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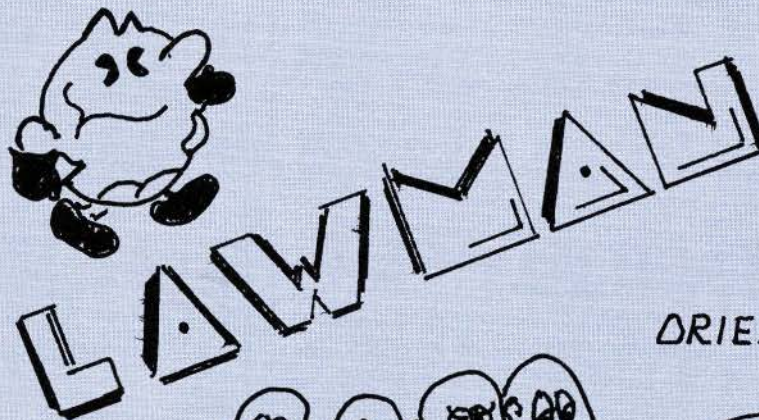
The GAVEL

Cleveland-Marshall College of Law

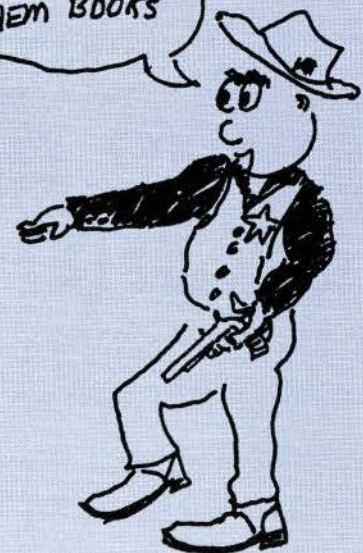
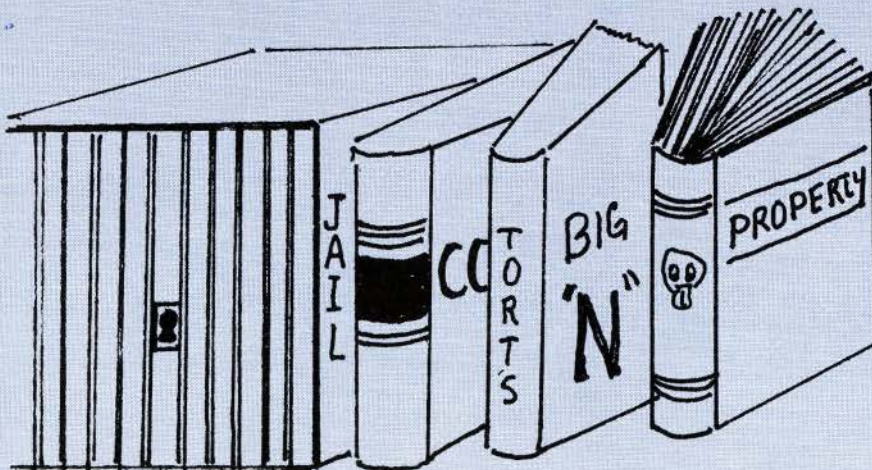
Volume 38

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ORIENTATION 1989



Editor's note

Cleveland-Marshall's law library is missing something. It can't be found in the card catalog or in the stacks. It is just not there. Cleveland-Marshall is missing a library director.

It seems almost incredible that Marshall has been without a permanent director for almost one and a half years. For some of us that is more than half of our law school careers. Most others have never had a library director during their time at C-M.

It seems even more incredible considering how important the library is to this or any other law school. The library is the heart of a law school. It is a place not only for students to study, but for the community of attorneys, the faculty's in-depth research, and most importantly to draw students and professors to the school.

Considering the importance, the question arises why has C-M not hired a library director yet? The simple answer is that Cleveland-Marshall's library has budget and space problems.

While C-M is the largest law school in the state, it also has one of the smallest library budgets. In fact, Marshall was ranked last in library expenditures per full-time student among Ohio law schools during 1987-88. First-ranked Cincinnati out-spent CSU \$2,634 to \$1,040 per student. Even the library staff realizes this problem has made it difficult to attract and land qualified directors. As one staff member put it, "they [the candidates] wonder how we are making it on our budget."

The second problem is space. C-M has almost 100 less square feet per student than Cincinnati. C-M has only 28 square feet per student as compared to the mean in Ohio of 63 square feet per student.

The Dean has worked with the University and greatly improved library facilities already. Even \$100 of your tuition increase went directly into the library and the University has vowed to match the dollars.

Still, we need more than just Dean Smith to be fighting for the library. No matter how much the library's facilities improve, it will still be missing that important something. A leader.

The GAVEL

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*Any interested students, including
first-year students, are encour-
aged to become involved.*

*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.*

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Burning flag shines free

Faculty forum

By Professor Joel J. Finer



The United States Supreme Court has been widely denounced for holding that flag-burning may not be punished under our Constitution. Both Houses of Congress,

by overwhelming votes, have passed resolutions calling for action against the decision, and President Bush has called for no less than a constitutional amendment prohibiting desecration of the flag.

