarthmore in 1961 and her Ph.D. from John Hopkins University in 1964.

why it is important to know how the jury selection and the jurors' own feelings affect their decisions. Pre-trial publicity is also a factor that must be taken into consideration.
The second stage, trial evidence, looks at how evidence is put together by the jurors in making their final decision. Professor Vidmar spoke of his own study in which he presented different types of information to four groups and studied conviction rates by these groups based on the information given. Where the group was given eyewitness testimony, the conviction rate was 90%, but where only circumstantial evidence was given the rate was 0%. A third group, given partially discredited eyewitness testimony, convicted 80% of the time, whereas a totally discredited eyewitness testimony brought a 50% conviction rate.

The third stage is the deliberation stage. During this stage it was found that there are two types of juries, those that are verdict driven and those that are evidence driven. The verdict driven group was shown to take a poll as soon as they enter the deliberation room, whereas the evidence driven group first discusses the evidence and what they heard in the courtroom. The major problem facing social scientists and attorneys is that for every study one side produces, the other side can find a study to support their side. Until social scientists find an efficient and widely accepted way of studying the judicial process, getting the information in front of the jury will be a difficult process.

Professor Landsman and Professor Rakos hope to offer Psychology of the Courtroom again next fall. Each lecture has been videotaped and is available for viewing at the Cleveland-Marshall Law Library.

Neil Vidmar
Photo by Lynn Howell
Few Lawyers Practice in Japan

By Tony Soughan

In 1853 Commodore Matthew Perry arrived off the coast of Japan and demanded commercial relations. Since then numerous trade agreements have been instituted to ease Japanese-U.S. trade friction. First it was textiles, then steel, then automobiles, then semiconductors. Now the barriers around the Japanese legal profession have been penetrated due to pressure by the American Bar and the Federal Government.

On April 1, 1987, "The Special Measures Law Concerning the Handling of Legal Business By Foreign Lawyers" went into effect in Japan. This new law permits foreign lawyers to open offices in Japan and engage in limited legal practice. In April three American lawyers submitted their applications to the Ministry of Justice to be registered as gaikokuho-jimoban, or literally foreign law lawyers. Upon approval on May 21, the three became the first foreign lawyers to open their own law offices in Japan since 1935.

History of Foreign Lawyers in Japan

The earliest mention of foreign lawyers in Japan appears in the Advocate Regulations of 1876. It allowed a foreign defendant in a civil action in which the plaintiff was also a foreigner to have the "Black Ship" of Commodore Perry as his legal counsel. The subsequent Attorney's Law passed in 1893 did not mention foreign attorneys. However, foreign attorneys did establish offices in Japan between 1885 and 1933. In 1935 the Diet of Japan, the Japanese Congress, enacted a new Attorney's Law which required validation of foreign lawyers by the Ministry of Justice. In the post-war edition of the Attorney's Law adopted in 1949, on its face, the law looked favorable to the foreign lawyer. Article 7 of the law recognizes three categories of foreign lawyers: 1) foreign lawyers who passed the national bar; 2) foreign lawyers who did not take the national bar exam but who could demonstrate that they "possessed an adequate knowledge of the laws of Japan"; and 3) all other foreign lawyers qualified to practice in a foreign country. Lawyers in categories one and two could conduct all the affairs which could be conducted by a Japanese lawyer, while lawyers in category three could only conduct legal affairs in regard to aliens or foreign law. In effect, however, the law precluded foreign lawyers from practicing in Japan for two reasons. First, except for persons of Chinese or Korean nationality born and educated in Japan, no foreigner could be expected to have sufficient knowledge of the Japanese language to pass the national bar exam. Currently, only 1.5% of those Japanese who take it pass. (Under the new law the Ministry of Justice will accept qualification tests written in English provided there is a Japanese translation.) Second, admission to the bar required two years of study at the Legal Training & Research Institute and the holding of a license required Japanese nationality for admission to the Institute.

By the time the third proviso of Article 7 was repealed in 1955 only 76 foreign lawyers, including 3 Americans, were authorized to conduct legal affairs in Japan; and then only in regard to aliens or foreign law. Fewer than ten of this group remain today. Approximately 100 American lawyers who are not recognized by the Japanese Bar, are working today as "trainees" of Japanese law firms.

The New Law

Under the new law, foreign lawyers are allowed to conduct legal business concerning their country of primary qualification. American lawyers may not give advice on Japanese law. They may not represent a client in a Japanese court. Candidates must also have five or more years of practice in their country of primary qualification. They may not enter into a partnership with, or hire a Japanese lawyer. Further, only lawyers from states who reciprocate with Japanese lawyers are eligible. Currently those states are California, Hawaii, New York, Michigan, and the District of Columbia.

