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Cleveland-Marshall College of Law

FIRST ANNUAL FAREWELL ADDRESS

Verily, verily! The end is near. To assure that some humor and parting thoughts accompany you during your final exams, the Gavel staff got it together to piece together a final issue for this year. It seemed appropos to have a farewell address by the outgoing editor. Here it is. The Gavel made an effort this year to divert its attention away from the alumni and to the interests of students. Prior to this year, the Gavel provided the alumni with news and attempted to generate favorable public relations with law firms.

Dean Christensen has initiated the Cleveland-Marshall Alumni Law Notes to serve this function. The Law Notes have some attributes in this regard. Unfortunately, however, it is the sole source of College of Law occurences and interests to the alumni.

As many of you are aware, the propriety of the Law Notes operation has been questioned. The Student Bar Association should pursue some of these unanswered questions. Anyhow, the Gavel was no longer mailed out to the thousands of alumni and attention has been focused on the concerns of students.

Unfortunately, few students took advantage of the free access policy of the newspaper. As a consequence, certain view points dominated the content of most issues. Students should become aware of the access to the Gavel and come forth with fluid pens. As it was stated in the first issue of the newspaper this year, "the Gavel will not plot a course. We need you for direction. This is your forum."

Next year the Gavel editors will be Bruce Rose and John Richilano. Any student desiring to write for the Gavel or become a member of the staff, should contact them.

-R. Musat

THE GAVEL

"THERE ARE MORE HORSES' ASSES THAN THERE ARE HORSES."
-Leavin

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Volume 22 * Number 14 * May 31, 1974

THE HAT STORY

One year ago at this time Sam Sonenfield walked out of his Real Property class rather than be confronted with the Indignity named Chris Stanley. Sonenfield asked Chris to remove his dirty hat. Chris refused and Sonenfield could not go on teaching.

Chris was advised to transfer sections for two reasons; 1) so the class could continue the last ten days with a teacher and 2) so Chris could have a chance of passing the course. Not too-veiled of a threat.

It was a time few people could feel pride or self-respect. There was a good deal of infantile behavior all over the place. It was nothing to be proud of.

It is nothing to hide either; although, Dean Christensen did suggest Chris just "forget it."

The Gavel decided to recount the event in a special anniversary gala issue.

Chris Stanley agreed to write his side. His story appears on page 4

Sam Sonenfield was sent the following message.

"The next issue of the Gavel will attempt to recount the events leading up to your walking out of your Real Property Class last year. I feel it is incumbant upon you to express your version of the events." His reply followed two days later.

"It is said that it is well nigh impossible to win a micturating contest with mephitis mephitis. I decline to attempt it."

Translation: It is improbable that one can win a urination contest with a disgusting, vile stench.

Giving effect to the objective meaning of this language, this seems to imply that Sonenfield thinks his smell is too horrible to even enter our urination contest.

Now I do not even know that Sonenfield does smell bad, never getting that close to him; but there is no contest and should the Gavel ever sponsor one there would be no ban on foul-smellers.

PICNIC POLITICS

By TED MECKLER

In October it was reported on these pages that (still present) Dean Craig Christensen had sabotaged (now former) SBA President, Carl Noll's plan to fill our lovely courtyard with picnic tables. At that point in time, if you recall, the tables were ordered by Carl and placed in the courtyard by the movers from the University physical plant department. Soon thereafter Craig had them removed. When reached for comment at that time, the Dean cited his fears that the picnic tables would become a "trash nest." He also noted that there were fire access problems. And furthermore the Dean hoped to acquire funds from our noble and rumor has it, rich alumni to more aesthetically furnish the courtyard.

The money, it seems, was not forthcoming. With spring fever descending upon us, making it very difficult for many to swelter in the library, the Dean felt compelled to act. The picnic tables of "trash nest" fame were re-ordered and re-delivered. When reached for comment the physical plant movers just shook their heads. So we're back to picnic tables again.

Already classes have been held in the courtyard. There have been some complaints about air quality out there. But the problem is certainly not peculiar to the courtyard. My only question is when will the SBA sponsor a courtyard concert series?

YIM NEW EDITOR OF LAW REVIEW

B. Casey Yim is the new Editor-in-Chief of the Cleveland State Law Review. He was elected on May 11.

The position has been characterized as the most prestigious student position in the University Community, going to the most diligent conscientious, hard working, and dedicated law student.

It is because of this reputation that the Board of Trustees designated this person to sit on the appeals board of the Student Judiciary.

Casey is modest and wants everyone to know that the real work is done by a dedicated staff.

