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## 1974 Vol. 23 No. 4

Cleveland Marshall College of Law

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Some of the experiences gained during the recent on-campus recruiting program are provided for future reference.

The matter of "no show" at on-campus interviews has been a problem of real concern and embarrassment. Last summer I sent to each student scheduled to graduate in 1975 a memorandum containing guidance for job hunters. One element that was emphasized was the serious consequence of a student missing a scheduled interview without prior notice. We have had three cases of this nature, two of them with the same firm. In both instances the interviewers voiced their displeasure in unequivocal terms. "Rude" and

SEE P.8

Student Lounge, Monday Morning, 9:00 a.m.



# THE GAVEL

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . ."

-Brandeis, dissenting in Olmstead v. U.S., 1928

The Student Newspaper of The Cleveland State University College of Law • Cleveland, Ohio  
Volume 23 \* Number 4 \* November 22, 1974

## MEA CULPA

If anyone noticed (I can think of two people who did), there was something strange about last issue's article on the new faculty members. Due to editorial oversight (very unlikely), sabotage (we have not ruled out the possibility at this time), or maybe the hallucinogenic qualities of printer's ink (hmm), Profs. Kuhns and Weidner (the "i before e" rule has more exceptions than hearsay) had their photos switched. No matter whose fault it was, however, it might not have been totally culpable. Their offices are just across the hall from each other. They both wear glasses. They both smoke pipes. They both have blond hair. I know one of them was smiling. But I can't really remember which one. And even if I did, why was he smiling? Hmm. In fact, the more I think of it, the fishier it gets.

At any rate, before everyone starts switching criminal law and property courses, "Weidner" is really Professor Kuhns, and "Kuhns" is really Professor Weidner. I think.

Further factual corrections --Prof. Kuhns is a graduate of Stanford Law School; Prof. Weidner was at South Carolina for three years, not two.

(Our Apologies).

## NOW, THIS IS RELEVANCE

BY JOHN RICHILANO

In keeping with the Dean's receptivity to more relevant and diverse subject areas, the curriculum committee has before it a proposal for a section of courses in continuance law. The initial course will be called "Continuance Practice Seminar," and is slated to be offered in the Fall quarter. It is designed to cover the basic precepts of an area which is rapidly becoming known as "90% of the law." "Continuance Clinic" will follow in the Spring quarter.

Winter quarter will be left open in the event the seminar is continued. Discussion in the seminar will explore the roots of the practice--"good cause." The Clinic will allow students to actually develop and sharpen their continuance skills. Grading will be in accord with the amount of continuances each student can accumulate in each case. The highest grade will be "I", indicating that the case was successfully continued the entire quarter. As to who will be suited to teach the course, the Faculty Appointments Committee will give priority to practicing attorneys who are out of town a lot.



Student Lounge, Monday Evening, 6:00 p.m.



[Mike Kieffer is a third year day student. This letter was originally intended for the Plain Dealer but it appears first in the GAVEL as an exclusive.]

The recent proposal by City Council President George L. Forbes to impose a 6 month mandatory jail sentence for the misdemeanor crime of carrying a concealed weapon, seems at best to be another attempt by one of our politicians to increase his popularity at the expense of an uninformed public.

It is the nature of Ohio's legal process that in setting up rules to govern the behavior of citizens, Municipal ordinances must not be in conflict with State statutes. In the case of Village of Struthers v. Sokol, 108 Ohio St.263 (1923) the Supreme Court of Ohio set up the test of whether or not a "conflict" existed. The test was stated to be: does the Municipal ordinance forbid that which the State statute permits, or does the ordinance permit what the statute forbids. Applying this test in a subsequent case, City of Cleveland v. Betts, 168 Ohio St.386 (1958), that court further held:

Section 3, Article XVIII of the Constitution of Ohio, authorizes municipalities to adopt and enforce within their limits only such local police regulations as are not in conflict with general laws, and a municipal ordinance which makes the carrying of concealed weapons a misdemeanor is in conflict with a general statutory enactment making the identical offense a felony and is invalid.

When these two decisions are taken together in light of the present State statutes dealing with Weapons Control, it becomes clear what I meant in my original statement. Under section 2921.12 of the Ohio Revised Code, the act of carrying a concealed weapon only becomes a

felonious crime if: (1) the offender has previously been convicted of carrying a concealed weapon or any offense of violence (2) if the weapon involved is a fire arm which is either loaded or the offender has ammunition ready at hand or (3) if the weapon involved is a dangerous ordnance (such as a sawed-off shot gun or a zip gun). In other words, the misdemeanor crime of carrying a concealed weapon on the streets, as far as firearms are concerned, only results when the offender is found with a concealed unloaded weapon which is not a dangerous ordnance.

\* \* \*

To the Staff and Editors:

I would like to extend to each of you my appreciation and congratulations with regard to The Gavel. I understand that it is not a newspaper sent to the alumni and therefore I would like to thank you for forwarding same to me.

As a past Editor-in-Chief of the voice of the law school, I always stated that the newspaper was the window of the law school. I regret that this student held paper is not the vehicle that informs the alumni concerning life at the law school. As an alumni, the publications we receive are either prepared for us entirely by administrative staffs or by students, after they are edited by the administration.

Enclosed are 10 stamps for postage. Thank you for your courtesy.

Sincerely yours,

Paul T. Kirner

\* \* \*

No other conduct can be so sanctioned in light of the State statutes and the holding in Betts, supra. Since the city council can only enact ordinances proscribing misdemeanors and penalties to be applied thereto, it is for the crime of carrying an unloaded firearm that Mr. Forbes is so actively promoting people should manditorily be placed in jail for 6 months.

