



CSU
College of Law Library

Cleveland State University
EngagedScholarship@CSU

1960s

The Gavel

11-26-1968

1968 Volume 17 No. 3

Cleveland-Marshall College of Law

Follow this and additional works at: https://engagedscholarship.csuohio.edu/lawpublications_gavel1960s
How does access to this work benefit you? Let us know!

Recommended Citation

Cleveland-Marshall College of Law, "1968 Volume 17 No. 3" (1968). 1960s. 59.
https://engagedscholarship.csuohio.edu/lawpublications_gavel1960s/59

This Book is brought to you for free and open access by the The Gavel at EngagedScholarship@CSU. It has been accepted for inclusion in 1960s by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.





THE GAVEL

"The Voice of Cleveland-Marshall"

CLEVELAND-MARSHALL LAW SCHOOL

1240 Ontario Street • Cleveland, Ohio 44113

Vol. 17 — No. 3 / November 26, 1968



C-M--C.S.U. Merger

The only remaining obstacle today to Cleveland-Marshall Law School merging with Cleveland State University is the 108th Ohio General Assembly.

The Ohio Board of Regents approved three law degree programs to be offered by CSU when it acquires the law school. The Regents' blessing followed Gov. James A. Rhodes' announced support by a day.

The merger still must await legislative approval of financing the operation of the law school within the state university system.

Cleveland State trustees have been negotiating for a year with the trustees of the private law school, which enrolls more than 500 students but is losing about \$100,000 yearly.

If the law school becomes a part of Cleveland State, tuition for the law school would be reduced considerably.

The Regents also announced a moratorium on new doctoral degree programs would continue through the academic year. Ohio State University and the University of Cincinnati were granted exceptions for programs "of special importance."

CSU President Harold L. Enarson, who with other state university presidents met with Regents' Chancellor John D. Millett on the moratorium, said it would have no immediate effect on CSU because doctoral programs at CSU are a few years away.

While he did not wish to sound as though he were endorsing the moratorium, Enarson said he understood the moratorium "gives all schools the

necessary flexibility to continue in careful, thoughtful consideration of new doctoral programs."

All approvals and legislative actions will be completed by the target date — July 1, 1969 — for the merger of Cleveland-Marshall Law School and Cleveland State University, as stated in the Oct. 1968 issue of the C.S.U. Faculty & Staff Newsletter. This information was confirmed by James K. Gaynor, Dean of Cleveland-Marshall, reporting on his appearance before the Ohio Board of Regents in Columbus on November 15, 1968. Dean Gaynor's attendance at the hearing was in strong support of the proposed merger which, he stated: "... was favored by the Trustees, Alumni, Faculty, and Students."

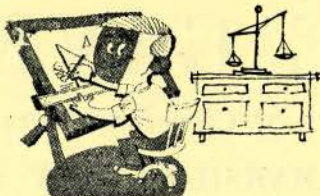
Mr. James J. Nance, Chairman of the Board of Trustees of The Cleveland State University, also appearing at the Regents' hearing, spoke in behalf of the merger, saying: "... the recent voter approval of State Issue I affirmed a procedure of expanding state universities by using operating funds as a borrowing base in order to expedite capital expansion. This is *exactly* the opportunity offered to Cleveland State University by Cleveland-Marshall Law School. . . . Also of importance is the value of Cleveland-Marshall's faculty and administration to the manpower strength of the State of Ohio . . . a high ratio of C-M graduates serve as elected and appointed public officials for and in the Greater Cleveland area. This is a tradition worth keeping . . . therefore, I recommend and urge that this proposed merger . . . be approved by the Board."

Continued on Page 3

THE GAVEL

J. Norman Stark
Editor-in-Chief

C. Ellen Connally
Associate Editor



Howard L. Oleck, D.P.L.
Faculty Advisor

STAFF

Glen Billington
Benton P. Bohannon, Jr.
James A. Ciocia
William W. Goldstein
Sheldon P. Katz

Brian W. Phillips
Jeffrey A. Rich
Marvin Sable
Barry Schonberg
Irene Svete

Class of 1993



Rowena Goshien
Class of 1993

born. Mother, father, Baby Rowena and MG are all doing well. Congratulations!

On November 18, Admissions Committee Chairman, Prof. Kevin Sheard, approved the admission of Rowena Goshien to the Class of 1993.

Exam File Available

The Phi Alpha Delta Law Fraternity of C-M is offering another service to the student body. Not only is a practice examination held for first year students, but actual examinations given in previous years will be placed in the library for student reference.

Most of the examinations given during the 1967-68 term are presently bound and will be available by the first week of December. With finals coming, the exams will be helpful to anticipate just what might be expected in the area of essentials.

THE GAVEL

Cleveland-Marshall Law School

Bi-Monthly Student Publication, September to June

1240 Ontario Street • Cleveland, Ohio 44113

Second Class Postage Paid at Cleveland, Ohio 44113

©Copyright, 1968

For the Record...

PROF. WILTON SOGG and ATTY. HOWARD ROSSEN, C-M Class of 1964, have been commissioned by the West Publishing Company to revise several editions of the Hornbook Series. Prof. Sogg and Atty. Rossen hope to complete the first of these revisions, Smith on Constitutional Law, by January, 1969. Consideration is currently being given to a Southern Edition dedicated to former Alabama Gov. George C. Wallace, which would exclude all references to the 13th Amendment.