THE PRESIDENT'S COLUMN

By DAVID SWAIN

At the faculty meeting on Friday, May 17, several items of interest were covered. One of the big items was the establishment of semi-permanent grade-point averages for graduation honors. Upon the discovery that leaving the standards which were used for last year's class intact, would allow about 27% of this year's graduating class to graduate with honors, a revision took place. The standards which will be in effect for this year's class and until the faculty again votes to change them are the following:

Graduation cum laude = 3.1-3.39

magna cum laude = 3.4-3.54

summa cum laude = 3.55-4.00

A reasonable amount of discussion resulted in some changes in the wording of the provisions for allowing a student to receive credit for the course in Legal Research. A course dealing with the Grand Jury was tentatively approved, subject to student interest in the course and having an instructor who will teach the course. The biggest change which took place was the reduction in hours of the Evidence course from 8 credit hours to 6 credit hours. The reduction took place after a large amount of discussion and a strong appeal by Professor Miller. The final vote was not even close, however.

The Student Bar Association resolution for getting <u>two</u> student voting members on faculty committees was discussed as the final item on the agenda. Because of its position on the agenda, it may not have received as much discussion as it might have received had the hour been earlier. Despite a very vocal minority, the proposal passed by better than a two to one margin. While I will not draw any conclusions, the passage of this item might have been partially a result of Dean Christensen's statement that if he were voting, he would vote in favor of the proposal.

At the SBA meeting Saturday, May 18, the new law facility plans were discussed in some depth. Student feeling was very strong that the facility would be inadequate and a committee was established to look into the alternatives which we have. It is possible that the committee will wish to work with interested faculty and alumni in a major fund-raising effort. There seems to be no question that Law Review, Moot Court, and Faculty will be extremely cramped in the new facility as far as office space is concerned. The overriding problem seems to be that, with the available money, the Law School is tied into a maximum space of less than 80,000 square feet. Within that area we must fit all of the services the school provides--Classrooms, library, faculty offices, administrative offices, lounges. washrooms, clinical program, student activities, et cetra. And it just does not seem to be possible to allocate the space in a manner which will please more than a few people.

There seem to be four solutions to the problem. [1] Do not build the facility at all (a cop out); [2] Cut back drastically in student enrollment (an obviously unacceptable alternative) [3] Raise enough money-somewhere-to pay for the additional space which is needed (a difficult, but not impossible, feat). The fourth solution--to go ahead and build the facility--is no solution at all. If an adequate facility is built, everyone will suffer, as the image of this law school will haunt us the remainder of our lives. If a fine facility is constructed, we will all benefit. It should be obvious that "the building makes the school" (to paraphrase an old saying). Look at Case.

Other items treated in some depth were C-SPIRG and a scheduling committee proposal. C-SPIRG was given an endorsement by SBA as being a worthwhile function. The endorsement will (hopefully) help the group receive University recognition and funding through student activity fees. The scheduling proposal gave the committee up to $200 to test the adaptability of the law school schedule to a computer program, rather than continue the present policy of scheduling everything by hand--a time-consuning process which does not always result in student satisfaction. The money will be used to pay for key-punching, modifications in the program, etc.

A small number of volunteers are needed to usher and hand out programs at the First Annual Convocation of the law school on Saturday, June 8. The convocation, in case you don't know, is to provide our graduating students with the recognition they will not get at the actual University Graduation Ceremony. If you would like to help, please let Dean Sierk know as soon as possible.

MOOT COURT

By DAVID SCHRAGER

It's been said that law school teaches one a vocabulary, whereas experience teaches one to become a competent attorney. This being so, Moot Court becomes a highly affective precursor to the practice of law. Unlike other courses and extracurric ular activities Moot Court accentuates specific skills necessary for a practicing attorney. Essentially these skills consist of teaching a law student the techniques of brief wri ting and oral advocacy. Unlike the first year course, Moot Court hones these requisite skills to a high degree of perfection. Members of the national team have credited these further experiences with oral advocacy as greatly aiding their competency as well as their confidence.

Beyond these basic skills, many other benefits are offered to incoming members. A three credit skills course, Moot Court eliminates the requirement of taking such a course in law school. More importantly, our team is growing dramatically and is beginning to attract national recognition. In each of the last two years, Moot Court has doubled in size. With this dramatic geometric increase has come a corresponding increase in the skills of the team itself. In the 1973-74 National Moot Court Competition, Cleveland State University was honored for the best regional brief. This February, in competition with American and Canadian law schools, our team was awarded first place in the Niagra Moot Court Competition. Next year, this international competition will be hosted at our law school. Our team in next y year's Niagra competition will be comprised of new team members. Due to greater allocations, an increasing number of competitors throughout the country will be entered. Further plans to assume an active role in aiding first year brief writing have been made.