Irrespective of whether or not gun control is a necessity in today's so seemingly violent society; I am anguished over the fact that the president of our City Council would creat such a political uproar over such a nebulous proposal. I submit, Mr. Forbes, that rather than propose to put people in jail for 6 months for carrying an unloaded firearm, an instrument which surely has not resulted in many, if any, killings, your efforts would be better spent if they were directed at the State legislators than in tying up the City Council with meaningless, yet politically controversial bandwagoning.



KIEFFER

\* \* \*

Jurors and Others for Reconciliation  
79 Western Avenue  
St. Paul, Minnesota 55102  
Telephone (612) 222-3643

October 28, 1974

Dean Craig W. Christensen  
Cleveland State University  
Cleveland-Marshall College of Law  
Cleveland, Ohio 44115

Dear Dean Christensen:

We are writing to you on behalf of more than one hundred Indian women and men who are facing trials and possible imprisonment for allegedly participating in the seventy-one day demonstration at Wounded Knee last year and other protests against the dual system of justice in South Dakota and Nebraska.

As you may know, the major Wounded Knee trial of Russell Means and Dennis Banks, two of the leaders of the American Indian Movement, ended recently when Federal Judge Fred Nichol dismissed all of the charges against both defendants due to acts of misconduct and deception by the federal government. In that case, soon after the jury of twelve had retired to deliberate, one of the jurors suffered a stroke and was unable to continue. The government refused to consent to permit a jury of eleven to reach an unanimous verdict after the long trial.

SEE P.3





In dismissing the case, Judge Nichol said,

"One reason this Court wanted this case to proceed to a jury verdict was because if the government could not produce sufficient evidence in nearly eight months of trial to convince you that Russell Means and Dennis Banks (who were certainly in the position of leading roles as far as the occupation of Wounded Knee is concerned) were guilty, is it fair to say that the one hundred and some other persons should be tried."

In historically unprecedented actions, twelve of the jurors and alternate jurors sent a letter to Attorney General Saxbe (a copy of the letter is enclosed) explaining that they could not have convicted the defendants and urging that the charges against the other defendants be dropped. They also assisted in forming this committee to arrange for a meeting between Mr. Saxbe and religious leaders, law school deans and professors, and other prominent Americans.

At its National Convention earlier this month, the American Lutheran Church endorsed the meeting, agreed to send its representatives to Washington and to urge its ministers and congregations to support the meeting with letters and petitions. Other religious leaders, constitutional law professors and attorneys, educators and others have agreed to attend.

We will meet with the office of the Attorney General on November 12, 1974 at 2:00 p.m. to ask him to:

- 1) Dismiss the Wounded Knee and related Federal cases against the Indian people and their supporters.
- 2) Use his good offices with the Attorneys-General of South Dakota and Nebraska to urge them to dismiss similar state charges against the Indian people and their supporters.
- 3) Initiate an era of reconciliation between Indians and non-Indian people with an exchange regarding Treaties entered into with Indian nations and suggestions for reducing the control over the lives of Indian people exercised by the Bureau of Indian Affairs.

There will be time to discuss these questions prior to the meeting with Mr. Saxbe.

We ask that you assist in ushering in a new era of reconciliation by agreeing to lend your name in support of this effort and by agreeing to attend the meeting with Mr. Saxbe next month. A card is enclosed to facilitate your reply.

Sincerely,

Mark Lane  
Coordinator

[This little squib appeared in TRIAL magazine, Nov/Dec. 1974 issue.]

## WHO LIKES LAWYERS?

The first attempt by the legal profession to determine the extent to which the public avails itself of the services of lawyers indicates that about a third of the people in this country have never seen a lawyer.

The study, sponsored by the American Bar Association, showed that those who have consulted a lawyer, 43% saw an attorney only once during their lifetime.

A possible reason for the infrequency with which lawyers are consulted may reside in the fact that a large proportion--a majority--of those people surveyed felt that lawyers' fees are excessive.

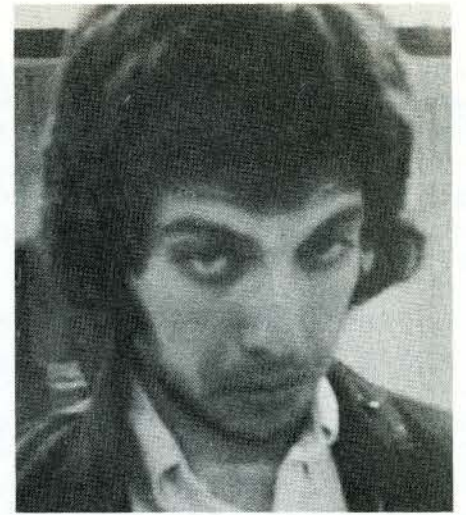
Other findings of the study were:

Most of those surveyed, 57% vs. 39%, felt that the legal system favors the rich;

Disagreed, 56% to 38%, that a lawyer will work as hard for a poor client as for an affluent one;

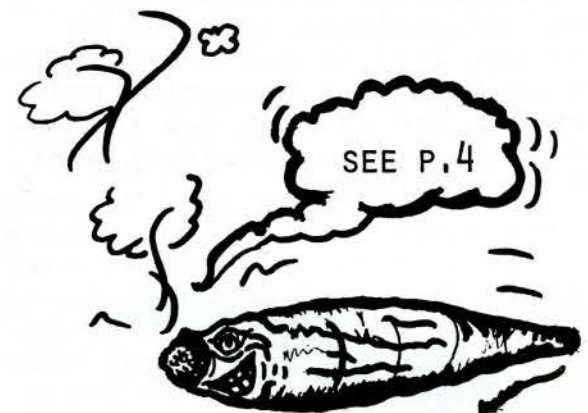
Disagreed, 57% to 39%, that lawyers are prompt in getting their work done;

Agreed, 76% to 17%, that much of the work now being done by lawyers, such as tax questions and estate planning, can be done as well, and at a lower cost, by non-lawyers, e.g. insurance agents, bank managers, accountants.