PROF. OLECK has a new column (in addition to his *Plain Dealer* column), in the *Cleveland Bar Journal* starting with the November, 1968 issue, and will welcome contributions of news about law schools and alumni connected in any way with or through the Cleveland area.

JEFFREY A. RICH, 2nd year day, has been appointed the Editor of the Cleveland-Marshall Law Review for September, 1969. That issue will feature a symposium on the law as an interdisciplinary subject.

ANDREW BUTLER, 2nd year day session student, helped to spread C-M's growing international reputation. Andy, who is from Liberia, was married on Saturday Nov. 9, to a very attractive and intelligent British girl. Best of luck to you both.

On November 12, 1968 Distinguished Professor HOWARD L. OLECK addressed the Women's Advertising Club of Cleveland on his recent book, *A Singular Fury*. Compensation for the speech was a cash donation to Prof. Oleck's favorite cause. He named Cleveland-Marshall Law School.

As a result of the recent **Faculty Parking Committee survey**, the Trustees were requested to provide additional parking spaces adjacent to the School. No answer as yet from the Trustees but at least faculty members have a hope of some relief. *What about students?*

While an earthquake shook half of the U.S. last Saturday, TED KLAMMER, a.k.a. Klammer the Hammer, 2nd year day, was attempting to work off a terrible hangover by (would you believe) studying in the C-M library.

PROF. JOSEPH T. SNEED, Stanford Univ., President of the AALS, was in Cleveland on November 1 addressing the Cleveland Bar Assn. about Christopher Columbus Langdell, father of the case-method of teaching (law). Prof. Sneed, visiting C-M on November 2 as the guest of Dean Gaynor, commented he was quite favorably impressed with the School facilities.

Merger . . .

Continued from Page 1

The formal agreement to join the two schools was reached August 23 by officials of the law school and the CSU Board of Trustees and was sent to the Regents.

The Regents previously had indicated that approval of the Ohio General Assembly would be necessary to operate the law school as a part of Cleveland's public university.

Should the merger become effective, C-M students will benefit by lower tuition costs. The present cost for full-time tuition at Cleveland-Marshall is nearly \$1,200 a year. The tuition at CSU is expected to be, as with other CSU curricula, considerably less.

The agreement between the two school provides for Cleveland-Marshall to give outright to the State of Ohio all of the school's physical property—valued in excess of \$1.2 million. It includes a \$900,000 building in downtown Cleveland, \$130,000 worth of furniture and fixtures, and a \$200,000 law library of more than 70,000 volumes.

It further provides that CSU will administer and maintain the law school's current faculty and staff of more than 60 people and a current operating budget of more than \$700,000.

The remaining assets at Cleveland-Marshall, which are in excess of \$1 million, will be placed

in a Cleveland-Marshall Fund. Income from the fund would be used to enrich the law program.

CSU has further agreed "in so far as feasible to continue in operation the night training, in part by practicing attorneys, which has historically been the function of Cleveland-Marshall Law School."

In addition, The Cleveland-Marshall Education Foundation will be created by the school's alumni organization to assist and support the college.

Gold Speaks to PAD

By Jeffrey A. Rich

Gerald Gold, one of the nation's most prominent criminal lawyers, was the guest speaker at the Phi Alpha Delta rush party on Thursday, November 14th.

Mr. Gold told the 60 people in attendance that 97% of his practice was in the criminal field. Though actually trying only 4-6 cases a year, he handles some 50-100 cases which never go to trial.

"This average is consistent with other criminal specialists," Gold added. After relating many humorous personal stories, PAD's guest suggested that as a specialist the criminal attorney can charge more than the general practitioner.

"The usual rate is \$50 an hour, though some big firm specialists, say in gift taxation, will charge as much as \$100 an hour. Of course, you don't always have enough work to keep you busy 8 hours a day at that rate."

On President-Elect Nixon's suggestion that if a gun is used, a 7 year penalty be automatically added as a deterrent on a felony sentence, Mr. Gold said, "I think it's ridiculous. Nine tenths of the criminals I meet never even consider the penalty. It will only act as a deterrent to the 10% who are professional criminals. The other poor guys will just serve 7 more years."

"Never refuse to take a case because a man is poor," Gold argued. "As an attorney you should take all clients who have rights which need defending, regardless of their ability to pay."

Mr. Gold's most famous recent cases were the Colby murder and Adams motorcyclist cases.

"It takes a specialist to practice criminal law since the criminal law revolution of the 1960's. For only a specialist could keep up with the daily changes in the law."

Gold is a 1954 graduate of Western Reserve Law School. He was editor of the Law Review and Order of the Coif.

The formal resolution adopted by the Board of Regents follows:

Resolution 1969-25

BE IT RESOLVED: by the Ohio Board of Regents that the request from Cleveland State University for approval of new degree programs in legal education leading to the award of the degrees Juris Doctor (J.D.), Master of Laws (LL.M.), and Master of Laws in Advocacy, are hereby approved, provided that:

a. A new Section of the Revised Code is enacted by the 108th General Assembly of Ohio authorizing the Board of Trustees of the Cleveland State University to enter into an agreement with the Board of Trustees of the Cleveland-Marshall Law School for acquisition of the facilities and other appropriate assets of the School; and

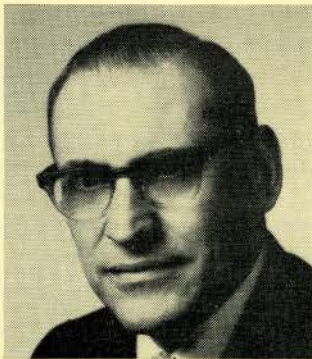
b. The necessary appropriations in support of a graduate-professional program in legal education are made available to the Cleveland State University for the biennium beginning July 1, 1969, over and above those appropriations otherwise available for the support of higher education.