In filling out an application at the Moot Court office, an applicant will receive much more than three hours of credit for a skills course. The applicant will gain experience which will enable him to improve his courtroom abilities. Not bogged down with theory, it serves as a tool by which a student can apply his knowledge. At its present rate of growth, Moot Court will be increasing in prestige, scope and ability in the coming years. With increased student membership and interest, the quality of the team as well as the quality of the student will continue to dramatically improve.

THIS WEEKS USELESS INFORMATION

After briefing cases for about two years (at night law school) this Gavel staff member was recently pleased by the appearance of an exclamation mark in a Judicial Opinion. The rarity of this class of printing animals provokes mention here:

<u>Sec v. Chenery Corp</u>, 332 U.S. 199 Dissent of Justice Jackson or page 621 of AD law, Gellhorn and Byse (1970):

"...The Court's reasoning adds up to this: The Commission must be sustained because of its accumulated experience in solving a problem with which it had never before seen confronted!"

The <u>Gavel</u> defies its readers to come up with another!

THANK YOU ELLEN

IT JUST COULD BE...

BY ZEE RAISH MECKLER

The scene is set in the heart of a modern American metropolis in the large rear office of the city room of a distinguished big city newspaper. There are two characters. One is a balding, 52 year old man, with thick prominent eyebrows, wire rimmed glasses, and a face laced with the wrinkles of anxiety and age. A large cigar dangles from his lips. He is the editor, the chief of this distinguished newspaper. Next to him, sits his chief assistant, or assistant chief, depending upon your preference. He is a bit younger looking. He has a bit more hair and a few less wrinkles. Instead of puffing on a cigar he inhales deeply on his cigarette. Consequently, the room is fairly smokey. Neither man seems bothered by the smoke.

The older man speaks first.

Rudy: Henry, what are we going to do about the circulation? We just keep going down hill. Pretty soon no one will want to advertise. Oh, what would my father have done?

Henry: Well, Rudy, I don't know what the "old man" would've done; but I've got an idea. Bear me out on this--it may seem a bit wild. We need something that sells newspapers. What sells newspapers?

Rudy: News.

Henry: True, but news alone is not enough. Everybody's got news. Why we've got Watergate coming out of our ass. We need more-personal involvement-some type of bizarre human interest story. And we need something that will last.

Rudy: What are you driving at Henry? What kind of story could do all that? Maybe we don't need a story. I think we ought to advertise the paper on radio and T.V.

Henry: No chief, that's my point. What I'm thinking of will advertise itself everywhere all around the world in every newspaper and on every radio and television station; that's worth anything. And all for free.

Rudy: OK Henry, out with it. You've aroused my curiosity.

Henry: We make up a character, someone unknown but with instant media appeal. Make her a sweet, innocent young thing and we'll say she's your daughter. Announce to the world that she's been kidnaped by a mysterious group of desperate, gun-toting revolutionaries. Carry on negotiations in public. Beg for her release on the air. Threaten her abductors. Bring your wife into it. Add a tragic love affair. The media will eat it up. They'll cover your every move. Your name and her name will be known all around the world-just like it used to be when the "old man" was around. The thing can be maintained for quite a while. Sympathy and attention will be lavished upon you and the family. And the paper will rise to new heights.

Rudy: Sounds great Henry, but will it sell?

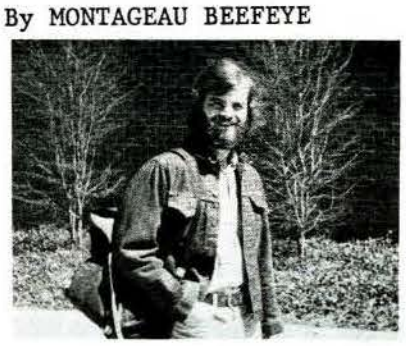
Henry: Just leave it to me chief, it will sell.....

CATCH SB - 22

OR

THE TOILET PAPER CHASE

By MONTAGEAU BEEFEYE



BEEFEYE

[Our avid readers will recall that last time Riparian was on the verge of discovering the catch, or going insane at the expense of his friend Obar, which, as we will soon find out, are not exactly inconsistent.]

SB-22, Riparian later found out, was the number assigned to Dean Crystalclear's special quash court over in the new gymnasium complex. No one know for sure, but it was rumored that Dean Crystalclear requisitioned the quash court room by somehow convincing the John Mitchell Endowment Fund that it would behoove the school's reputation to have a quash court room as well as a Moot court room. The trustees, in their sole and unlimited discretion, were immediately intimidated by such arcane terms as "quash" and "moot", and unanimously approved it. They probably imagined a group of astute legalists pursuing a little black ball across a cubicle room with briefcases, black robes, and sneakers.