I suggest that we who love our flag and what it stands for owe an enormous gratitude to the majority of the Supreme Court for transforming a nihilist attack on a single replica of our flag, into a monument to the enduring liberty values symbolized by the concept of Old Glory. Not ironically, liberals and conservatives alike should be purchasing flags in celebration of the respect and fortification the Supreme Court has given Old Glory's underlying values.

During the Republican Convention of 1984, in Dallas, Gregory Lee Johnson a self-declared "Maoist," and other anti-Reagan demonstrators chanted political slogans as they marched through the Dallas streets. Johnson was handed an American flag by a fellow protestor. He set it afire and while it burned, the protestors chanted, "America, the red, white, and blue, we spit on you." No one was physically injured or threatened with injury, though several witnesses testified that they had been seriously offended by the flag-burning. Johnson was convicted by a Texas Court of desecration of a venerated object, having intent to seriously offend, and sentenced to one year.

The Supreme Court found, quite appropriately, that if the purpose of the law is to forbid expression of the contemptuous idea through conduct (expressive conduct), the actor cannot be punished, unless the act causes a very serious harm. Is the profound offense felt by so many a very serious harm?

The majority of the Court upheld an essential idea underlying the flag--an idea that spells much of the difference between our values, and the values of our enemies throughout the years. An idea so central to our democracy,

that it can be said to embody what the boys in Iwo Jima and the boys in Vietnam were fighting for. That idea is that, no matter how offensive to how many people are our views, we in America are free to express them without fear of being jailed. The great principle our flag stands for --the principle of freedom--is meaningful only in terms of the idea of freedom for everyone--i.e., tolerance for those whose expressions and expressive acts we detest, as well as for those whose expressive acts we applaud. Freedom for ideas we love would be a hollow sham, if there weren't a corresponding freedom for expression we despise.

"We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents," observed Justice Brennan for the majority.

Why is tolerance of offensive ideas and expressive acts one of the great principles of our constitution?

a) Because in a very real sense the respect you give to the least of our citizens, or to the most obnoxious, is as much as you can hope to receive should your time ever come to protest.

b) Because, by being free to express ourselves stupidly, mistakenly, offensively, each of us can learn from the natural consequences of that experience far more than if we were threatened by jail into remaining silent.

c) Because without such vigorous criticism, criticism sometimes expressed powerfully, if vulgarly, through a destruction of a symbol (actually only symbolic destruction of a symbol), we might be sufficiently shaken in our beliefs to question a false belief.

While there is a narrow "fighting words" exception to the broad principle that no one may be punished for expressing a point of view, however offensive and outrageous, that exception is applicable only when the expression is personally directed at another individual and intended to provoke a violent response.

The legendary conservative, Justice Harlan, wrote for the Court in 1969 that a person could not be convicted for walking through a courthouse wearing a jacket that carried the words "Fuck the Draft," regardless of the obvious offensiveness and indeed outrageousness of such

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Letter:

Racist caller should get Guild's message

To The Editor:

Whoever thinks that racism and red-baiting are incompatible doesn't get mt telephone calls. Just after the gaffe between CSU and the Lawyer's Guild over FBI recruiting on campus last spring the calls began. At first, they were a group project with chants in unison or serial contributions. Later they diminished to a single caller with a message. Still later just hang-up calls. The messages generally went something like "Eat s--t and die you m-----r!" There was usually a lashing out at my apparent leftist political bent. Fortunately, except for the hang-up calls, my answering machine has spared me from direct contact with any of the callers.

I can only suppose that the calls are somehow connected to the Guild's insistence that CSU not allow employers who discriminate on the basis of race and national origin to recruit on campus. As far as placement policy is concerned, the Guild's position is a wholly reasonable position since we are merely asking CSU to uniformly enforce its own rules. The issue here isn't the reasonableness of our argument or the fact that we vigorously advocate empowerment of the disempowered, but rather what happens when we do these things. The harassing phone calls go hand in hand with the words "nigger" and "commie" that are regularly scrawled on notices posted on our bulletin board at the law school and the whispered warnings by fellow law students about the necessity of avoiding association with the Guild because it is a communist front group. These aren't surprising antics. After all, America hasn't been kind to its forward-thinking, level-headed citizens whether they were calling for industrial unionism, better wages and working conditions, were pacifists, the old farm worker organizers Woody Guthrie wrote about or leaders in the UFW; whether they fought for free speech and association, civil rights or nuclear safety. Remember what happened to Gene Debs, the Hollywood 10, Martin Luther King and Karen Silkwood

(cont. to page 11)



Professor Steve Werber was one of the handful of faculty members attending the first social of the year. The same handful can be seen at most student events.

Peer program gives direction

By Christina Janice

In an interview with Bridget McCafferty, the S.B.A. secretary outlines the direction the Peer Advising Program will take in light of the needs of the first year student body.

For the second consecutive year, the Student Bar Association is sponsoring the Peer Advisor Program for first year students. When the program began last year, its purpose was to orient first year students to their surroundings and assist them with any questions they may have had as they worked their way into the C-M community. Last year's program was not without criticism, however, as many students of the class of 1991 found that they met their peer advisors once during orientation, and then were unable to access their advisors during the rest of the year. To avoid this problem, the S.B.A. has developed a more comprehensive program for advisor - student interaction, involving the assumption by the advisors of many responsibilities which have been left relatively unattended to by other sources in the law school.