Introducing C-M Trustees...

With this issue, we take pleasure in introducing the men who, by their continued interest and effort, ability and counsel, have guided Cleveland-Marshall Law School in its growth. We gratefully acknowledge the continued impetus they have added to the work of their predecessors in helping to make this institution a vital part of the Cleveland, and Ohio community for present and future generations.

The Gavel Editorial Staff

Introducing: Carl Fazio Trustee, C-M Law School



Carl Fazio

Mr. Carl Fazio is Chairman of the Board of Fisher Foods, Inc.; is a Fourth Degree Knight of Columbus; and is a member of the National Board of the American Committee on Italian Migration. Until recently he was Chairman of the Cuyahoga County Chapter of ACIM. This organization was instrumental in obtaining passage by the Federal Government of the new Immigration Bill.

At the age of three, Carl Fazio was brought to the United States from Italy by his parents.

In 1943, at the age of 26, he joined in partnership with his brother, John, and his father, and the first Fazio's Supermarket was formed. Then, in 1948, the Fazio's Supermarket joined with five other supermarkets to form the Foodtown organization. Upon opening their third supermarket in 1954, the Fazio brothers severed their ties with Foodtown and progressed on their own. Carl Fazio and his brother eventually operated six supermarkets.

He is Chairman of the present Cleveland Little Hoover Commission, having been appointed by Mayor Carl B. Stokes, and also served as a member of the former Commission, through appointment by former Mayor Ralph S. Locher. He is a member of the Boards of Directors of the National Association of Food Chains, the Greater Cleveland Growth Association, and the Cleveland Convention and Visi-

tors Bureau; and is a member of the Executive Committee of the Retail Merchants Board.

His favorite hobbies are gin rummy, golf, golf, and more golf. In addition, he is known to have a very keen interest in sports cars, being the proud possessor of a Maserati Ghibli and a Ferrari—both very fast and very red.

Introducing: Dr. Carl E. Wasmuth M.D., J.D. Trustee, C-M Law School



Dr. Carl E. Wasmuth, M.D.

B.S., University of Pittsburgh, 1935

M.D., University of Pittsburgh, 1939

J.D., Cleveland-Marshall Law School, 1959

Head, Department of Anesthesiology, The Cleveland Clinic Hospital, 1967 to present

Associate Professor of Law — Cleveland-Marshall Law School, 1960-1965

Adjunct Professor of Law — Cleveland-Marshall Law School, 1966 to present

Director of Medicolegal Division — Cleveland-Marshall Law School, 1960 to present

Editor-in-Chief, Cleveland-Marshall Law Review, 1958

Sindell Award, Cleveland-Marshall Law School, 1958

Listed in "Who's Who in America"

Author:

Anesthesia and the Law; American Lecture Series; Charles C. Thomas, Publisher; 1966

Law for the Physician; Lea & Febiger, Publisher; 1966

Medicine, Surgery and Specialties; Contributing Editor

Lawyers' Medical Cyclopedia; Contributing Editor

Hale's Anesthesiology; Contributing Editor

Legal Medicine; Advisory Editorial Board

Law and the Surgical Team; Williams & Wilkins, Publisher (In press)

International Anesthesiology Clinics; Editor

Introducing: Hon. Angelo J. Gagliardo
Trustee, C-M Law School



Judge Angelo J. Gagliardo

Adelbert College, WRU — A. B. (Magna Cum Laude — Phi Beta Kappa)

School of Applied Social Sciences, WRU, 1939 M.A.

Cleveland-Marshall Law School, J.D. (Cum Laude)

Instructor, WRU Law — Medicine Center, 1958 to date

Associate Professor of Law, 1952-1958, Cleveland-Marshall Law School

General Practice of Law, 1951 to December 31, 1962

Judge of Cuyahoga County Juvenile Court since 1963; re-elected November, 1968

Trustee of Cleveland-Marshall Law School since October, 1967

Introducing: Paul S. Sanislo
Trustee, C-M Law School



Paul S. Sanislo

Practicing Attorney-at-Law

Member Citizens League

Graduate, Cleveland-Marshall Law School, 1961; Baldwin-Wallace College AB, 1948.

President, Cleveland-Marshall Law School Alumni Assn., 1968-69.

Trustee, Cleveland-Marshall Law School, October, 1968.

Introducing: Edward T. Cunneen, Sr.
Trustee, C-M Law School



Edward T. Cunneen, Sr.

V.P., Ball, Burge, & Kraus, Investment Bankers

Former V.P., Fahey, Clark & Co., Investments

Member of Civil Service Commission, City of Shaker Heights, Ohio; Lyndhurst Civil Service Commissioner; elected to Board of Trustees, The Cleveland-Marshall Law School, 1963

Introducing: Hon. Sumner Canary
Trustee, C-M Law School



Judge Sumner Canary

Judge Canary born in Bowling, Green, O., in 1905, and has had vast law experience since he was admitted to the Ohio Bar in 1927, after having been graduated from Denison University and the Western Reserve University Law School.

He is presently a trustee of Denison University, Fairview Hospital, Cleveland-Marshall Law School, the Cleveland Zoo, and is a charter member of Blue Coats, Inc. He is a former trustee and President of the Board of Bowling Green State University.