At any rate, the venerable trustees jumped at the change of scoring a "first" among law schools, and Dean Crystalclear capitalized on the opportunity to the utmost. SB-22 became the scene of board of directors meetings, luncheons, important appointments, and nearly everything Dean Crystalclear wished it to be.

He knew that he could leave a note in his office saying he had an appointment, come over to SB-22, and play "quash ball" in cloistered bliss, where the pressures of being a law school Dean were vented on four alabaster wall

Riparian went to the sub-basement of the gym and began looking. No where could he find an "SB-22" among the regular squash courts. At the end of an unusually dimly lit hallway, he came upon what appeared to be a broom closet. The plack on the door read "SB-22".

He didn't bother knocking. He opened the door, and the first thing that caught his eye was an obstreperous red and white gym bag. He knew this was it. Over in the corner apparently taking a breather from quash ball with his ego, Dean Crystalclear sat. He appeared startled at first, since no one ever opened the door without knocking. He peered up at Riparian through his myopic, fogged-up glasses. Dean Crystalclear's appearance also surprised Riparian, who despite the Dean's evanescence wasn't expecting someone so young.

"I've half been expecting you, Riparian. You've been around for six years, and I suppose I wouldn't be a Dean if I didn't run into you once. And you're here for a reason. You're the only one who hasn't caught on Riparian, and I was beginning to think that after six years you never would. You're just as idealistic as when you started. Obviously, there is something wrong."

Wrong? thought Riparian. He came here to find out the catch, and now he is being told there is something wrong with him.

Dean Crystalclear continued, "Law school is a game. An elegant, agonizingly protracted ritual designed to separate the men from their senses. Only after such elegant, agonizingly protracted training can we feel responsible in sending lawyers out to try elegant, agonizingly protracted cases, make elegant, agonizingly protracted laws, and write elegant, agonizingly protracted articles about them both.

"Don't you see, Riparian, you should have taken leave of your senses long ago."

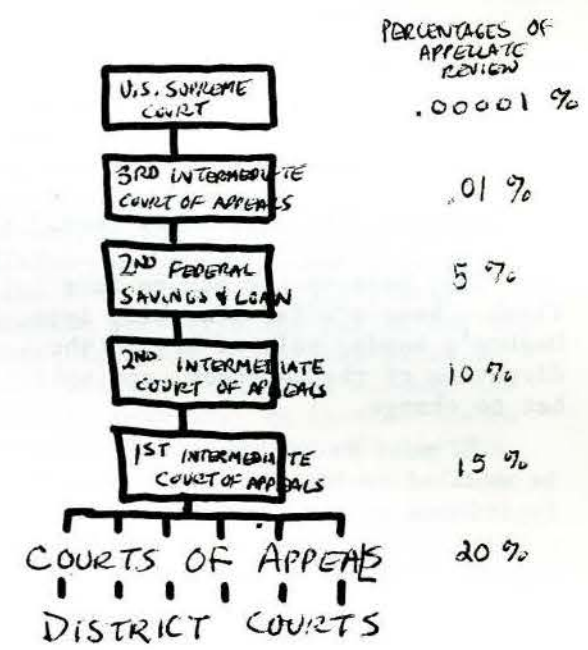
"But what about the catch," asked Riparian, still puzzled.

"Oh, the catch. That's really anything you want it to be. Just so long as you get what you're after." Then Dean Crystalclear looked upon Riparian with all the verity of a learned guru, and said, "The important thing is to take leave of your senses. Only then can you achieve "catch-consciousness."

The metamorphosis was occuring within Riparian. The catch. Catch-consciousness. Of course!

Riparian vanished as quickly as he had entered. It was so simple. Take leave of your senses. Graduate. Take the bar exam. Collect fees. Screw all this idealism. Thus elevated from his senses, Riparian strided across campus as if helium filled his earth shoes, stepped onto Chester Avenue, and was summarily run over by a truck.

Finis



BURGER & FREUND'S "INTERMEDIATE" APPELLATE JUDICIARY DEVELOPED EVEN FURTHER, USING BURGER & FREUND'S "INTERMEDIATE" POINT OF VIEW.

B. Anderson

REEZ

BY BRUCE ROSE

This episode: The Search for Reasonable Love
Editor's note: When we last encountered Reasonable "Reez' Mann, he was ostensibly at the peak of an illustrious career. He was known throughout the land by his symbol, a tiny silver balance scale, respected far and wide for his outstanding legal skills and amazing Reasonableness; yet deep inside he knew there was something lacking. Love. But not just any love, Reez needed and craved reasonable love. What's reasonable love? Maybe you and I don't know, but Reez knew.)