BY DANIEL WOLF

On October 26th on the Cleveland State campus, Ohio NORML, which is in its initial stages, held an organizing meeting. NORML stands for National Organization for the Reform of Marijuana Laws. Present at this meeting were some Cleveland attorneys, psychologists and those that proudly called themselves part of the working force. Also present was Keith Stroup, National Director of NORML. Mr. Stroup, an articulate young lawyer, has been at the forefront of the struggle to decriminalize marijuana for the past several years. The word decriminalize must be emphasized for Mr. Stroup stated that it is not NORML's goal to per se legalize grass, but rather to take the problem out of the criminal area. He stated, "Society, of course, has an interest in regulating marijuana and to discourage the use of recreational drugs, but there isn't any reason to use the criminal law." He went on to say that Ohio has the most stringent marijuana laws in the United States. One possible goal for Ohio would be to follow the lead of Oregon where it is no longer illegal to possess up to one ounce. One can receive a \$25.00 civil fine for possession but one would not be haunted by a criminal record. The problem is devoid of the criminal law.



WOMEN SPEAK OUT For Peace and Justice plans a Boutique and Film Festival on Saturday, December 7, from 11 a.m. to 6 p.m., at the Unitarian Society, 2728 Lancashire. Films will be shown from 12 to 5, and Arts & Crafts of all kinds will be on display. Coffee and cookies, too. For further info., Call 371-4027.



Due to NORML's efforts the maximum penalty for possession of up to two ounces in Texas is six months. It used to be life. Stroup feels that because of Oregon we have a better chance in Ohio. The trend is toward decriminalization.

NORML hopes to use public education in unemotional pleas to create a climate in which decriminalization of marijuana will not be thought of as injurious to the State. Stroup noted that Senator James Eastland of Mississippi is the major opposition to reform. Senator Eastland once held six days of hearings where he stated that marijuana is a communist plot. Stroup finished by saying that there has been a bill pending in Congress for the past two years to decriminalize marijuana and that President Ford is about to come out as neutral or even in favor of the bill. The rest of the meeting was devoted to organizing an effective group to help Ohio NORML attain their goal.

In Ohio we have been led to believe that possession of marijuana is a minor offense. We must look at the interpretation of the word minor, for everyday in the courts around Cuyahoga County many people are being faced with the prospect of one year in jail and a \$1000 fine for possession of one joint and less. The hypocrisy of such a statute is obvious and goes to the very idea of respect for the law and courts of this State. When one can legally drink himself to death by abusing one of the most dangerous drugs known to mankind, but yet lose his cherished liberty for possession of a small quantity of a type of weed, many questions must be asked.

Lenny Bruce said, "I think marijuana will be legal in five years because most the the law students I know smoke dope." Mr. Bruce's prediction has already been proven wrong, but the hypocrisy continues for the law students referred to are now lawyers and prosecutors. It is just that hypocrisy which lessens the respect for the law which is such a necessary part of our society.



## INSIGHT AT CSU THEATRE

Cleveland State Players are putting on three one-act plays. Two of which are not worth the price of admission. The middle play, "Schubert's Last Serenade" is an excellently acted farce. None of the scripts are particularly exciting and perhaps that is what the title "Insight" is all about. The first play, "The Academy" is an obnoxious plot concerning a school for jiggolos in Italy. The final insight is an incomprehensible hour's worth of verbiage called "The General." It concerns a man and wife in the 21st century, and the threat of total annihilation. The set for "The General" is full of gimmicks and is nearly as exciting as the acting, which really does not say very much. In fact, the only bright spot in the evening is contributed by the leads of "Schubert"; they at least are fun and seem to enjoy what they are doing. If you have nothing else to do, or get stuck at school one night by a snow storm, you might want to try to get in free one night (Fri., Sat., or Sun.), otherwise read a book or see a movie!

Al S. B. Tokenless

DON'T FORGET  
Beer Party in Student  
Lounge Friday, Nov. 22,  
4:30 - 8:30. Sponsored  
by Cleveland-Marshall  
Alumni Association.  
FREE

## FACULTY MEETING HIGHLIGHTS

The faculty meeting last Friday had as its high points Wounded Knee, prospective faculty members, The Clinic, Admissions in light of De Funis, and beer.