Aside from two more socials scheduled for this fall, McCafferty plans to have monthly meetings with the advisors to discuss student problems with which they have been faced, and is organizing a "crisis referral service", through which the advisors can access a directory listing their names and problem areas with which each peer has had experience. The

(Cont. to page 6)

A nervous year begins

By Christina Janice

Faculty, staff and student organizations took their places and the atrium filled with restless and nervous first year students as Orientation 1989 began on Thursday, August 17, 1989. For over four hours that evening, the class of 1992 listened to speech after speech and were led from room to room as part of their sudden submergence into first year law school at C-M.

As in the year just past, the new students took part in the S.B.A. (Student Bar Association) functions of signing up for and meeting their peer advisers, purchasing in-house locker space, and taking part in the social hour that ended the evening. Unlike last year, however, the students were not informed of the presence of student organization officers on the second floor of the atrium, who were in attendance as part of their regular yearly recruitment programs. Subsequently, introduction to extra-curricular activities at C-M was not part of the annual submergence, and was delayed until a later scheduled S.B.A. social, held August 31.

Professor Joel J. Finer delivered a thoughtful keynote address, entitled "Finding Yourself in Law School." Concerned for the intellectual and emotional, as well as academic, growth of the students, Finer made several suggestions for surviving the first year of study. He recommended study groups, attendance at social functions, physical relaxation techniques, and the often avoided personal communication with the faculty. "Invite us for a cup of coffee," he said. "It sometimes gets lonely in the so-called ivory tower."

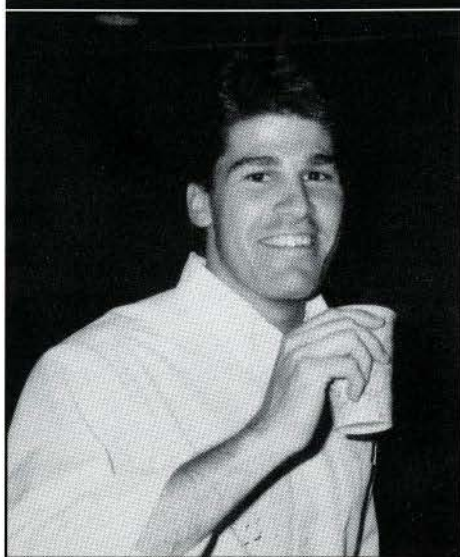
Finer stressed the importance of legal education in developing values that students will take with them into the profession. He stated that, to be good lawyers, students will learn to respect their clients as people, to question authority, to learn and to teach, and to be open-minded: "The idea, that you'll come to appreciate is central to justice," he said, "is that the rights received by the most despicable of our citizens will determine the rights received by the most admirable of our citizens when caught in the web of the law."

Finer addressed the need for involvement of this future legal community in the social

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The new S.B.A. officers pose for a picture. They are (left to right) Sherri Goodman, President; Max Brown, Vice President; Bridget McCafferty, Secretary; and Pat Phillips, treasurer.



Third-year student Mike Polito enjoys a malted beverage during the year's first social.

Hispanic students to organize

Several Hispanic law students at Cleveland-Marshall are currently organizing a Hispanic Law Student Association to be affiliated with the Hispanic National Bar Association, which currently represents many chapters comprising over 6,000 lawyers, judges, law faculty, administrators, and students dedicated to advancing the interests of Hispanics in the legal profession. The Hispanic Law Student Association will focus on the concerns of Hispanic law

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Juries have the power to try both law and fact

By **Garin C. Hoover**

In criminal cases, juries have the power to try the law. The process is called nullification. Jury nullification is the ability of a juror to judge a law. A jury can nullify or disregard any law given to them by the trial judge. This means that if a jury does not agree with the law, even if the facts show a defendant did break the law, they can render a vote of NOT GUILTY. It only takes one vote to acquit a defendant in a criminal trial. Juries, in deciding whether a party is guilty or not, have the final power to void a law. Juries are judges of both law and fact in criminal cases.

The concept of jury nullification dates to the early stages of this country. In Georgia v.

The party poop

First social is confusing

By Tom "I love free beer" Goodwin

The S.B.A. held its first social of the year recently, but it got things a little backwards. The pizza was cold and the beer and pop were warm.

Due to a lack of communication at the First Year Orientation Night, incoming students were not directed to the information tables set up by various student organizations. The social (the S.B.A. says we can't call it a happy hour because it promotes the use of alcohol) was meant to introduce the organizations to the incoming students, although it appeared that second and third-year students made up the majority of the crowd. It may be too early in the year to expect first-year students to realize the stress and tension relieving capabilities of free pizza, pop, and beer.

Hopefully, it will only take another social or two before the S.B.A. gets the details down and figures out how to keep both the day and evening students happy by arranging for a later pizza delivery specifically for the evening students who often miss out on the S.B.A. socials. I am sure Vice-President Max Brown will be more prepared for the next event (maybe another keg?). Still, he did relatively well considering the shortage of S.B.A. senators lending a hand.