To be continued in the next edition of The Gavel.

Dean Joiner Reports to AALS

Dean James K. Gaynor has released the report submitted by Dean Charles W. Joiner relating to his recent visit to the School in connection with the application by C-M for membership in the Association of American Law Schools.

The report first said four major deficiencies were found in the two visits of AALS representatives in 1964: (1) The School was qualitatively poorer than an Association school should be; (2) the financial structure and management were in the hands of non-academic administrators; (3) there was too little control by the Dean and faculty; and (4) the admissions policy was too loose.

The report then listed the ten requirements for membership in the AALS (set forth below in bold) and gave conclusions as to compliance.

1) **Admissions requirements designed to exclude applicants who are inadequately equipped for law study.** Conclusions: School using a selective admissions policy. Admissions standards should gradually be up-graded but are at present in compliance with Association policy.

2) **Academic requirements that call for satisfactory scholastic attainment throughout at least three years of full-time or four years of part-time law study, in residence before the first degree of law can be earned.** Conclusion: The standard of this is fulfilled.

3) **Equality of opportunity in legal education without discrimination or segregation on the ground of race or color.** Conclusions: No evidence of discrimination. Probably less discrimination than in many schools. Association policy is complied with.

4) **A faculty of high competence and suitable size, vested with the primary responsibility of determining institutional policies.** Conclusions: Teaching is satisfactory in every respect. Full-time faculty is very young, lacking in extensive law-school teaching experience. Part-time faculty has in many instances a great deal of experience. There is a need to improve course offerings in the enrichment area. There is a high esprit among the faculty. Part-time faculty seems to be available to students more than at other schools. The faculty is competent, their credentials are adequate, and the size is adequate. An increase in the full-time faculty is recommended.

5) **Institutional relationships that give appropriate range to the law faculty's judgment concerning the law school's opportunities and needs.** Conclusions: Merger with Cleveland State is expected. Before it takes place, School now has good internal relationships. Dean has adequate budgetary control and does not have outside interference. Dean and faculty are working well together. Prior to merger,

an ad hoc arrangement should be made with Cleveland State and other local institutions to provide enrichment of the curriculum in various areas. The Dean and the President of Cleveland State have indicated a willingness to proceed with this. When the merger takes place, there will be an extraordinarily good institutional arrangement. Even before, institutional arrangements are such that they would comply with Association requirements if steps are taken to formalize the contemplated enrichment arrangements. Association requirements are met at present.

6) **Conditions conducive to the faculty's effective discharge of its scholarly responsibilities.** Conclusions: Teaching load is well within Association policy. Research by faculty is far from adequate, but is being encouraged by the administration. Most faculty members are engaged in research projects. All aspects of academic freedom seem to be maintained. The Dean has promised that tuition will be raised to balance the budget. Older scholars of substance should be attracted to the school. Conditions now are conducive for the faculty's effective discharge of its scholarly responsibility.

7) **A comprehensive curriculum and a sound educational program.** Conclusion: The curriculum is standard and traditional. It should be enriched with courses in Jurisprudence, Comparative Law, International Law, and such currently popular courses as Law and Poverty, Law and Urban Renewal, International Trade, etc. At present, however, the Association requirements are complied with.

8) **An adequate library.** Conclusion: The library is adequate but additional space should be provided for student study.

9) **An adequate physical plant.** Conclusion: The plant is clean and well cared for, and is excellent.

10) **A financial structure sufficiently strong to make possible a consistent quest for excellence and a steadfast fulfillment of the obligations of membership.** Conclusion: In every respect, the School today is substantially superior to that reported on four years ago. In many respects, the improvement is remarkable. There is no evidence of any real financial problem. The budget is realistic, and since it now is being made by the Dean, it is predicated upon scholarly goals. The School is fully qualified at present to become a member of the Association. It has gone about as far as it can without Association membership. The application should not await the outcome of negotiations with Cleveland State."

Dean Gaynor announced that he will be meeting in the near future with Dean Toepfer, Chairman of the Committee that will select the next group of visitors to the School.

Book Review: A Singular Fury

By HOWARD L. OLECK, D.P.L.

Reviewed by Sheldon P. Katz

"Mr. Benedict, my name is Janet Duffield Porter. I am being held by the police. They say I killed my husband. Can you come here to talk with me . . .?" So begins *A Singular Fury* by Howard L. Oleck, Distinguished Professor of Law. The mystery is the first in a new series based on the career of prominent trial lawyer Jake Ehrlich (and Professor Oleck) characterized by Sam Benedict.

The plot is of no simple variety. An ex-professor of Cleveland-Marshall Law School, a tall white-haired man by the name of Kevin Porter, is allegedly beaten to death by the defendant, his wife, a daughter of a famous legal scholar. The weapon is a bronze replica of the Statue of Justice. Matters become more complicated when the bar of an old client of Sam Benedict is shut down, her place padlocked, a newspaper decides to make an example of her, and the D.A.'s finest counsel represents the State of California in a simple misdemeanor charge.

Author Oleck uses two intricate literary techniques not commonly used together or successfully manipulated in the typical mystery novel. Through "flashbacks" via Sam's dreams, the author cleverly exposes Sam's philosophy, his humanity, and his stubbornness. These interludes are interwoven by means of the second literary device, alternation of

the plot. Alternating the plot and sub-plot, chapter by chapter, keep the reader's interest and create an accelerating tempo, terminating in a vivid courtroom drama. This mystery story is worthy of a movie; indeed, M.G.M. has already taken the movie rights.