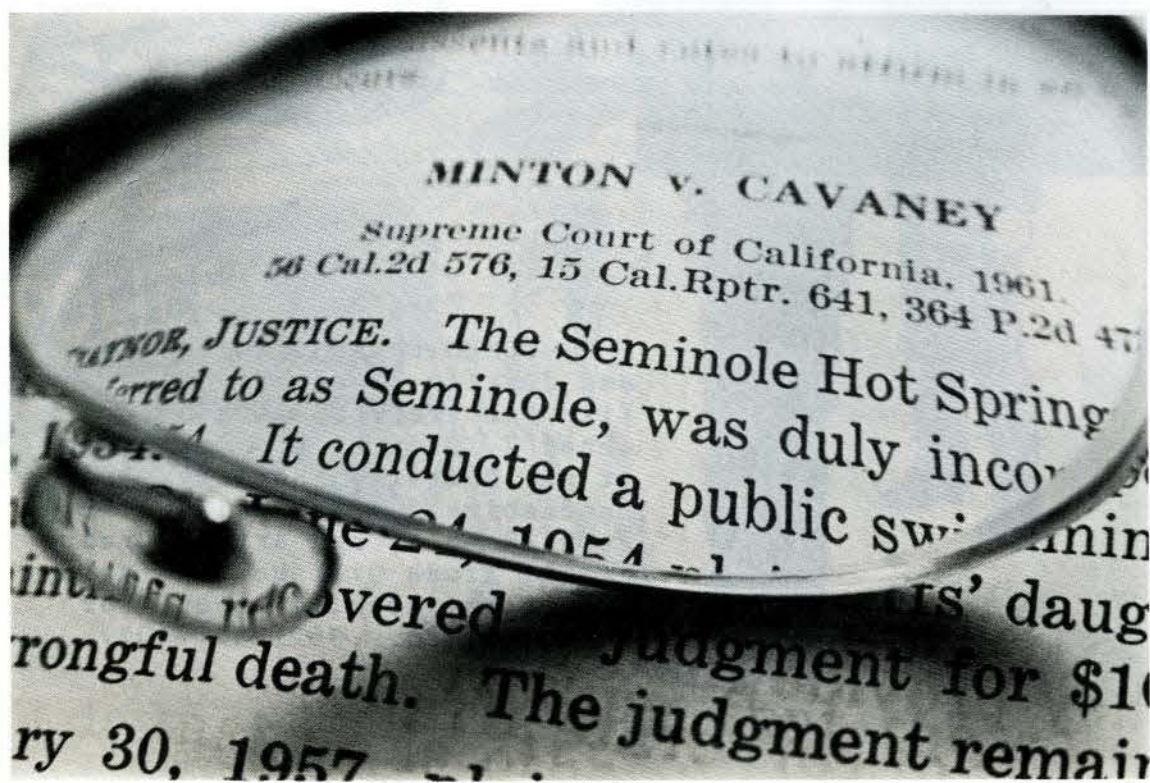
Prof. Gary Kelder passed around a petition pursuant to a letter received by Dean Christensen (see Letters) from the Wounded Knee jurors (coordinated by Dee Brown and Mark Lane). Half-way through the announcement, Prof. Sam Sonenfield objected, sparking some curt, unparliamentarian dialogue. The final petition contained eight faculty signatures.

Prof. Liz Moody reported on faculty appointments. She noted that, whereas in the past the school's policy in recruiting faculty was to focus on "bright and attractive people" rather than on curriculum area needs, this committee's policy will be to seek depth in certain subject area, most notably Tax and Corporate Securities, along with International Law, Jurisprudence and Legal History. (We all know how much we've missed Jurisprudence and Legal History.)

Prof. Buckley reported on the clinical committee. A resolution to make the Fall quarter's experimental 5 hour section of the Clinic permanent was amended to allow the section to exist through winter and spring quarter before resolving its permanence. It was felt that it was too early to draw any significant conclusions from the response at this time.

Most of the time and substance of the meeting was taken up by the Admissions Committee's Goals, Criteria, and Procedures report. Much lip service was given to De Funis, and as may be expected from a Supreme Court opinion of a vaguely defined area, confusion developed. Amendments were proffered and the matter was tabled for future discussion.

The topic that got the most participation out of our faculty was alcohol. The prospect of a student lounge cocktail party every Friday as a matter of policy brought robust and lighthearted debate from many professors. All seemed to be for it. The most important question in Prof. Sheard's mind was whether or not Cleveland-Marshall students are sophisticated enough to have cocktails (as opposed to beer). Luckily, somebody (I can't remember who) came to our rescue and vouched for our sophistication. I got the feeling that even though Sheard may have not gone along with this, he favored the idea as an educational experience in sophistication, for those of us who ain't got no couth yet.





## AN INTERVIEW WITH SUSIE POWELL

[We decided to feature Ms. Powell apart from the other new faculty members because her functions are a little different than those of a regular professor. In addition, to dispell any notions that we may have overlooked her, we told her she deserved special attention. She agreed. -Editor]

BY RICH MUSAT



MS. POWELL

"I consider myself a radical lawyer and also a professional--by virtue, part of the system. It's a dilemma that one must constantly consider."

That's Susie Powell speaking, Staff Attorney with the Legal Clinic and one of those folks who work together in the Clinical Program here at the College of Law.

Susie came to Cleveland State after working at Legal Aid for one year. She is a graduate of Case Western Reserve College of Law and has been in Cleveland for four years. Ms. Powell came to Cleveland from Vermont where she resided while studying at Smith College in Massachusetts, Susie grew-up in North Carolina and received her undergraduate degree from the University of North Carolina. She sees Cleveland-Marshall as a vibrant place --"The enthusiasm of the clinical students provides energy to all of us--it's synergetic."