Every time Reez would extend his arms to actually balance sompeting interests, people were astounded. They would see this ramrod of a man with arms flailing, coming to a rest and a decision.

No one thought to ask and just assumed that what Reez was doing was balancing. Reez sometimes could even fool himself. But not often.

Reez wasn't balancing. He was marking parameter and defining voids. When it was dark and he was alone and not afraid he would say the words that described his action-'constructive embrace'.

Reez was in San Francisco for a convention way back when, long before anyone even heard of Rock and Roll.

There were women who followed the legal profession around the country, looking for new 'kicks'. They were called, derogatorilly, Legalies.

One Legalie named Daphne bounced up to Reez. "Balance me, Reezie baby! "

Oh my God, thought Reez, oh no.. on the other hand..but on the other.. furthermore..and then...but!!!..... Essentially it seems...oh my God!!!! Sweat was pourin down his fore and back.

"Come on Reez. Subject my intent."

Passion. Passion is what separates a reasonable man from an unreasonable beast. Passion is so unreasonable. Reez looked around. No one was watching .

"Quickly, let's go to my room."

They were up the stairs in a flash. Reez stuffed something into Daphne's hands, pointed her in the direction of the bathroom, and told her to change.

"I must be within a penumbora," he mumbled to himself; but there is a legitimate police power. Yet there is a right to privacy. But this is illegal. Illegal? Unreasonable!!

He turned around as he heard the door open. She was nude save the shorty judicial black robe he had given her to wear.

"This is what I want you to say now, nothing more, nothing less." He gave her an underlined copy of The Federalist Papers. You be Hamilton and I'll be Jefferson.

Reez' head was spinning. After all these years of waiting to actually do it. He was orgasmic. He was in ecstasy. Stars were bursting. Gavels pounding.

"Oh Reez"

"huh?"

"Reez this is not how it's done." She wasn't telling him anything he already didn't know but he liked to pretend.

"I'm serious Reez. You're supposed to be the best. Come on, let's make a contract. You offer and I'll accept."

"Look, maybe if we can find a reasonable position. You go into the next room and I'll stay here."

"Reez!"

"How about if we just bargain at arms length?"

Daphne sat down and thought for a moment. And thought some more. She couldn't let a situation like this go to waste. This was Reasonable Mann. She stood up.

"Reez come over here"

"Why?"

"Just come here. I want you to think of me as a problem."

"Believe me I do."

"I mean a real problem. A legal problem. Just listen to me." She lowered her voice. "It is in the interest of national security."

Like a rocket his left arm shot up stopping at her right shoulder.

"But now listen Rezzie, Congress shall pass no bills of attainder."

And then his right arm raised to her left shoulder, and his left arm fell to her waist. That's when Daphne bent forward and whispered into his ear, breathing heavily, "shocks the conscience, lewd and lascivious, prurient interest, right to privacy, sanctity of the bedroom."

His arm scales went wild balancing and analyzing up and down her body. And it was not long before Reez gave his fulcrum its proper place in his decision making process.

THE GAVEL

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THE SILLINESS OF LAW SCHOOL

By CHRISTOPHER D. STANLEY

Through my two years of law school I have encountered many silly things, but I find that most of these experiences are really very serious because of the shape of our world. The most silly thing that has happened to me personally was my wearing a hat in Sam Sonenfield's Real Property class and Professor Sonenfield ordering me to take it off, and when I didn't, his storming out of the class. I thought it was pretty silly to argue over a hat but the serious part of the experience which scared me was that Professor Sonenfield and most of the class thought he had the power and the right to order me to do most anything. Other examples of silliness which are really very serious are:

1. A professor calling a Black man boy in class
2. Professors calling women "honey" , "dear", "sweetheart" while at the same time calling men by their names
3. A professor who says he flunks 70% of his Black students saying he is not a racist.
4. A professor asking a Black woman from the South about sharecropping.
5. A professor asking a Hawaian about picking pineapple.
6. Professors visibly having little patience with Blacks and women.
7. A professor saying he is going to flunk his "nigger" a year.
8. Trying to teach students "values".
9. Professors verbally assaulting students for not memorizing a case.
10. Going before the Faculty Standards Committee to change your grade received from a professor whose course you took because he had a reputation for giving good grades.
11. Not allowing a student to retake two major exams he flunked because he had a heart attack two weeks before exams.
12. Having to get "dressed up" to perform your oral argument.
13. Making night students go to class 5 nights a week saying the Administration is not phasing out the night school.
14. A Real Property professor spending only 1 class period on indigent tenant law.
15. Students having very little say in how the law school is run.
16. Giving a multiple choice exam.