Student organizations represented reported meeting quite a few students interested in

their activities. While faculty were not required to attend the event, apparently many professors feel that interaction with students is important and were in attendance. I also believe that faculty interaction is important in the life of a law student, and would like to note the faculty present included Professors Browne, Buckley, Finer, Forte, Makdisi, Sierk, Steinglass, Tew, Werber, and White, as well as, Dean Smith. If any faculty member present was not included on this list, please accept my apologies. As for the faculty unable to attend, it may be interesting to talk to some of your students outside the classroom atmosphere, why not give it a try?

All work and no play makes one a dull person, so please, relax every once in a while and enjoy the numerous social activities that the S.B.A. and other student organizations hold throughout the year. Your fees help pay the organizations' budgets, so get your money's worth! The S.B.A. is sponsoring a field trip to the Browns' game on Oct. 29. Tickets are tentatively \$12.00, so get your permission slips early.



Angie, pictured here with Gavel editor Tom Goodwin (he's on the left), recently celebrated her 25th birthday, again.

Brailsford, 3 U.S. 1, 4 (1794), the Supreme Court declared through Chief Justice Jay "...for, as on the one hand, it is presumed, that juries are the best judges of the facts; it is, on the other hand, presumably, that the court are the best judges of the law. But still both objects are lawfully, within your power of discretion." (Emphasis added).

In Horning v. District of Columbia, 254 U.S. 135, 138 (1920), a case with undisputed facts, the Court stated, "(t)he judge cannot direct a verdict it is true, and the jury has the power to bring in a verdict in the teeth of both law and facts." This case follows the earlier holdings that juries have the power to try the law as well as the

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S.B.A. Senate has stormy start

It was like a tornado touched down in this year's first S.B.A. meeting. Within five minutes President Sherri Goodman had appointed six senators and a treasurer, and amended the constitution. Each of the acts were unanimously approved by the nine attending senators.

Goodman, who has sole power of appointment, picked Patrick Phillips to succeed Sean Kelleher. Kelleher was elected last spring but had to resign due to family and job obligations. Goodman stated she picked Phillips because he was a senator last year and had done similar work. Phillips fielded two or three questions from the senate and stated he had a fair idea of how to fill out purchase requisitions. The

appointment, which needed a two-thirds vote of the senate, carried all nine votes. Phillips, a fourth-year night student, will receive a one-semester tuition stipend for his work as treasurer.

Next, the Senate approved a constitutional amendment which upped the number of senators from 1 per 75 students to 1 per 50 students. The amendment had been put in place by Scott Spero, last year's president, but was never passed by the senate. Goodman stated she believed the amendment was necessary for proper representation of the students. It passed without question.

Immediately following the adoption of the amendment Goodman appointed six sena-

tors. According to Goodman, the appointments were based upon interest. All six new senators, four of whom were in attendance, were passed by the senate in a single vote.

In other business, the senate discussed its attendance policy, which allows for two excused absences. Due to an increased number of meetings, to two per month from one per month, Senator Ellen Roth argued for four absences. Although no decision will be made without further study, the senate agreed the two-absences rule shall be liberally construed.

The senate also discussed law school security. This is expected to improve with the hiring of two student patrols and an increase in the police patrol of the law school.

Peer advisors

(Cont. from page 4)

directory also will list other University counselling services. Along with students who have experience with problems of housing, night school, and work, the directory will list advisors who have had experience with personal problems. "It is our hope to be a referral center and to know that, if their problems are too big for us, not to be vain, but to make sure they get help." McCafferty herself worked at Oxford Crisis Referral in college, and several other advisors have worked for crisis hotlines. "We are hoping we won't have to use them," she said.

McCafferty said the function of the advisors would be to give "common sense advice." For example, while the American Bar Association urges first year students not to work during the school year, this may not be the advice the advisors give. "For someone to come in and say 'I have four kids and my wife just got laid off' and we're supposed to say 'Don't work your first year'? What we might say is 'Maybe you'll want to take one class less, or go part-time.'"

Another area that McCafferty anticipates the Peer Advising Program to step into is that of academic counseling. She plans for the advisors to meet a couple weeks before the fall schedules come out in order to review the tentative schedules and the requirements that must be explained to both day and night second year students.

"There is a definite gap between the Administration and the students here," McCafferty said, "and every [advisor] is told that they have access to go and see Dean McNally personally."

A final area McCafferty wants to direct the program toward is the fall interview program for second year students. First year students are not advised of this program until late in their first year or the beginning of their second year. "Last year," McCafferty said. "Career Planning did not stuff mailboxes, so we're just going to do it."

McCafferty plans to send out mailings to the first year students early in their second semester, so that they may plan for the program. She hopes to do so with the cooperation of Placement Director Pam Lombardi, who currently is on a leave of absence.

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Getting involved at Marshall:

There's more to law school than just the classes

Moot Court Board of Governors

By Pat Corrigan

A Tucson judge recently sentenced a lawyer to 40 hours in jail for appearing before the bench in green tennis shoes. Why, one might ask, would an attorney present himself in such an unprofessional manner? Perhaps he intended to humor the jury or startle his client. Whatever the reason, it is clear that the lawyer never learned the importance of proper courtroom conduct.