Recently, Susie has been busy traveling to and from Federal Court. The Legal Clinic, with Susie directing most of the work has a case docketed in district court which has gained notoriety with Clevelanders. The case is within Ms. Powell's forte: Landlord-Tenant Law. The issues in the case are of great importance to many people and could have resounding effects around the country. The story is not a happy one. The building programs of the 1960's were to afford people, displaced by urban renewal, with safe, decent, clean and sanitary housing. The Federal Government, through the Agency of Housing and Urban Development (HUD) insured loans to private developers to build housing under the National Housing Act. Private entrepreneurs didn't seek to build good, adequate housing but rather put a premium on capital. They made money. The buildings deteriorated, foreclosures ensued as the buildings became rat infested and crumbled. The U.S. Government became a slumlord. Susie feels that HUD, because of their lack of supervision, forced the foreclosures to take place. The specific issues in the case relate to an onerous lease, violations of the City Housing codes and rent increases. Many of the plaintiffs in the suit are now in rent strike.

When queried on the correlation of legal work and social reform, Susie expressed her thoughts, "The only thing a lawyer can do is frustrate the system. Reforms come piecemeal--sometimes a favorable result can be had for an individual, but the problem is often transferred to others."

"People certainly express anger--maybe it's the weather." Susie on Cleveland. She doesn't feel Cleveland is a very friendly place compared to other cities she has lived in. In spite of her long days in the clinic, Susie manages to find time to refinish antiques and do woodworkings.

The Legal Clinic is seen by Ms. Powell as an essential part of a person's legal education, a critical link between theory and practice. "Dealing with people--other lawyers, judges, and court related people is something which has to be experienced and perfected. The Clinic provides students with the opportunity to do much of what a lawyer does in the first year of practice."

Unabashed, Susie stated at one point, "I am 32 years old--print it--nobody believes me."

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### SKI CLUB

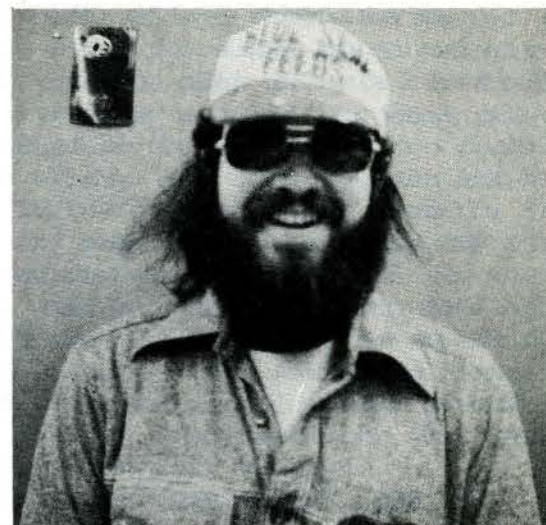
Meetings every Thursday at 3:00 p.m. in MC 102.

For more info., or to join--if you can't make meetings--our office is UC Room 5, Cubicle 6, or Call Tony Miccuilla.

School - 687-2220  
Home - 961-8724

## THE HOME STRETCH

BY CHRIS STANLEY



Well here I am in my last quarter at Cleveland-Marshall. In fact I have just 4-1/2 weeks to go before I finish my last law school exam. It hardly seems possible that it has been more than 2 years since I first started law school. It seems like only 10 years ago, and yet here I am, and what is best is that I am still sane (I think). However, this joy of mine about finishing law school is somewhat dampered by the realization that two weeks after I finish law school I start a seven week bar review course, which culminates in taking the bar exam (3 days long, 6 hours a day), which officially will tell me if I am good enough to practice law (which brings up the question--why go to law school for 3 years?). This column will be an expression of what I am going through from now until I find out the results of the bar exam--my last quarter, my last exams, the elation of graduation, the drudgery of 7 more weeks, and finally the bar exam and the waiting for the results, all of which hopefully will enlighten you and possibly help 1 or 2 of you. This issue's column will be about how my last quarter is going and my trying to decide which bar review course to take.

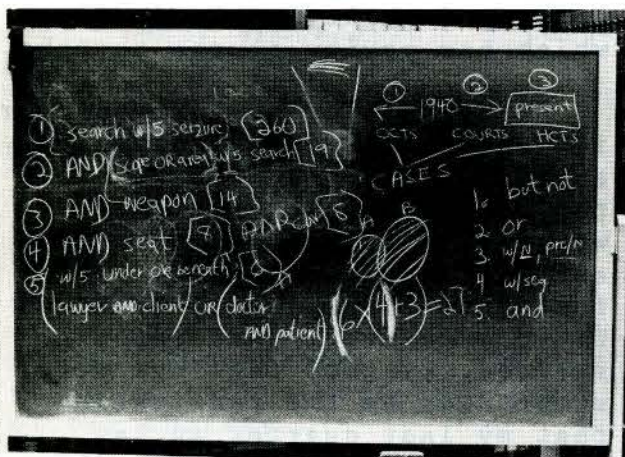
Very simply my last quarter is long and boring. The only enjoyable part of my last quarter was before it started. It was really nice to be able to sit back and contemplate the fact that I only had 1 quarter to go. However, once school started, my good feelings were swept away by the realization that my last quarter in law school would be basically the same as my first year--most teachers still asked for briefs and they still use the Socratic teaching method and it has all become very boring. I find that my whole last year in law school has been a waste of time. I have been taking courses during that period which I probably will never use. What would be useful would be to have the last year in law school out in real practice, interning at various places throughout the state. Personally my scheme for law school would be 4 or 5 quarters of studying basic law (Torts, Contracts, Criminal Law & Procedure, Property, Civil Procedure, Constitutional Law, & Evidence,

SEE P.6



plus elective courses) plus a year of practical internship in the area which the student wants to specialize in. The Clinic is a good idea as far as it goes (it is too superficial and not diverse enough and is really only one quarter of real practice). This sort of scheme would allow students a better legal education and would allow the law school to offer more in terms of real practice than the unreal and traditional moot court and law review.