MEPHITIS IN THE AIR

BY DANIEL WOLF

I can remember a Saturday about a month ago when the sky was blue and would could sense the cloak of gray winter being discarded for the rebirth of spring. But yet; downtown Cleveland was beseiged by an alien army. Our worst fears have been consummated. Nixon should call out the troops for this invading alien force may be as wretched as those wicked Commies. The army I am speaking of is brown particles that permeate the air--polluted lung destroying air.

see p.6

WOUNDED KNEE

(THE FOLLOWING ARTICLE IS EXCERPTED IN PART FROM THE WKLD/O COMMITTEE NEWSLETTER)

On April 30th an Indian protest against the dual system of justice in South Dakota for the second time in 15 months erupted into a police riot, when supporters of the first five Custer defendants now on trial in Sioux Falls defied the judge's order to rise for the court or leave the courtroom. Attempts were futile to negotiate with presiding Judge Joseph Bottum, who insisted on maintaining the custom out of pride. Standing in respect for the court is not required by law.

A Lutheran clergyman who witnessed the tactical squad's ensuing attack on the 14 unarmed spectators and the defendants inside the locked courtroom of Minnehaha County Courthouse descibed the scene as "using a shotgun against a flea." Twenty-five tactical police in full riot gear, with batons in hand, mace and tear gas, rushed the courtroom, pushing aside the Lutheran churchman in attendance (who had also refused to vacate) and descending first on David Hill-- despite cries from his lawyer that he was a defendant and required not to leave. All Indian spectators were injured, eight requiring hospital attention. David remains in the hospital with severe eye and head wounds; it is yet unclear whether his eye will be permanently damaged.

The April 30 confrontation was the climax of escalating friction between Judge Bottum and the defense since the opening of the trial April 15. While protesting the defense's claim that South Dakota is prejudiced against Indian people--"This court does not go along with your claims of inherent pre judice in South Dakota. I have tried Indians in my court and defended Indians and I know it does not exist"-- Judge Bottum has consistently chipped away at the rights of the defendants. He summarily denied all pretrial motions and has severely limited the defendants opportunity for a fair trial and impartial jury by treating the five as one because of their own choice to be tried jointly. To stand in respect for the court is a courtesy which Judge Bottum does not deserve from Indian people, whom he is helping to railroad into prison.

On April 25 defense attorney Ramon Roubideaux was cited for contempt when he refused to continue with the "legal lynching" in Judge Bottum's court. The defense sought a decision from the state supreme court to increase the number of peremptory challenges which Judge Bottum had limited to a total of ten--only two for each defendant. The defense, Roubideaux argued, could not proceed intelligently without knowing how many challenges it could exercise in the jury selection process. Bottum accused the defense of continual delaying tactics and after a 45-minute recess to have us consider the consequences, jailed Ramon over night for contempt and suspended the two out-of-state attorneys on the defense team from practicing in the state of South Dakota.

After an all-night vigil on the jailhouse lawn, court resumed the next morning. More than 100 people packed the courthouse, which was heavily patrolled by U.S. marshalls and plainclothesmen. A 24-man squad of tactical police on call since the interruption of the trial the previous day were soon mustered when the courtroom spectators defied Judge Bottum's order to stand for the court or leave. While all proceedings were halted, the more than 50 supporters who were not admitted gathered outside the courtroom, chanting the song of the American Indian Movement to the beat of the traditional drum.

Meanwhile, marshals began dragging out individuals inside the courtroom. More than two dozen people were physically removed before Judge Bottum reversed his order at the urging of AIM Executive Director Dennis Banks, who had arrived in Sioux Falls to join the vigil in support of Ramon, one of the defense team in the Banks-Means trial in St. Paul.

The drum singing continued in the tightly secured hallway as Judge Bottum met in camera with the defendants and counsel. The judge capitulated from his hard-line position, apologizing for jailing Ramon, who incidentally is one of his contenders in the circuit court election next month. He further reinstated the two out-of-state counsel--

Jack Pratt of Los Angeles and David Allen of Seattle--and granted the defense motion that David Hill represent himself in the course of the trial. In the interim the state supreme court had denied the increase in peremptory challenges.

While Judge Bottum could not go along with the defense claim of inherent prejudice against Indians in South Dakota, events in his courtroom continually point to the contrary. The Indian lawyer is jailed while the whites are only reprimanded and go free. The Indian protesters are beaten while whites who take the same stand are pushed aside for their protection. From Welsey Bad Heart Bull's murder in January 1973, which precipitated the February 6, 1973 protest in Custer to the April 1974 assault on Indian people in the locked courtroom where Wesley's mother faces trial for protesting the leniency toward his white murderer, the South Dakota dual system of justice has prevailed.