The opportunity to acquire such courtroom skills is best available during one's tenure as a law student. At Cleveland-Marshall the Moot Court program offers the student an excellent chance to learn the important skills of lawyering. While little time is spent teaching proper footwear, the Moot Court program instills in its members the professionalism required of oral advocacy.

Moot Court offers the opportunity to hone one's brief-writing and oral advocacy skills. No other course in law school demands as much effort or produces such practical benefits. Participation in Moot Court challenges the student to embrace research, writing, legal analysis, and oral advocacy. Such skills are essential to the profession.

The Cleveland-Marshall Moot Court Board of Governors has a long tradition of excellence in appellate advocacy. Last year's Board enjoyed success. Seven teams from four competitions proudly achieved two Best Briefs, two semi-final appearances, one finalist team, and one Best Oral Advocate award. The Cleveland-Marshall teams compete against teams from such schools as Cornell, New York University, Ohio State and Yale. Our strength is in our commitment to hard work and excellence.

The 1989-90 Board of Governors has decided to enter a variety of well-respected competitions. Cleveland-Marshall, in keeping with tradition, will send two teams to the National Moot Court competition and one team to the Benton Competition this fall. Spring competitions include the Jessup International Law Competition, the Jerome Prince Evidence Competition, the Cardozo Entertainment and Communications Law Competition, and the Products Liability Competition. The competitions usually involve thirty to forty teams and include interesting topics of current legal importance.

For an opportunity to see what Moot

Court is all about, attend the Moot Court Night Competition in November at Cleveland-Marshall. The two teams on their way to the National Moot Court Competition will square off against each other in front of a live bench. Moot Court night is known as an exciting event and is the culmination of a lot of effort on the part of the National's teams. Should you have any questions about the Cleveland-Marshall Moot Court program, contact anyone on the Board of Governors or Professors Werber and Weinberg. The Moot Court offices are located in room 16, so feel free to visit.

The Gavel

The GAVEL is the student publication of the College of Law. Its purpose is to inform, entertain, and comment on the law school, legal community, and related topics of interest. The GAVEL acts as a forum for students, faculty, staff, and the Cleveland legal community.

The GAVEL is always seeking interested students to participate in the writing, layout, or photographic aspects of producing the newsmagazine. Also of interest to us at the GAVEL are stories, news items, letters, or any other information concerning the C-M community, law students in general, or any other aspect of the legal field.

Students become staff members after having had two articles or equivalent contributions printed in the newsmagazine. Staff members participate in editorial elections at the end of the year; each of the three editor positions provides a full tuition waiver.

Much has been said about the rigors of the first year of law study. While some of it is true, a lot is exaggerated. Not every waking hour is spent pouring over books. Writers, artists and photographers use the GAVEL as a vehicle to express themselves outside the traditional classroom setting. For more information, stop in the GAVEL office, LB23, or call 687-4533. Editors for 1989-90 are Greg Foliano, Tom Goodwin, and Christina Janice.



Moot Court Board of Governors Chairman Pat Corrigan sells the board to first-years during a social hour.

Journal of Law and Health

The Journal of Law and Health is a student-run scholarly publication that affords a legal forum for discussion and debate among practitioners, academics and policy-makers in the field of health-care law.

Journal members are invited to seminars and meetings sponsored by experts in the field. This allows personal contact with various professionals, including those involved in medicine, insurance, and hospital administration. These contacts add an extra dimension to Journal membership.

NBA-LSD

The National Bar Association-Law Student Division is a nationally recognized organization with local chapters in most of the nation's law schools. The purpose of the NBA-LSD is to foster and encourage professional competence by articulating and promoting the needs and goals of minority law students. The organization also works to influence the legal community to bring about meaningful change to meet the needs of minority communities. Membership is open to any student committed to these goals.

For more information, stop by the office, LB13, or contact Regina Melton or James R. Tanner, Jr., at 687-2329.

Domestic violence dominates culture

By Anita Bajurzak

*"A spaniel, a woman, and a walnut tree,
the more they're beaten the better they
be."*

-Old English Proverb

Violence and sexism dominate our culture. Although it is said that nice people don't abuse each other, the truth is that abuse transcends age, race, income and education. Abuse is not specific to blue collar and lower class. An abuser may be a doctor, lawyer, banker, psychiatrist, or other professional.

Domestic violence is the single most unreported crime in the country. Frequently, a woman who enters a hospital emergency room will claim that she has fallen down the stairs, walked into a door, or has been assaulted by an unknown person- myths fabricated to protect

themselves and their spouse.

Those of us in society who have not been exposed to domestic violence view the home as a source of love and support. However, victims of domestic violence do not find support in the home and are often isolated from friends and relatives. Many victims do not have the financial resources to change their situations. Under these circumstances, it is the victim and not the criminal who must flee the home.

Domestic violence has been defined by statute. O.R.C. 2919.25 provides:

a) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

b) No person shall recklessly cause or attempt to cause physical harm to a family or household member.

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National Lawyers Guild

The National Lawyers Guild was founded in 1937 as a progressive, anti-racist alternative to the American Bar Association which then excluded Blacks and opposed child labor legislation. It remains dedicated to basic political and economic change using law as an instrument for the protection of the people rather than for their oppression.