Choosing which bar review course to take is an important decision, if only because it concerns about \$200-250 of your money. At this time I advise everyone to take a bar review course (my opinion may change after I see what it is like) because the bar exam does not test your knowledge of the law (I would assume the successful completion of 9 quarters of law school would prove this) but rather it tests your memory and your ability to regurgitate and the bar review courses are geared to helping you do this. Nord bar review course is cassette tapes and printed material which you use at home. It takes a great deal of personal self-discipline but you can play it as many times as you wish and whenever you wish. Miner and Rossen are very similar in that they both give lectures and outlined notes. The biggest difference is that most of the instructors for Rossen are from Cleveland-Marshall while most of the instructors for Miner are from Reserve. I personally chose Rossen because it seems to be Cleveland-Marshall oriented, and thus smoother for me.



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In an exclusive interview with Head Librarian Bardie Wolfe, the Gavel has learned that the library is presently anticipating keeping the library open 24 hours a day during the reading week and final exam week. This translates into the library being open continuously from Dec. 9 at 7:30 a.m. until Dec. 21 at 9 p.m. It is hoped that this will help students in the final weeks of the quarter to study for exams and finish papers. Confirmation of this schedule will appear in the next Gavel and notices will be posted in all appropriate places, but it is stressed that there appears to be no reason at this time why this will not come to pass.

## BEHIND THE SCENES AT THE SUPREME COURT

BY BRUCE ROSE

During a recent visit to the Supreme Court we had a chance to meet and talk with Ed Douglas, the carpenter to the court. He in turn introduced us to another behind the scenes member of the court, Kathy Hetos, the curator of the highest tribunal.

When we walked in to her large office in the basement we found her sitting at her desk which was in the middle of a good deal of fine, old and valuable clutter. A larger-than-life size portrait of the late Chief Justice Earl Warren recently painted by Phillip

Her first objective in her position was to bring back to the court those art objects which belong at the court and not in private collections. She spent a year in constant contact with collections museums and societies in an effort to locate and reclaim the court's memorabilia and artifacts. Her effort is now beginning to show success. At least one-third of the correspondents have expressed interest in donating to the court. On the day we visited with her she was very excited as she had just been promised John Marshall's corner chair by a Pittsburgh industrialist.


A justice at the court can lead as secluded a life as he desires. Former politicians appointed to the bench usually go through a long period shunning the Washington social circuit. However, the opportunity to be chauffeured into the private underground garages, whisked up their private elevator and cloustered in their suites of offices is not one of which the justices avail. They are often seen walking the corridors amidst the tourists.

Prior to a court session, the justices meet in a locker room of sorts behind the court room. Where a valet helps them into their robes. It is there that they ritualistically and brotherly shake hands. It has been years since a justice has refused to shake hands with an associate.

The court house itself has gone through some changes. It was remodeled two years ago "for the first time in a long time." In order to get away from the sterile white look that permeates all of official Washington, Mr. Burger had the ceilings painted red.

He also had taken out of the closets and storage areas all the official portraits of each former justice. They were put up for permanent display in the hallways. One painting caused minor flare. Phillip Rutner, whose sculpture of the Warren court greets the visitor at the front door of the court, painted a portrait of Felix Frankfurter, which too many people found too abstract. It was taken down and a new painting, more realistic, but still the most non-realistic, was substituted.

The justices' suites have enlarged in recent years, to accommodate the increase in staff size--from 2 clerks to three clerks and from one secretary to two secretaries. The senior associate justice is offered the office space of any recently departed justice. However, the offer is generally declined. Each justice is responsible for his own decorating ideas.



### THE GAVEL

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JOHN RICHILANO, EXECUTIVE EDITOR  
TOM BUCKLEY, FACULTY ADVISOR

THE GAVEL STAFF: SANDY EDELMAN,  
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JOHN LAWSON, CHRIS STANLEY

The views expressed herein are those of the newspaper or its by-lined reporters and contributors, and do not necessarily reflect the views of the student body, administration, faculty, or anyone at The College of Law or The Cleveland State University unless specifically stated.

THE GAVEL, COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY, CLEVELAND, OHIO 44115  
687-2340

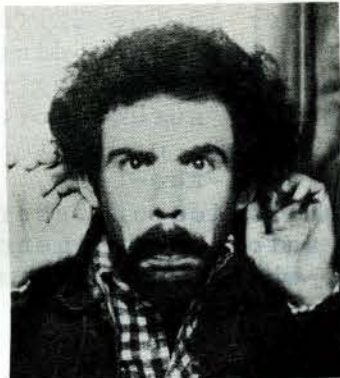
Rutner, rested behind her. Smaller paintings, sculptures, and pieces of furniture lie on the floor amidst many more pieces of paper. On her desk sat a large awkward looking tool. She informed us that it was the first Official Supreme Court staple remover. Naturally there were several scales of Justice lying around just waiting to balance competing interests. Her position at the court is much like these scales. On the one hand she must serve as a public relations person for the court, while on the other hand she must maintain a sense of judicial independence and secrecy.

Ms. Hetos is young, open and friendly. She is the first person to occupy the office and hold the position at the court. The Chief Justice created this position in his effort to revitalize the image of this co-equal branch of government.