In pretrial hearings sociologist Jay Schulman of New York testified that 60% of the population of South Dakota is prejudiced, according to his jury selection surveys within the state. At an earlier hearing the state prosecutor himself said the defendants could not obtain a fair trial in Custer.

After three days of hearings the court on April 18 refused to dismiss the cases. The defense had moved to set aside indictments due to the inadequacy of the voir dire to bring out the grand jurors' biases from massive publicity and the general widespread prejudice against Indians in the Black Hills area. The defense also sought dismissal on constitutional grounds, challenging the vagueness of the riot statute under which the first five defendants were charged. The statute reads that a meeting of three or more people using force or violence without proper authorization constitutes a riot. The defense argued that a jury could in no way judge anyone on such vague terms.

Another pretrial defense motion questioned the jurisdiction of the state of South Dakota on grounds that the Black Hills, where Custer is located, is Indian land, held under the 1868 Great Sioux Nation Treaty.

It is believed that this is the first time in a criminal case that the Sioux ownership of the Black Hills has been raised. Vine Deloria, Jr., a Colorado attorney and noted researcher on Indian treaties, testified on April 16 that the Black Hills were stolen from the Sioux by fraudulent legislation and litigation. Sioux Treaty Chief Red Cloud believed he was leasing the "tops of the hills" to feed and clothe his people. He never actually signed the proposed Agreement of 1876, which continued the terms of the 1868 Treaty, including the provision for annuities, at the cost of the Black Hills. The so-called Agreement was unilaterally ratified by an act of Congress in 1877.

Deloria explained that over the period of 1868-1876 there was continual agitation about the gold and mineral deposits in the Black Hills, which had precipitated an invasion of mining companies, contrary to the 1868 prohibition of white settlers beyond the Wyoming and Nebraska borders. In 1876, following a mining expedition to determine the gold deposit, a commission rationalized the taking of the Black Hills because the Sioux were not self-supporting, having received annuities--annuities indeed provided by the 1868 Treaty--for 15 years. Meanwhile General Grant pulled out the federal troops guarding the Hills against white invasion and allowed the miners to rush in. He further issued an impossible order that all Indians who did not report to agencies within a specified time would be considered in a state of hostility. Over the same period that the gold was in question, there was an intense conflict over the establishment of Indian agencies for the Sioux people. The subsequent act of 1889, still in question because the required three quarter was

TO THE GRADUATING MEMBERS OF THE CLEVELAND MARSHALL COLLEGE OF LAW; WORDS CANNOT EXPRESS HOW THE REST OF US ENVY YOU. CONGRATULATIONS.

not clearly obtained, disregarded totally the ownership of the Black Hills, providing annuities by reservation and thus obliterating Indian rights to common land claims.

Deloria stressed that neither of the succeeding acts of 1877 or 1889 say anything to abrogate the provisions of the 1868 Treaty, which included the Black Hills within its land boundaries and provided annuities to the Sioux people for an uniterrupted period of 50 years. The chiefs attempted not to sign these agreements until the previous terms of the 1868 Treaty were met; they had been paid for only 15 of the 50 years annuities, they claimed.

Only recently have the Indian people even realized how the Black Hills were taken from them. Up to then they accepted the events of history. The defense urged Judge Bottum "to right the wrongs of our forefathers." Counsel continued: "For a century this country has lived a lie. For the first time we can begin to right these wrongs and we can begin it in this courtroom."

Still, there has been no opportunity for the Sioux people to make a legal claim. The monetary claim granted on February 15,1974 is now under settlement. As reported in Newsletter #12, the Indian Claims Commission has offered the six Sioux tribes and the Arapahoes $17.1 million for the land plus interest, a total of $104 million. An additional $450,000 for gold extracted prior to 1872 was also offered. The Black Hills Sioux Nation Treaty Council, which instituted the claim, publicly repudiated the payment offer saying, "the sacred Black Hills are not for sale."

The Custer trial resumed on May 14, following Judge Bottum's refusal to grant a mistrial or a 120-day delay while Sioux Falls "cooled down". At present the city is an armed camp, with all branches of law enforcement on the streets, in patrol cars, buses, ambulances, on foot. Coincidentally, the National Guard is meeting at the downtown Holiday Inn, which until recently was also the lookout for armed tactical police whose rifles were aimed directly at our housing quarters at the Van Brunt Building.