The Guild was in the forefront of legal support for industrial unions. It led opposition to political persecution during the McCarthy era and played a prominent role in the Civil Rights and Anti-War movements. The Guild currently sponsors scores of projects including a national clearinghouse on AIDS issues, Central America anti-intervention work, and the defense of women, people of color, and progressive faculty at law schools across the United States. Law student members are considered a valuable asset and thus have had full membership privileges for nearly twenty years. They participate at every level of the organization. They also receive something in return. There is the unbeatable experience of working with attorneys, legal workers, jail house lawyers, and,

of course, other law students. This year several standing committees of the Guild are seeking students to do paid research. There is even the possibility of receiving independent study credit. Through the C-M Chapter, students may apply for internships sponsored by the NLG Summer Projects program and the Law Students Civil Rights Research Council. Both programs place summer interns with groups working for social change and represent minorities and the poor. For avid readers, the Guild is a great source of publications and other research material relating to public interest law. Some are available in LB25 on a loan basis. We also have a cache of hornbooks, casebooks, and even some (the unmentionable) commercial outlines which students may borrow.

As the Guild enters its sixteenth year, we plan a series of informative and stimulating forums and workshops. There will be at least one field trip. Lastly, we encourage students to attend the Guild's regional conference at the University of Pittsburgh Law School, September 22-24. Stop by the office in room LB12 for details.

Law Review

The Cleveland State Law Review is a nationally recognized legal journal edited and published by Cleveland-Marshall students. Its contents are determined by the Review's student editorial board and includes significant legal writings authored by law students, legal scholars, practitioners, and other members of the legal community.

Membership is extended to both beginning second year students ranked in the top ten per cent of their class and to those students successfully completing the summer writing competition held in the summer following the first year. Students invited onto the Review by either avenue serve as associate members and are given the opportunity to contribute to the legal community by writing a scholarly article with an aim towards publication in the Review. Successful completion of this article may sat-

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Applications rise

Applications for admission to Cleveland-Marshall for the 1989-90 year totaled 1,315, a 13% increase from 1988 and a 32% increase since 1987. Some 629 applicants, or 48% of the applicant pool were, offered admission. Of these, 310 students registered. The 1988 incoming class numbered 321 and in 1987 there were 326 new students.

The new first-year class is comprised of 126 females and 184 males. Minorities account for 37 of the total 310 students, or about 12% of the class. In 1988, minorities numbered 43; in 1987, just 23 minority students began their first year. Fulltime students number 199, parttime 111. Fifty students are nonresidents of Ohio, while the remainder are. Some 109 colleges or universities and 12 states are represented among the student population.

The mean LSAT score for the first year class is 33. This compares with 32 in 1988 and 31 in 1987. The mean undergraduate GPA for this year's new students is 3.05, the same as in 1988 and up just slightly over 1987's 3.00.

These figures were provided by Assistant Dean McNally.

C-M Law Review

(Cont. from page 8)

isfy the law school's upper level writing project required of all students for graduation. Third year members who have completed publishable articles are promoted to the governing Board of Editors and upon successful completion of editorial duties receive two hours of academic credit.

Participation on the Cleveland State Law Review is a nationally recognized academic honor that is both fun and rewarding. For more information please stop by the Law Review office, or call 687-2336.

P.A.D.

Phi Alpha Delta (P.A.D.) is the largest international law fraternity, consisting of over 110,000 members. The list of alumni includes judges, lawyers and national leaders who have made significant contributions to the legal and political history of this country. It was also the first law school fraternity to welcome women and blacks as members.

The Meck Chapter of P.A.D. at Cleveland-Marshall is very active and has sponsored many events in the past year to enhance students' experiences at the law school. Our professional program in the past has included speakers from many areas of law. Our social events have included going to Indian games with the ever popular behind-the-fence party, coffee and donuts, a film series and social hours. The 1989-90 school year promises to be yet another successful year for P.A.D. with speakers and social events planned for this fall.

The officers this year are: Justice, Lisa Brown; Vice Justice, Bob Kistemaker; Treasurer, Michael Goldberg; and Clerk, Julie Meyer. Please stop by our table in the lunchroom or our office anytime to find more about P.A.D. and the events planned for this year.

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Juries try the law

(Cont. from page 5)

facts. It also displays that a judge cannot direct a verdict in a criminal trial, which exemplifies the limiting of a judge's power. Why does a jury have the power to try the law? A basic principle in this country is that the people should have the final say on whether a law is moral or not instead of a judge. It is a reminder to those in power that the citizens of this country are the sovereigns. In U.S. v. Moylan, 417 F.2d 1002, 1005 (1969), cert. denied, 397 U.S. 910 (1970), the Fourth Circuit stated "...the jury's power to acquit where the law may dictate otherwise is a fundamental necessity for a democratic system. Only in this way, it is said, can a man's actions be judged fairly by society speaking through the jury, or a law which is considered too harsh be mitigated." Consequently, the court has authorized the jury the right to try the law.

A jury has the power to disregard the instructions of the law given by the trial judge. U.S. v. Dougherty, 473 F.2d 1113, 1132 (1972), states that there is an "existence of an unreviewable and unreviewable power in the jury, to acquit in disregard of the instructions on the law given by the trial judge..." The court went on to state that "jurors had a duty to find a verdict according to their own conscience, though in opposition to the direction of the court; that power signified a right; that they were judges both of law and fact in a criminal case, and not bound by the opinion of the court." Id. This power held by the jury co-exists with the function of the judge to properly instruct the jury on the matters of law. The court, however, intended for the jury to correctly analyze and interpret the law and facts.