Considerable economic constraints also restrict American lawyers from practicing law in Japan. The law does not mandate Japanese language ability, nor does it require the presence of a Japanese lawyer. Simply stated, the non-contentious practice of law in Japan is accessible only for those who can "work it out." It has been said that the Japanese like their contracts to be vague and difficult to fulfill their obligations under this contract, the parties shall meet and settle the matter between themselves. The American practice of law in Japan is anathema to Japan. The lawyers in category three could only conduct legal business in Japan. They may not represent a client in a foreign country. Although many Japanese universities offer a law curriculum, there is only one law school in the country conducting business in the country. Fewer than 500 lawyers graduate from the Legal Research and Training Institute each year, and many less become judges and prosecutors rather than general practitioner attorneys. Simply stated, the non-contentious nature of Japanese society dictates that few lawyers are able to enter the profession.

With regard to confrontation and litigation, Americans represent the antithesis of the legal culture of Japan. America is a land of lawyers and litigants. Courts are crowded, and legal fees are high. Many lawyers become judges and prosecutors rather than general practitioner attorneys.

Given the opposing nature of American and Japanese culture, the resulting opposing approaches to law, can an American lawyer practically practice his profession in Japan? Perhaps. But certainly not without an understanding and respect for non-confrontation. For legal success in Japan, the American lawyer must want to be able to compromise his argumentative attack and be willing to fight back. Given the opposing nature of American and Japanese culture, the resulting opposing approaches to law, can an American lawyer practically practice his profession in Japan? Perhaps. But certainly not without an understanding and respect for non-confrontation. For legal success in Japan, the American lawyer must want to be able to compromise his argumentative attack and be willing to fight back.
Streib Makes Supreme Court Appearance

For someone who studied to become a business attorney, the death penalty seems to be at the opposite end of the scale of legal specialties. However, Professor Victor Streib has become a top authority on the death penalty and juveniles.

Streib appeared before the United States Supreme Court as co-counsel on the Thompson vs. Oklahoma case Nov. 9. Thompson, the defendant in the case, was a 15-year-old juvenile when he killed his sister's ex-husband. Thompson was sentenced to death.

Streib has been working on the case since December of 1983 when he received a call from Thompson. Harry F. Tepper Jr. and Kevin W. Saunders, professors of law at University of Oklahoma's College of Law, are lead counsel on the case. The brief which was granted certiorari follows constitutional arguments against the death penalty for juveniles in Streib's 1986 article The Eighth Amendment and Capital Punishment of Juveniles, 34 Cleve. St. L. Rev. 363 (1985-86). Streib did most of the work of preparing the brief.

Arguments against the death penalty for juveniles as raised in Streib's article are briefly: 1) juveniles are treated differently by the law, and should be given the same considerations with the death penalty; 2) the death penalty is excessive and disproportionate considering the nature of juvenile defendants; 3) goals of deterrence and retribution are ineffective against juveniles.

On the first argument, Streib said juveniles have historically been treated differently from adults because they don't have the same level of maturity or experience. Teenagers have not been given certain rights such as voting, attending restricted movies or obtaining a driver's license. Once the law has made these differentiations, it can't deny it on the death penalty. "The law should be consistent in making these distinctions," Streib said.

Generally, the death penalty is reserved for the most heinous and atrocious crimes. Teenagers really don't have the fine mens rea the death penalty is supposed to require, Streib said. Teenagers are impulsive and frequently irrational, he added.

This is one of the reasons why the death penalty is not an effective deterrent against juveniles. "Teenagers aren't afraid of death," Streib said. Teenagers constantly flirt with death by ingesting foreign chemicals, driving while intoxicated, jumping off bridges into shallow rivers. Although realizing what death is, Streib said teenagers really don't appreciate the finality of it.

Counterfeiting And Its Costs

By Doug Davis

Most people realize the Cartier watches being sold on the corners of New York City are not genuine. A buyer knows it is fake, but it might be worth the ten dollars to fool unsuspecting friends and relatives.

On a worldwide scale this is no laughing matter. According to Donald E. deKieffer, partner in Pillsbury Madison & Sutro of Washington D.C., more than $20 billion worth of counterfeited goods were purchased in the past year. Most of this is not in fake watches and blue jeans, he said, but in pharmaceuticals, agricultural chemicals and now, airplane parts.

Counterfeited parts have been blamed for serious accidents, deKieffer said. NASA found entire parts shipments which were counterfeited and may have been partly responsible for the space shuttle Challenger's explosion.

International protection of intelectual property is more than rock stars complaining about bootleg records, deKieffer said. Less than one in three name-brand pharmaceuticals sold in Brazil are genuine, he said. In another case, the former General Counsel to the U.S. Trade Representative said, four and one half years of Kenya's coffee crop were destroyed because of bogus agricultural chemicals.