The Cleveland Bar Association will offer a seminar on how to set up your own law practice. It could be the most valuable course you will ever take. You will have to call the Bar at 696-3525 for the dates and cost which as yet have not been announced. Ask for Peter Roper. Tell him the Gavel sent you.

A REPLY TO WILLIAM KUNSTLER

BY JAMES BURGE

It was with great distress, after viewing the six o'clock news Saturday that I reread John Richilano's article "Kunstler Speaks of Justice In America" (Gavel, May 13). In the article, Kunstler was quoted as saying "violence is a political reality," and the most effective means of transportation 2,000 years ago was fear--it still is today." Such irresponsible rhetoric from this man, whose credibility with young liberals and radicals is so great today, struck a hard blow to me as I learned that the F.B.I. and other police authorities had on Friday ended the lives of five young persons, all reportedly members of the S.L.A.

The scene of their death was tragically bizarre. Reporters told that large crowds gathered when the police arrived and that persons were heard to cheer when police began pouring rounds of ammunition and tear gas bombs into the little house where the army had been hiding. It was said that when the tiny citadel burst into flames from an exploding bomb, no one even attempted to put out the fire. Reporters stated that the crowd, police and civilians, watched and waited, while those inside died as violently and tragically as in recent months they had lived, their lungs filling with the smoke of the raging fire and their bodies tortured by its flames. A newsreel disclosed that after the police-caused fire had consumed its victims and ignited the bullets in their ammo-filled belts, tearing their bodies beyond recognition, fire trucks were finally summoned and the blaze was put out. And as the police inspected their work, the bodies of the five young Americans were shoveled into bags, thrown into a truck and carried off to a morgue.

Why? These members of the Symbionese Liberation Army wanted to feed the poor, wipe out racism and other forms of oppression and give credence to the notion that all persons must stand equal under the law. Their means chosen to meet these goals, goals which anyone must agree should be foremost with all social reformers, was violence. It was violence in its most potent forms: kidnaping, extortion, armed robbery, and in an earlier case, even murder. If this is the change which attorney Kunstler advocates, this is what he got from the S.L.A., and if the resulting deaths of these five young people are the product of his rhetoric, or that of others like him, then he may stand proud of his work; for Friday's episode was confrontation of the finest revolutionary water.

The battle was quixotic. When the fighting began, the five members of the S.L.A. stood fast against 350 local police officers, sharpshooters, and agents of the Federal Bureau of Investigation. Of course they had no chance. And now they are dead. William Kunstler will never represent them in a court of law. The lives of their families have been shattered, as well as the lives of many against whom they sought their vengence.

It should be clear from the story of the S.L.A. that those self-styled liberals like Kunstler and others who sit and wallow in their hard-earned wealth and urge their brothers and sisters into the street, announce a doctrine which accomplishes little and brings tragedy to its soldiers and their victims. It should also be clear that in the final analysis, as the scene in Los Angeles bore out, the violent revolutionary will be scorned not only by his adversary, but also by those for whom he wants to effect change.

In a word, violent revolution is not built into the system, and Mr. Kunstler in all of his pompous liberalism can rest assured that this system and the nation which perpetuates it, whether of the people, whether by the people or even whether for the people, shall not perish nor be altered meaningfully by violence. The price which Kunstler asks others to pay for attempting violent radical change is too great. Neither he nor anyone else can afford it.

THE GAVEL STAFF HOPES THAT YOU HAVE AN ENJOYABLE SUMMER. WE'LL SEE YOU IN THE FALL.

WOLF, IN THE AIR

FROM PAGE FOUR

Do you feel yourself becoming woozy, your head spinning? Have you been experiencing nausea, headaches and a bout of sneezing lately? I am not a doctor, but it sounds to me like you are suffering from the infamous Cleveland Air Sickness-let's call it "lack of breath."

Cleveland, in one of its fits of progressiveness, has a comprehensive emission control ordinance which was adopted in 1969. In Chapter 19 of that ordinance the penalties are listed for not abiding by the law. But as evidence by Tuesday, May 21's emergency alert and 232 air quality reading, this ordinance has not been what one would call totally effective.

We still hear cries from such unbiased individuals as Henry Ford that Americans are alarmists, that there isn't any overwhelming evidence that our urban areas are suffering from air pollution. Yet in Washington vs. General Motors (406 U.S. 109) Justice Douglas states that "Air pollution is, of course, one of the most notorious types of public nuisance in modern experience."

It is my feeling, and for some reason seems to me should be others, that clean air is a right that all individuals should enjoy. As future lawyers, each one of us should be concerned and make it our responsibility to try to effect change so that clean air can become a possiblity in American cities.