# THE COWBOYS HAVE "ADVISORS"

BY JEFF DWORKIN



[Jeff worked this summer on the Wounded Knee Legal Defense/Offense Committee, which is organizing defense of the Indians being tried in federal court on charges stemming from that struggle.]

Cowards die a thousand deaths  
A hero dies but one.

--Maxim

You can never bury the truth  
deep enough.

--Gladys Bissonette,  
Oglala Sioux

Nearly two years ago, a force of several hundred poorly equipped American Indians, comprised largely of Oglala Sioux and members of the American Indian Movement, occupied the Village of Wounded Knee on the Pine Ridge Indian Reservation, South Dakota. For the next 71 days they held federal forces to a standoff, in an effort to wrench political power from the corrupt tribal officials and federal bureaucrats, and to call world attention to the poverty and powerlessness of the Indian as "ward" of the state.

America seemed interested. The Indian, after all, was a harmless relic of our pioneer past, a romantic link to wildness, to primitivity, to history. And a remote sympathy for the Red man resisting the overbearing authority of government was in keeping with the growing middle class skepticism of people in power.

So the country watched the evening serial of an inverted Western-style siege, as the Indians drew up their wagons and repelled the federal troops attacking from the surrounding hills and roads. Somehow "lost" in the media portrayal of all this was the fact that the siege of Wounded Knee constituted one of the government's most daring field tests for repression--the militarization of the country's federal law enforcement agencies.

The government attempted to project the image of Wounded Knee as a civil disturbance being controlled by federal law enforcement officers, much as if it were controlling a political demonstration or enforcing a court order requiring busing in the schools. And the media dutifully presented it as such. The visible personnel were almost exclusively from two federal agencies--the FBI and the Special Operation's Group (SOG) within the U.S. Marshals Service (USMS).

The latter group, formed in 1971 and first tested that year at the May Day protests against the Vietnam War, had become a wandering domestic army, composed of hand-picked and specially trained Marshals, whose further appearances in 1972 included the evicting of Indians at Alcatraz and at the Twin Cities Naval Station at Minneapolis, the Republican and Democratic National Conventions and the demonstrations at the federal prison at Dansbury, Conn., protesting the murders at Attica. Ostensibly formed to protect federal property (a function clearly within the operations of the Federal Protection Service), SOG was and is a de facto domestic army under the control of the U.S. Marshals Service and, ultimately, the U. S. Attorney General.

The issue of military involvement at Wounded Knee does not rest solely upon the illegality of SOG. While SOG functions completely beyond the statutory functions of the USMS to enforce the orders of the courts and to make arrests committed within the marshal's presence, the federal courts in the ongoing Wounded Knee trials have refused to find such an illegal function. But, as the courts in these trials have found, there is ample evidence showing that the U.S. Army itself was unlawfully involved in the siege of Wounded Knee, an involvement which thereby tainted the involvement of the federal agents within their effective control.

The illegality of the military's presence has been successfully raised by the defense in several of the trials, involving some of the seventy-odd Indians who are defending against charges of violating 18 USC 231(a)(3). This statute makes it a crime "to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder. . . ."

The defense has responded by showing a violation by the government of 18 USC 1385, which provides:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both." (emphasis mine).

Furthermore, by 10 USC 334 Congress requires that the President may call in the army or militia to suppress domestic violence only by proclamation. No such proclamation was issued preceding the military involvement at Wounded Knee.

In all trials, thus far involving charges of violations of 18 USC 231(a)(3), the defense has prevailed by showing that, due to the unlawfulness of the military's unauthorized presence at Wounded Knee, the conduct of the federal agents acting in concert with or under the influence of the military was so tainted as to remove such agents from the protection of 18 USC 231(a)(3). In other words, due to the illegal military presence, the marshals and FBI agents were found no longer to be "lawfully engaged in the lawful performance of (their) official duties."

Initially, the standoff at Wounded Knee was a small-arms confrontation between the Indians, and the agents of the FBI and USMS. Within a few days, however, the federals received two Armored Personnel Carriers from the South Dakota National Guard, and over 100 high-powered M-16 rifles with ammunition. Further, the Air Force, at the request of USMS Director Wayne Colburn, flew photo reconnaissance missions over the area, and gave the photos to the Marshals. This request was channeled through the Directorate of Military Support (DOMS), an office within the Department of Defense, which was established in 1968 as the Directorate for Civil Disturbance Planning and Operations, and whose function is to channel military hardware and assistance to civil authorities.

As DOMS was receiving further requests for equipment and aid, and as the Justice Department had requested federal troops to move in on the insurgents, the army realized both that it needed a skilled observer on the spot, and that it also had the unique opportunity to effect military leadership and control over a situation which was and continued to be viewed as a civil disorder.

To that end, it sent one of its best. Col. Volney Warner was Chief of Staff of the 82nd Airborne, whose troops would be designated to assault Wounded Knee under Operation Garden Plot, the military's national emergency contingency plan. Warner, a starched, disciplined, and intelligent product of West Point, Vietnam (as an early advisor, and later in the pacification program), and of psychological warfare training in the U.S. Army Special Warfare School, was shifted from his preparations of contingent plans for an assault by the 82nd in Sudan, where two U.S. diplomats had recently been assassinated, and sent to Wounded Knee with instructions to stay out of uniform, to maintain a low profile, and to abstain from confronting or killing anyone.