Only a few judges will inform a jury of their right of nullification. Because of this, it is necessary that citizens learn the law on their own in order to properly participate in the sovereign body politic. Jury nullification demonstrates that the citizens of this country have a power superior to judges. If a member of the jury thinks a criminal law is unjust or the circumstances of the case justify the defendant's actions, the juror can acquit the defendant. In this sense, jury nullification is a safeguard against oppressive laws.

Domestic violence

(Cont. from page 8)

c) Whoever violates this section is guilty of domestic violence, a misdemeanor of the first degree. If the offender has previously been convicted of D.V. ... domestic violence is a felony of the fourth degree.

Within the meaning of the Code, a family or household member is a spouse, a person living as a spouse, a former spouse, or a parent, child, or any person related by consanguinity or affinity to the spouse, former spouse, or person living as a spouse; or has resided with the offender.

Domestic violence is not always a constant occurrence, but in many situations seems to occur on a cyclical basis. The cycle is identified as having three phases which can vary in intensity and chronology.

The first phase is identified as the "Tension Building Stage" and is characterized as a series of minor incidents which cause increased tension in the relationship. The parties become less able to control events. The woman withdraws and the man becomes intrusive. The woman feels that somehow she is responsible for his behavior. She tries to be good. As she withdraws into this pattern of good behavior, he becomes more frustrated.

This frustration leads to phase two, the "Acute Battering Incident." During the second phase the man loses control and takes his tensions out on the female, inflicting physical injury on her. At this point she feels helpless and may even provoke the man in order to get the abuse over and move into the next stage. After the attack, the woman may be in a state of disbelief, and the man cannot remember the details of the incident.

The next stage begins. Phase three is "Kindness and Contrite, Loving Behavior." The couple experiences a revived intensity in their relationship. The man often is sorry for the attack. He may buy her presents and promise to change. The woman often will believe he can change. They decide to try again, but there has been no real change in their behavior and, although there is a period of calm, the cycle will begin again. If the victim does decide to flee the violent home she may need assistance to break free of the perpetrator of domestic violence, who often is reluctant to let her leave. To get help in the city of Cleveland, she first must report the crime with the City of Cleveland Police Department. Next she must file a complaint with the City of Cleveland Prosecutor's Office. The complaint may be handled in several different ways: by the issuance of an arrest warrant, a mediation hearing, or a referral to a private attorney.

The determination of how to handle the complaint is based on whether or not there is probable cause to issue an arrest warrant. If a warrant is issued it is put on file for service and the police go out and pick up the perpetrator for whom it was issued. Although he is booked, he may be released from jail on a personal or money bond. The following day he will have to appear in court and enter a plea. The case ultimately will be set for trial and he will be sentenced. If he is convicted there is a maximum of \$1000.00 fine and up to 6 months in jail for a first conviction of domestic violence.

Once a warrant has been issued a victim should be prepared to follow with prosecution. It is difficult to drop the charges even if the victim wants them dropped.

In conjunction with a warrant, a criminal Temporary Protection Order (T.P.O.) may be issued. It will require the man to stay away from the victim's home and cease bothering her. The T.P.O. remains in force until the case is disposed of. If when the complaint is filed the prosecutor determines that a mediation hearing should be conducted, a date for the

hearing will be set. The hearing will be held in the City of Cleveland Prosecutor's Office by a trained mediator.

The Mediation Department was established in Cleveland in 1981 to deal with crimes committed within the city between individuals who will have continuing contact, such as neighbors, relatives, tenants and friends. The department is headed by Assistant City Prosecutor, Andre Craig. Craig, a 1982 graduate of Case Western Reserve School of Law, joined the Prosecutor's Office in 1985, and was appointed Director of Mediation in 1987. Under his guidance the Mediation Department meets its objective of dispute resolution. Mediation helps the parties involved reach a peaceful settlement to their problems.

Although other crimes are dealt with, special attention is given to complaints about domestic violence. The goal is to stop the violence in the home and convince couples who want to stay together to seek counseling. Without counseling, the woman who remains in the home runs the risk of continued violence. In a situation where the victim does not wish to prosecute the offender and has refused mediation, she may be referred to a private attorney or Legal Aid. The attorney may file a motion for a civil Temporary Protection Order. The order may direct the man to leave the home, cease bothering the woman, and possibly award temporary custody of children as well as support payments for them.

When the Prosecutor's Office assists a citizen with a complaint of domestic violence, that citizen is referred to the Witness Victim Service Center, an agency established by the Board of County Commissioners to aid victims of crime in the community. A family violence program is included in the Witness Victim Service Center as a specialized unit focusing on crimes within the home. A highly skilled staff provides help in reducing psychological, physical and financial burdens. Staff members also assist citizens through the criminal justice system by accompanying them through each step of the process.

Under certain circumstances it is not safe to return to the home. In this situation, Witness Victim Center will assist the victim in finding a "safe house," a shelter which provides care and a supportive environment. The locations of these shelters are confidential. They are free. Families contribute by doing housekeeping chores.