Perhaps the book has one shortcoming (or longcoming, if you will); it is very sophisticated for the typical aficionado of mystery tales. Such a complex medico-legal question as chronic pre-menstrual tension and its effect on the commission of a murder is not easily reduced to simple terms, though still capable of producing the necessary impact. Prof. Oleck's impressive legal experience and writing skills create a systery story out of a brutal killing, a touch of amnesia, a bio-chemical disorder, and a psychosomatic trigger. Janet Porter is more than a fictional character, because Prof. Oleck portrays her so vividly.

Memorandum for Faculty Staff and Students

I have just received a copy of a novel, *A Singular Fury*, by Distinguished Professor Howard L. Oleck of this School.

It is of particular interest to lawyers and law students since it is built around criminal litigation and shows, in a very practical way, the preparation of a defense in the defense of one accused of crime.

Because of technical difficulties, the School is unable to carry the book in stock for sale. However, it strikes me that many of the faculty, staff, and student body may wish to purchase the book and have it autographed by the author.

The cost is \$4.95. The School will be glad to receive orders, accompanied by payment in advance, and order the book for those who are interested. An order will be submitted now and then when justified by the number of orders.

I find the book very impressive. I commend it to you.

James K. Gaynor
Dean

DRI Invites Students

The Defense Research Institute, an organization concerned with the defense of civil actions (in a way, somewhat a counterpart of the American Trial Lawyers Association, whose members often appear for plaintiffs), will conduct a seminar at Cleveland-Marshall Law School on Civil Jury Trials on Saturday, December 14, 1968, from 9:30 a.m. until 4:00 p.m.

Subjects to be discussed are modern tort developments, preparation and pre-trial procedures, proof, presentation of law, summation and verdict, and a panel discussion and question period. The speakers will be prominent members of Cleveland law firms.

Students of Cleveland-Marshall and Case Western Reserves are invited, along with local practicing attorneys. A handbook will be provided for each person attending. There will be no charge for students of Cleveland-Marshall or Case Western Reserve.

It is requested that each student of this School who wishes to attend, sign a register form in the Administrative Office prior to November 23 so that space may be allocated.

This is an excellent opportunity to gain some practical knowledge of this subject, which is so important in the practice of law.

No issue of The Gavel will be published in December, in observance of EXAMINATIONS. The next regular issue will appear on January 22, 1969. Our staff of two, plus a few faithful friends and an occasional reporter, wish all of our readers an abundant Thanksgiving, a Merry Christmas, a joyous Chanukah, and a Happy New Year. Consistent with necessity, in the public interest, The Gavel mailbox will remain open for your contributions during the holidays.

Traps for the Unwary Lawyer

By Prof. Charles Auerbach

Since so much time and energy are spent in preparing for the practice of law, it would seem that utmost care should be taken by those who succeed in obtaining the privilege, that they do so in full accord with the principles laid down by the grant-



Prof. Charles Auerbach

ing authority, the Supreme Court of Ohio. Yet, more often than is meet, we read of situations which have proved not only embarrassing to the lawyers involved, and often in their suspension from practice, but reflect upon the bar as a whole when they occur. This is a frightful price to pay for an indiscretion which, with thought and care, can be avoided. One such incident is reported in the Ohio Bar of March 25,

1968, In Re Jacobs, 13 O. S. 2nd, 147.

In that case it appears that the Respondent was the attorney for a receiver. The assets of the receivership were a bar and liquor permit. The Respondent procured the sale of the bar and permit for \$11,500.00, and deposited the proceeds of the sale in a savings account in the name of the receiver, but was given a power of attorney to withdraw funds from the receivership account.

So far, so good. The Respondent, however, borrowed the sum of \$10,000.00 by pledging the pass-book of the receivership with a lender and loaned the borrowed amount to a cousin. The Respondent, sometime thereafter, closed the receivership account and deposited the funds thereof in the trustee account he used for all his clients. For one month thereafter, he kept the receivership funds in that state, unsegregated either from his own personal funds or from the trust funds of other clients in the Respondent's trustee account. For 18 days during the period when the funds were so commingled, the trustee account contained substantially less than \$11,500.00, and the difference could not be explained in terms of expenditures for the receivership. The Supreme Court points to this significant fact among others: "Respondent also made disbursements from the Trustee account for personal expenses unrelated to the business of any particular client."

The Respondent later, at the insistence of co-counsel for the receiver, deposited \$11,500.00 in a new receivership savings account. Accountings were then filed and the receivership was closed with the approval of the court.

But this was of no avail. The Respondent had

sown the wind and reaped the whirlwind. The Court suspended the Respondent from the practice of law for an indefinite time.

In the study of Negotiable Instruments, we give close attention to the subject of good faith as it pertains to holders in due course. Among the tests courts use to determine whether one is a holder in due course of a negotiable instrument and is free of personal defenses of the maker or is merely a holder and is saddled with the maker's personal defenses, are the colorful ones denominated "prudent man," "red lights," and "white heart." The NIL did not, and the UCC did not, apply the "red light" doctrine, that is, the rule set forth in the Code, nor the "prudent man" theory to determine whether one is a holder in due course, but rely upon the doctrine of the "white heart," sometimes referred to as "white heart and dumb head" to determine whether one takes in good faith. Lawyers who undertake to commingle funds of clients with their own would be well advised to consider all these tests as their guiding principle to determine whether in so doing they may be violating the adjuration to live like Caesar's wife, above suspicion. The lawyer who handles clients' money must not only avoid suspicious circumstances, but must act with prudence and with a "white heart"; this is to say that by giving in to a temptation to commingle the clients' funds with his own, no matter what the circumstances, he would turn the phrase "white heart but dumb head" into a very circumspect "bon mot" — "white heart and good head!"