The pharmaceutical companies are particularly concerned because strict liability applies to some drugs they manufacture. Difficult legal questions arise when "knocked off" drugs injure or kill and a name-brand manufacturer is implicated. Most companies are "closed-mouthed" about counterfeit products which are hazardous, de-
Spouse Rape Raises Controversy

By Greg Temel

Rape is perhaps the most emotionally stirring topic of the criminal law; ethically, morally, and legally. For two hundred years our country's legislatures and courts have been trying to protect victims and prosecute the offenders in rape cases. We have statutes and common law principles that guide us in matters from statutory rape to felonious, aggravated assault and rape. Last year, Ohio went one step further in the attempt to protect innocent victims of rape by passing what is commonly known as the Spouse Rape Law, or H.B. No. 475.

The Ohio legislature cannot be faulted for its attempt to further curb sexual abuse in our state; the question though, is what led Ohio to pass such a law? Many Ohioans would like to believe that such a law would be passed to further end the discrimination of women. To halt the false beliefs that women are the property of their husbands, and must succumb to every whim and desire of their mate. Alas, Ohio's legislature may have had such noble intentions, but the real reason was not so symbolic. It was however, even more justified, by attempting to curb physical spouse abuse at all costs, of whatever shape and size.

An interview with Ruth Reilly of the Cleveland Rape Crisis Center disclosed that spouse rape is the ultimate manifestation of spouse abuse. An attempt by the male to degrade his wife for his own feelings of frustration and impotence. Spouse abuse, and in particular spouse rape, is the man's way of attempting to regain control of his life or family. He wants to show the woman just who is the boss; the man of the house.

Prior to the enactment of this law, the victim of spouse rape rarely was able to find legal protection or remedy against her husband. Spouse abuse, whether rape or otherwise, was treated as was every other domestic violence situation; without compassion by authorities who didn't want to invade the private domain of husband or wife. Even if the police and courts became involved, the attack was treated as an aggravated assault, at most. Aggravated assault is at most a second degree felony, where aggravated rape is first degree felony. The distinction between degrees of felonies may look unimportant to one viewing the situation from an objective legal standpoint; but look at the difference between assault and rape subjectively. Rape is a crime that stirs even the most passive juror; rape disgusts everyone.

There should be no doubt in anyone's mind that aggravated and intentional rape should never be excused, whether your personal reason be equality of men and women, or the physical protection of the innocent victims. Unfortunately, in its attempt to (Continued on page 11)
Family Law Essay Contest Sponsored

The Howard C. Schwab Memorial Award Essay contest is conducted annually by the Family Law Section of the American Bar Association. The contest was established by the Toledo Bar Association and the Ohio Bar Foundation in honor of Howard C. Schwab, a Past President of the American Bar Association. In 1985 the Family Law Section of the American Bar Association assumed full responsibility for the sponsoring of this contest.

ELIGIBILITY OF CONTESTANTS
All second and third year students enrolled in ABA-approved law schools, are eligible to compete, except employees of the American Bar Association.

AWARDS
First Prize - $700.00
Second Prize - $500.00
Third Prize - $300.00

Winners will be notified in July, 1988. All winning entries will be considered for publication in the Family Law Quarterly.

SUBJECT MATTER OF ESSAY
The subject may be any aspect of Family Law which the contestant chooses. Essays should be limited to approximately 3,000 words (about 15 double spaced, typewritten pages with footnotes). Essays scheduled to be published, and essays which have previously been published, are ineligible for consideration.

Entries will be judged on the basis of timeliness of subject, practicality, originality, quality (not quantity) of research, and clarity of style.

ENTRY PROCEDURE
Law students desiring to enter the contest should write to the Howard C. Schwab Memorial Essay Contest, Section of Family Law, American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611, requesting an entry form. The form must be completed and returned with the essay. The entry form will contain a number to be placed by the contestant in the upper right-hand corner of each page of the essay. The contestant's name is not to be on any copy of the submitted essay. Contestants' identities will not be known to the judges.

Six copies of the essay must be submitted. Photocopies or good carbon copies are acceptable. Entries for the 1988 awards must be submitted to the Howard C. Schwab Memorial Essay Contest, at the above address, postmarked on or before April 9, 1988.

Contact Edele Passalacqua or Charlotte Wereb in Room 26 for applications and more information.

The Gavel

Officiating & The Law

by Rick Smith

Some individuals were not too pleased with the umpiring in the World Series last month. Still others believe that the National Football League officiating is sometimes substandard. Fortunately, most people don't go beyond mouthing their dissatisfaction with sports officials. Unfortunately, for all those involved, the real problems arise when players, fans or other observers take to physical attacks on the officials.