The non-violent environment of a safe house gives victims an opportunity to think about their situation and deal with it more effectively. Skilled counselors are available to help with problem solving, and provide information concerning legal assistance. There are therapeutic activities available for children. Women who have had similar experiences provide support groups.

Although this article has dealt with violence between men and women who live together, the definition of domestic violence encompasses others who live in the household and are abused. Children, for instance, are more likely to be abused if the father or mother is violent. In addition, about 4% of this country's citizens who are 60 or older are abused each year. The abuser is usually someone they live with and depend on. Often, the abuser is their own child.

Orientation

(Cont. from page 4)

issues that face the nation; among them being racism, sexism, homelessness, child abuse, improper care for the mentally incapacitated, prison reform, and nuclear disarmament. "That lawyers are not doing more, much more, is a disgrace, a moral disgrace."

Finer ended by advising that it is the obligation of the students to master their craft, and to open themselves up to an appreciation and fascination of the subject. He also offered, as a side note, that he would be pleased to be invited by the students to take part in a student-formed "Dead Jurist's Society," in order to celebrate the drama and nobility of the profession. He recommended a charter meeting within a couple of months, "after," he added, "you've begun to get your feet wet."

Letter:

(Cont. from page 3)

and many, many more who were branded agitators, communists, were persecuted, and even murdered. The environs of U.S. institutions of higher learning, much less our own school, are not a talisman against intolerance and prejudice.

What happens next? Well, the main campus placement policy needs revision to bring it into line with the law school's policy, then the policy at the law school and the main campus needs to be enforced. The Guild, myself included, will pursue that goal. A few months of crank calls won't change that. Most CSU law students will continue to shun the Guild either because they outright disagree with our views or are susceptible to red-baiting. That still leaves one or two of you. Ask yourself what kind of society and school you'd prefer. If you have the courage of your convictions and share our ideals, you know where to find us.

Phil Althouse
Co-Chair, CSU Guild

The burning of old glory

(Cont. from page 3)

behavior. Expression, Harlan said, is often being most effective when it appeals to the emotive faculties.

As the Court wrote 40 years ago, "[a] function of free speech under our system is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

The kind of official outrage being expressed at the Court's decision suggests almost a "sacredness" compatible more with a theocracy than a democracy. Do we indeed worship the flag? Must we lower our heads each time we pass one? Must we kneel before it and kiss it? Do we pray to it or through it to a higher being? Do we mean our flag to be a holy object? Is the flag God or a symbol of God? Sacrilege!

The flag symbolizes our nationhood and its constitutional principles; our national unity, without compelled uniformity.

The greatness of the flag is its symbolic embrace of all points of view--otherwise how could it stand for all Americans? The flag is not inherently a conservative symbol. The boys who fought and died defending our nation and our flag throughout the years died for freedom, tolerance, and the rule of law-- principles not readily observable in and by much of the world.

They fought for the principles that empowered a House Committee to recommend the impeachment of President Nixon. They fought so the Senate, following constitutionally mandated procedures, could discredit and censure Senator Joseph McCarthy. They fought for the principles that made it possible for this nation to investigate its own conduct regarding the atrocities at My Lai. They fought so that no arbitrary symbol could be valued more than the reality of human reality. And they fought, with flag held high, so that no American official or law could dictate to another American, what shall be the approved, orthodox way to express oneself, directly or symbolically.

As was the hardy flag's greatness at Fort McHenry, the greatness that inspired Francis Scott Key to write the words to the Star Spangled Banner, America's very greatness, is also demonstrated and strengthened by its capacity to withstand attacks on its virtues, its ideals, its leaders and its policies. America's very greatness is tested each time it is attacked. Will it prove the attacker right and compromise its ideals by jailing its denouncers? Or will it, by the dawn's early light, show the purity of its democratic soul by embracing its attacker within its awesomely powerful, yet magnificently tolerant arms?

Old Glory. It is that flag that is strengthened by the decision that permits destruction of one of its thousands of replicas. Old Glory caught no flames. Old Glory is in our hearts and minds. Old Glory is our inspiration, and our ideal. Old Glory flies over an America that is the land of the brave and the home of the free. Old Glory means liberty and justice for all.

All the destruction of all our wars has not tarnished Old Glory one bit. So how can a miserable Maoist destroying one replica among thousands, singe a single fiber of Old Glory itself? Old Glory has been strengthened by its tolerance of attacks upon itself and is more fireproof than ever.

The remedy for noxious speech, Brandeis suggested, is more speech, is not compelled silence. Should you see a flag-- a replica of Old Glory-- being burned contemporaneously, fly your own flag proudly. And Old Glory will smile upon you as she has on the Court for understanding its core meaning for our democracy.

Hispanic group to form at C-M

(Cont. from page 5)

students in an effort to enhance the communities we live in through the sharing of ideas and achievements, promoting reform in the law, facilitating the administration of justice, and sensitizing law schools and the legal profession to the needs of the Hispanic Community. Membership

is open to all Cleveland-Marshall students who express a firm commitment to the goals and objectives of the organization. Contact or call Elizabeth Balaguer at 459-0214 or Reynaldo Guerrero at 631-2186 for further information.

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