From the time he arrived, was briefed by USMS Director Colburn and ranking FBI Agent Joseph Trimbach, and was flown

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over the hamlet with them by National Guard helicopter, Warner became the de facto commander of the federal agents there. His first act was to deny the request for federal troops, and to convince Colburn and Trimbach to pursue a plan whereby they would enlarge their own forces to do the job. To induce their cooperation, he assured them that DOMS would keep them armed and supplied, and the 82nd would bail them out should they attempt to capture the village and fail. Later that day, Col. Jack Potter arrived at Wounded Knee. Potter was Deputy Chief of Staff for Logistics for the 6th Army.

In the next few weeks, the Army made good on its logistics promises. Fifteen armored personnel carriers were supplied by authority of General Alex Haig; DOMS supplied to the force of now over three hundred federal agents more than 100 M-16 rifles and 100,000 rounds of ammunition; 75 high-powered sniper rifles with scopes and ammunition; helmets, flak vests, signal flares, mine detectors, C-rations, jeeps, trucks, and maintenance personnel for the armored personnel carriers.

Equally important to the military's unlawful presence was its powerful influence over the conduct and strategy of the federal government, both as to the federal agents taking part in the siege, and as to the federal negotiators exploring

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MR. GREENWOOD CONT'D



"unprofessional" were the mildest comments made to me. In the case of the two absentees I received the impression that the interviewer, a partner in his firm, had very nearly concluded that, since the students at Cleveland-Marshall had no time for his firm, it is possible that next year the firm will have no time for Cleveland-Marshall. It must be recognized that derelictions of this nature inevitably become common knowledge throughout the local legal community and do nothing to enhance the professional reputation of the College. In short, the damage has been done and all will suffer because of the irresponsible actions of a few.

settlement possibilities with leaders of the American Indian Movement.

Warner and Potter served as military advisors to the Justice Department officials, and Warner, with Colburn, formulated the Marshals' basic plan of attack upon the village. This written plan, presented for approval to General Alexander Haig and Army Chief of Staff General Creighton Abrams, suggested that Colburn and Warner direct the planned assault overhead by helicopter.

During this same period, Warner and Potter also advised the government negotiators. After these negotiations failed, the Warner-Colburn plan was revised, and the date of April 10 was set for the assault. In preparation, the Army continued to advise the Justice Department officials, and it likewise sent in helicopter pilots, as well as an officer to instruct the marshals on use of CS gas launchers. At the ready at Fort Carson was a "pre-positioned" package of military gas, explosives, hardware and vehicles for the assault.

Renewed negotiations between the government and American Indian Movement leaders bore an agreement on April 6, four days before the assault would have taken place.

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One of the more interesting phenomena that has been reflected in the comments of some of the interviewers in the course of their exit interviews has been the manifestation of deep skepticism by some students that the "firms are not serious about hiring graduates of Cleveland-Marshall; they're here solely for the public relations value." Questions addressed to the interviewers, for example: "How many Cleveland-Marshall graduates are partners in your firm?" or "When did you last hire a Cleveland-Marshall graduate and what was his GPA?" are not likely to set a proper tone of affability for the interview. In fact an ill-concealed feeling of hostility or suspicion is almost guaranteed to be counter productive in the case of the individual. Unhappily, this air of belligerency is going to permeate following interviews and will do nothing to help the cause of the subsequent interviewees. By any rational analysis the charge that the firms aren't serious will not stand up. If only the billing rate of the interviewer is used as one element of the analysis, a major firm that expends upwards of \$2,000.00 on its interviews here is not playing games. Likewise, a firm that has a partner and a junior associate tied up here for two days is not indulging in a public relations exercise. Coupled with this is the fact that over the last three years, graduates of this College have been and are being hired by the major local firms.

The government has apparently decided not to pursue further prosecutions of the Indian defendants under 18 USC 231(a)(3), at least for the time being. But, the message sounding from these trials is surely more than justice-will-out, or that all-is-not-paranoia-on-the-Left. While the militarization of federal and state law enforcement agencies continues; while the courts refuse to find para-military units such as the Special Operations Group as operating outside the bounds of their statutory duties; while the government refuses to prosecute for the unlawful use of the military; while Volney Warner enjoys his promotion to Brigadier General and Assistant Division Commander of the 82nd Airborne for his role at Wounded Knee; still, one hundred Indians await prosecution in federal court, and one hundred fifty more are being threatened with indictment if the present defendants refuse the government's demands that they plea bargain.

The national focus is diverted toward the Indian's defense efforts, while the economic and political oppression which spawned the Wounded Knee insurgents once more becomes an accepted fact of American life. Meanwhile, the Waltons try to lead us gently into this Depression with memories of how good the last one was. Brecht wrote:

"Those who take meat from the table  
Teach contentment.  
Those for whom the taxes are destined  
Demand sacrifice.  
Those who eat their fill speak to  
the hungry  
Of wonderful times to come.  
Those who lead the country into the  
abyss  
Call ruling too difficult  
For ordinary men."

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Of course the job market is tight, the competition keen, and the economy shaky. One firm that took on fourteen summer interns last summer is contemplating only four next summer. Another firm that interviewed 29 students here is interviewing 22 other law schools and is considering employing only ten new associates. It's a buyer's market. A manifestation of ill will, skepticism and disbelief can only impair prospects for success. Don't downgrade yourselves.

A third matter that is of concern is typified by the second year student who asked on November 13, "What is on-campus recruiting and when will it start?" It is evident that more extensive communications are in order. As a starter, all students who have placement interests are urged to examine the Placement Bulletin Board frequently - daily is not too frequently. Additionally, I propose to use the GAVEL when it is timely and to post notices where and when appropriate.