In rendering its opinion, the Supreme Court, in *Jacobs* held that the Respondent in doing what he did, violated Canon 11 of the Canons of Ethics. But the Court went further and found the Respondent in violation of Canon 32 as well.

Canon 11 reads follows:

"Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him."

Cannon 32 sets out the lawyer's duty in the last analysis. The final sentence of the Canon reads as follows:

". . . But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man. . . ."

Continued on Page 9

Traps for Unwary Lawyer . . .

Finding the lawyer in violation of Canon 32 is, to this writer, the "unkindest cut of all." For a lawyer to be thus categorized is chastisement beyond reprieve, whatever may ultimately follow. The first element of "noblesse oblige" to which every lawyer is required to give fulfillment is a deserved reputation for being an "honest man." Failing in that, he fails in all.

Having said this, we think it is imperative to look to Canon 11 and see how stringent are the requirements against commingling and whether they can technically be fulfilled. The language of the Canon makes it mandatory that money "of the client or collected for the client . . . should not under any circumstances be commingled. . . ." The words "any circumstances" make it difficult to effectuate complete, absolute and unadulterated compliance with the Canon in each instance when money is so collected unless the trust account which every lawyer is required to keep for such purpose is divested of any semblance of the lawyer's own funds, even such funds as may become his own after accounting in full to his client.

Let us assume, for example, that the lawyer recovers for his client the sum of \$10,000.00 in settlement of a personal injury damage suit. Let us further assume that the lawyer's contract calls for a fee of 25% of whatever recovery may be had on trial thereof. He opens an account with the check or draft he receives from the insurance company, causes his client to endorse the same, the lawyer endorses it for collection and deposits the same in the special or trust account separate entirely from his own account in the same or in another bank. When the check or draft is paid, the lawyer pays his client out of his funds \$7,500.00, and the \$2,500.00 remaining is the property of the lawyer. Suppose then that he has another like transaction with another client. Query, can he use this trust account as the depository for processing the second transaction in the same manner as he did the first? If so, will he not be commingling his client's funds with the \$2,500.00 remaining in the account as his own? What is the lawyer to do? An easy answer, of course, is for the lawyer to withdraw his \$2,500.00, deplete the entire account and go through the same routine as he did with the first matter and thus avoid commingling. This may indeed be the correct way to handle the situation, but is it not cumbersome? Another way, of course, is to open a new account in each instance where money is collected by an attorney for a client.

I raise these questions not in criticism of the purpose and spirit of the Canon, which is proper, just, and necessary, but to point in the direction of a clarification and perhaps an amendment of

Continued on Page 10

Thanksgiving Thoughts of a First-Year Law Student

"Why, there's not light in this turkey; I see only stuffing."

"Maybe he meant the light comes on the Christmas turkey!"

"Is that little hole up near the neck supposed to be the long-awaited light?"

"That may be the light of Property, but it sure doesn't help much in Contracts."

"Why did all of the pilgrims have to be lawyers?"

"Why do the Professor's comments on that case sound like gobbledigook?"

"Does the first year law student march to the beat of the distant drum stick?"

"I wonder if a turkey is a 'chicken'?"

"Is an order of light meat only consistent with Brown vs Board of Education?"

"Let us be thankful that our Winters is not more severe" (especially with regard to matters of English grammar).

Inside Legal Aid

By Glenn Billington

The Legal Aid Society of Cleveland announces that Cleveland-Marshall Law School will grant up to 2 hours of free credit to students who volunteer their services to the Society. One hour of credit will be granted for each 50 hours of satisfactory volunteer work.

Volunteers under this program will be assigned to particular offices of the Society, where they will perform the duties of a law clerk. Duties include client interviewing, research, docket, and correspondence. It is essential that volunteers be able to commit themselves to a regular schedule of attendance at the office, even if for only a few hours per week. The offices are open to clients Monday through Friday, 9:00 a.m. to 5:30 p.m.

This program should be an excellent opportunity for students to learn the very practical aspects of practicing law, including dealing with clients, preparing and filing cases, and researching new theories of the law. Anyone interested in volunteering for credit under this program should contact Mrs. Jane Edwards in the Placement Office.

Also, beginning Feb. 1, 1969, the Legal Aid Society will hire 8 third or fourth year night students to work full time during the day as law clerks. Duties primarily will be interviewing clients, research and docket work. This position will be an excellent opportunity for upperclass students to learn, from experience, the practical aspects of practicing law. Interviews for these positions can be arranged through Mrs. Edwards in the Placement Office.

Moot Court Team Argues Draft

By Marvin Sable

The names of the six Cleveland-Marshall students who represented our school in the National Moot Court Competition were announced by Professor Hyman Cohen, the faculty supervisor of the Moot Court program.

The student advocates who argued in the National Competition were selected from sixteen candidates, all of whom prepared research on the problems presented by the case.