A sports official, whether professional or amateur, takes on many responsibilities when he or she steps onto the court, field, or ice. All of these responsibilities stem from the official's duty to uphold the rules of the game being played. If an official fails to be responsible he leaves himself open to much more than just criticism from overzealous fans. Nonetheless, substandard or careless officials are not the only ones subject to physical attacks and other negative behavior. So, to protect every official regularly putting on a uniform and going out to become a decision maker between two opponents, there needs to be laws which protect the safety and well being of officials: laws which make those contemplating physical attacks aware of the severe consequences of their actions.

In recent years the trend throughout the country has been to limit such liability to certain actions.

In a 1985 case in New Jersey a county court ruled that an official could only be liable for injuries of players when the official acted with gross negligence. Similarly, Ohio has proposed a law which would limit liability to situations where an official acts in a grossly negligent or willful manner.

Field conditions give rise to lawsuits against sports officials. Other suits arise from individuals who bring actions to overturn the calls of an official.

Six states, including Ohio, have had their courts rule that there will be no judicial review and reversal of rule or judgment calls made by officials during games. Additionally, where the field conditions may have had some cause in the participant's injuries, two recent cases show that courts and juries may be more strictly applying the assumption of risk doctrine.

In another New Jersey case, a track and field official was dismissed as a defendant in a claim where a contestant injured his knee on an alleged dangerous take-off board. In California, a jury failed to find an umpire liable for an injury to a player who stepped into a hole in the batter's box while running from third base to home plate.

Obviously, sports officials are not without some duties when it comes to the protection of participants, but they too, need to be protected from frivolous lawsuits. In order to strike a balance, officials must be provided with some immunity. They must also have the sense of security that they won't be subjected to physical attacks when they go out to perform their duties. Revised legislation has imposed a reasonable burden on the officials and it reflects the need to protect everyone involved in a sporting event.
### Moot Court

**Team Triumphs**

The Moot Court Board of Governors recently sent a team to the John Marshall (Benton) National Moot Court Competition in Information Law and Privacy in Chicago, Illinois. This team returned to Cleveland on October 25th sporting a grand trophy that represents the first place award for this competition. The team also wrote the top ranked Respondent brief which will be published in the John Marshall Law Review, Privacy Edition.

There were thirty-three other teams from across the country initially competing in this competition. The team argued before six state supreme court and court of appeals justices, including Justice Shirley Abrahamson who was a visiting scholar at Cleveland-Marshall last year.

Congratulations go to Mathew Nakon, Laura Steffee and Steven Yoo for their fine achievement and dedication to the Moot Court program. Special thanks are also due to faculty advisor Stephen Werber whose continued dedication to the Moot Court program makes successes like these a reality.

Fred Wheatt discusses fund raising for the first law student division of the National Bar Association, at Cleveland-Marshall. In back, from left to right, SBA President Jane S. Flaherty; Greg Thomas, NBA-LSD Treasurer, unidentified; Dea character-Floyd, NBA-LSD President. *Photo by Lynn Howell*

Melodie Stewart and Orville Stiefel prepare for FALL Moot Court night Nov. 9. *Photo by Lynn Howell*

### Counterfeiting And Its Costs

(Continued from page 8)

Local protection of intellectual property in third world countries is practically non-existent. Third world governments argue that greedy imperialist companies ought to let their domestic industries copy products even though the counterfeit goods are inferior in quality, deKieffer said.

The United States government has been able to force some countries such as Korea to modify and enforce its intellectual property protection laws. deKieffer said the United States threatened to cut off Korea's most favored nation status before it complied.

Another problem exists in trade between third world countries, deKieffer said. No incentive exists for either government to enforce intellectual property protection laws. Both governments profit from the transactions though consumers may suffer the consequences. Half of the LiveAid record profits were lost to Indonesian counterfeiters, he added.

Since no organization enforces international laws against counterfeiting, multi-national corporations and governments can only ask and beg countries to enforce the laws. "This doesn't work," deKieffer said.

Domestically, protection of intellectual property has been more successful, deKieffer said. The 1984 Trademark Act gave a private right of action against counterfeiters. deKieffer said four raids were conducted in Cleveland last year. The act allows a victim to hire a private "SWAT" team to seize counterfeit goods. Usually, the people with the counterfeited goods do not show up in court to contest the seizure, he said. With few contested cases, he said, not many opinions have been written and there is little case law.

"Will-fit" products are another problem, deKieffer said, but are more difficult to work with. "Will-fit" products are replacement items, such as a car fender, that replaces manufacturer's equipment at substantially reduced prices. The U.S. government is not as concerned about these products because there is no intent to deceive the consumer that the goods are "original equipment." deKieffer's talk was sponsored recently by the Greater Cleveland International Lawyers Group.

### Spouse Rape

(Continued from page 9)

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