The petitioner in the case is George Ivan Joseph who is a private in the United States Army and has refused to obey orders directing him to participate in the Vietnam war. G.I. Joseph has petitioned the Federal court to enjoin the United States from requiring him to serve in Vietnam. Mr. Joseph asserts that the war is illegal, unconstitutional, and that he is *morally opposed to participating* in it. The three members of the team who represented the petitioner are Thomas Hermann, Jeffrey Weiler and Kenneth Bossin. They attempted to develop arguments showing that the petitioner has been denied due process of law under the Fifth Amendment, has been denied his First Amendment right to freedom of religion, and that the government has established a religion in violation of the First Amendment by enacting the Conscientious Objector exemption, which they claim discriminates unreasonably between different types of religious expressions.

The respondent's team, consisting of J. Terence

Burke, Lawrence A. Grey and Ronald L. Rosenfield represented the United States. The Government argued that the United States has not given a valid *consent to be sued*, with the result that the court does not have jurisdiction over the United States according to the doctrine of Sovereign Immunity. Counsel for respondent also contended that the issues presented by the petitioner are not ripe for adjudication in that there is no finality to the order directing Joseph to Vietnam, since a court martial could invalidate the order and thus eliminate the necessity for civilian judicial intervention. Another point the respondent's team argued is that the issues presented are non-justiciable since they invade the political domain into which the courts will not enter.

Among the group of judges were the following Cleveland attorneys: Mrs. Lucille Houston, Messrs. Jack Budd, Edward Becker, James Hardiman, Joshua Kanclebaum, Robert Kennedy, Harry Pickering, Ralph Rudd, Benjamin Sheerer and Gerald Wochna. In addition to Professors Hyman Cohen and James Boskey, (the faculty administrators of the Cleveland-Marshall program), other members of the faculty whose assistance is appreciated are: Prof. Ann Aldrich, Mr. Jerry Gordon, Mrs. Elizabeth Moody, Prof. Kevin Sheard, and Mrs. Paul Torbett.

The Regional rounds included eight law schools, each of which entered two teams (one petitioner and one respondent) in the regional competition.

Traps for Unwary Lawyer . . .

Continued from Page 9

the rule to avoid even further the possibility of violating technically the requirement against commingling *under any circumstances*. While the lawyer, as heretofore stated, must live above suspicion, he nevertheless should be permitted to live. It is submitted that the lawyer can and should live within the rule in letter and spirit, but that some consideration be given by the Supreme Court to the technical problem involved in conforming to the letter with the granitic requirements of Canon 11. If the rule requires total depletion of each special account created for the purpose of collecting and disbursing funds obtained for clients by their attorney, it is submitted that the rule be made explicit to that effect. In such way the lawyer could act with greater certainty and this would redound to the benefit of the client — the public as well as the lawyer.

It is submitted also that accounts which fluctuate from abundance to scarcity even with frequent replenishment must be burdensome to the banker as well as to the depositor. Minimal check-

ing accounts are chargeable. What then should be the procedure best to accomplish the desired purpose of fulfilling the required order of the Supreme Court, with the least inconvenience to the lawyer as well as the bank?

It would be of interest to know what reaction others may have to this seeming "tempest in a tea pot" which, however, may give rise to serious consequences.

Ed. note: The Gavel invites comments from students, faculty, attorneys, judges, financial institutions and other interested readers.

ABOUT THE AUTHOR: Charles Auerbach is Adjunct Professor of Law at Cleveland-Marshall Law School and has served on the faculty since 1939. He is a practicing attorney in Cleveland, a member of the Cleveland Bar Association, Ohio State Bar Association and American Bar Association. Mr. Auerbach holds A.B. and J.D. degrees from Western Reserve Law School and LL.M. degree from Cleveland-Marshall Law School.

Mr. Auerbach is Chairman of the Juvenile Court Committee and a member of the Judicial Candidate Committee of The Cleveland Bar Association, a member of the Uniform (State) Laws Committee of the Ohio State Bar Association, and nonetheless serves a full practice schedule with a specialty in trial work, civil procedure and Uniform Commercial Code.

PROCEDURE DESK QUICKBOOK — P.D.Q.

(Formerly, "Law Clerk's Handbook")

By Brian W. Phillips and J. Norman Stark

PETITION FOR REPLEVIN PERSONAL PROPERTY

Filing Procedure, Cuyahoga County, Ohio

REQUISITES:

1. *Petition For Replevin*¹: This should be presented to the filing clerk in the following manner: Original of the petition, and *two (2) copies* of the same.
2. *Affidavit For Replevin*²: This should also be presented to the filing clerk. One must have the *original and two (2) copies*.
3. *Precipe*: This is presented along with the petition and the affidavit; one original and two (2) copies. The precipe orders the sheriff to issue summons on the defendant(s), stating the type of action, and asks for the recovery of the goods involved.
4. *Bond* (Plaintiff's Undertaking in Replevin): This will be filed at a subsequent time with the Sheriff's office. It must be equal to twice the appraised value of the property to be replevined.
5. *Costs*: The initial filing of the Petition costs \$20.00. An additional \$25.00 must be deposited with the Sheriff's office in order to complete the action.

NOTE: If more than one defendant is involved, the number of copies mentioned above increases per defendant, *i.e.*, if two (2) defendants are involved, you need original and four (4) of the Petition, original and four (4) of the Affidavit, and original and four (4) of the Precipe. It is good practice to take more copies than you need because if you are short the number of copies necessary at filing, the action *cannot commence* and this delay may give the defendant just enough time to dispose of the (chattel) property.

ABOUT THE AUTHORS: Brian W. Phillips, a fourth-year student in the Evening Division at C-M, is a 1965 graduate of Bowling Green State University, with an A.B. degree in Political Science. He is a law clerk and librarian with the Cleveland firm of Calfee, Halter, Calfee, Griswold & Sommer, with prior employment experience in building construction and with the New York Central railroad.

J. Norman Stark, a third-year (Evening) student, and Editor-in-Chief of *The Gavel*, is a registered architect, planner, appraiser, and the principal of a Cleveland consulting firm. He is a 1954 graduate of the Rhode Island School of Design, Providence, R.I., with a B.F.A. in Interior Architectural Design, and a 1958 graduate of

PROCEDURE: (after having found the Courthouse)

1. Pay costs of \$20.00 at the Cashier's counter, window No. 8.
2. Take all papers to the Filing Clerk at window No. 5, and wait for the case number. The Clerk will also issue a Summons to the Sheriff and an Order for Delivery of Personal Property.
3. Take all papers received from the Filing Clerk, go to the Sheriff's Room of the County Court House. At this point, give the Summons, a copy of the Petition, and Precipe to the Clerk at the Summons Counter. Next take the Order for Delivery of Personal Property, a copy of the Petition, two copies of the Affidavit and a Precipe to the Execution Desk. At the desk deposit \$25.00. An additional \$10.00 per item replevined is necessary if chattels are not on the *same premises*.
4. The Sheriff's Office will proceed to seize the personal property and all appraise it. After appraisal and replevin (which takes a day or two), the Sheriff's Office will call the Plaintiff's Attorney and advise him as to the value set on the chattel(s). From the time of the telephone call, the Plaintiff has 24 hours to post a bond for twice the amount of the appraised value of the chattel(s).
5. The Sheriff's Office will hold the personal property for five days after the Order of Delivery of Personal Property has been issued. The Sheriff will file a Return Writ of Replevin if the Defendant does not, within the five days, file a similar bond for twice the amount of the personal property. If the required time has expired and the defendant has not timely filed his bond, the case is then set for default judgment in Court Room No. 1.

¹See 2737.01-.24 ORC for complete requirements of content of petition.

² *Ibid.*

Kent State University with a B. Architecture degree.

The authors became acquainted only last year, by chance, and the fellowship that followed arose from a mutual interest in the mechanical aspects of legal practice and the procedures



LEFT TO RIGHT: Brian W. Phillips and J. Norman Stark, student co-authors of "P-D-Q" — legal filing and procedure handbook.

soon to confront them. They agreed about the lack of a simple, concise guide for the most common filing procedures. In pooling their limited experience, they appealed to other clerks and practitioners for guidance, and began compiling an outline of the more common, then more involved forms,

Continued on Page 12

limiting themselves to Cuyahoga County. From this beginning their idea grew, with the sole intent of aiding others and sharing their experiences, hoping thereby to attract voluntary aid from classmates, instructors, practitioners, clerks of courts, and even the Courts themselves. Ultimately, the authors aim to publish a complete, integrated, single-source handbook to include all of Ohio's 38 counties.

Future issues of *The Gavel* will publish additional "P D Q" pages. Reader inquiries, corrections of errata, assistance, encouragement, and requests for particular forms will be welcome. Contributions by guest authors will be published with acknowledgment of authorship, amid loud murmurs of prayerful thanks by both authors, in harmony, and in any language or religion of the guest's choosing.

Goshien and Boskey on Bridge

Prof's. Goshien and Boskey each addressed large groups of our fellow professionals, the Cleveland police, as part of a "Project Bridge" — sponsored program of instruction for the coming Selective Service promotion examination.

They lectured on the subject of Jerome Skolnick's book, *Justice without Trial; Law Enforcement in Democratic Society*. There the author contrasted the needs for order with the limitations imposed upon police by law, concluding that the phrase "law and order" is a solecism.

The police "students" appreciated the teaching service given them, because they have worked very hard in the past two months to try to digest some parts of twenty-six assigned major works for the exam; they also began to appreciate what law students fear and feel under the questioning of law profs.

Alumni News

The Alumni Association's series of "Bread & Butter" Seminars for practicing attorneys has been well received, as evidenced by the large number turning out for these sessions.

Guest lecturers have proved to be well versed in their particular subjects and have allowed plenty of time at the end of their talks for questions from the audience.

The recent seminar was held on Friday, November 22, and was the second half of the session devoted to Workmen's Compensation. Guest speakers at this time were two men renowned in this area, Robert A. Butler and Donald M. Colasurd, both of the Columbus law firm of Solsberry, Ahern & Butler.

There will be no seminars scheduled for the month of December. Two seminars are scheduled for January 17 and 31, at which time the subject material will be Federal Income Tax Practice and Procedure. You will be notified of the principal speakers at this forum right after the first of next year.

RUSSELL J. GLORIOSO '67, has joined the firm of Cozza and Steuer . . . FREDERICK HETTER II '66, reports he has formed his own law firm in San Diego, California specializing in criminal law . . . ROBERT I. TEPPER '66 was recently elected State's Attorney from Rutland County, Vermont . . . WILLIAM W. MORGAN '57 named sales manager for Pennsalt Chemicals Corp. . . . RICHARD J. MINNICH '65 is now License Counsel for Diamond Shamrock Corp. . . . DAVID B. McCLURE '67 and JOHN A. PFEFFERLE '67 have entered into a law partnership at Huron, Ohio.



THE GAVEL

Monthly Student Publication

CLEVELAND-MARSHALL LAW SCHOOL
1240 Ontario Street • Cleveland, Ohio 44113

©November 26, 1968

November 26, 11968

Return Requested