first time here

MOOT COURT TEAMS VIE FOR NIAGARA TROPHY

By David Schrager

On the weekend of February 7th and 8th American and Canadian Law Schools will match wits, respective legal skills and advocates as the prestigious Niagara Moot Court Competition is hosted for the first time at Cleveland State University. Trying for the Niagara trophy presently held by the Cleveland State Moot Court Team, four Canadian and nine American teams will begin a series of six elimination rounds Friday afternoon, Feb. 7th at the University Center. The participants will include McGill University, York University, Toronto, Windsor University, Cleveland State University, Case Western University, Ohio Northern, Akron, Pittsburgh, University of Detroit, Toledo, Wayne State and Buffalo.

Aftermath of Watergate

By Stanley Muszynski

Some time ago, during the heat of the debate on the impeachment of former President Nixon, I wrote on the pages of the 2nd issue of the Gavel of American and Canadian interpretations as to what constitutes trademark infringement. Over the past several years American television has been picked up and re-broadcasted into Canada. All commerical spots have been edited and replaced by appropriate Canadian commercials. American networks have never granted permission, let alone received compensation for use of their broadcasts.

Judging the preliminary rounds will be prominent local attorneys, with an expertise in either international law or telecommunications. The final rounds Saturday will be judged by a bipartisan Canadian American bench.

The problem for this years competition is topical as well as controversial. It is an international problem of telecommunications. Niagara will present conflicting Canadian and American interpretations as to what constitutes trademark infringement. The past several years American television has been picked up and re-broadcasted into Canada. All commerical spots have been edited and replaced by appropriate Canadian commercials. American networks have never granted permission, let alone received compensation for use of their broadcasts.

Representing Cleveland State Law School's Root Court Team in it's quest of retaining the Niagara trophy, are Leslie Brumbach, James Dacek and Mike Murray. These second year law students were picked on the strength of their earlier performances in the fall competition. Under the guidance of Law Professor Stephen Werber our Niagara Team has been preparing their appellate briefs and arguments for several months.

Over the weekend, with several receptions planned, will not be limited solely to competition. An opening reception Friday night, a buffet dinner and a subsequent reception Saturday night, will provide an opportunity for the advocates from both countries to get acquainted.

The preparation involved in a major competition like Niagara demands long hours of attention to tedious details, as well as hours of research in constructing an appropriate brief. It is unrealistic that a successful tournament requires a diligent coordinator. Luckily we at Cleveland State Law School have such an individual in Al Kehoe. Since June Al has been meticulously laying the groundwork for the Niagara weekend. Al has contacted the various law schools, assisted Law Professor Aldrich and Mike Murray.
The Justice Department supports the legal position that an involuntary committee to a mental hospital have a constitutional right to treatment. Solicitor General Robert Bork said in a letter to the Supreme Court, which is considering the case of O'Connor v. Donaldson (argued Jan. 15), involving a person committed to a Florida State hospital in 1957 by his parents, and released in 1971 "as cured," that such a patient "enjoys a constitutional right to receive treatment as will give him a reasonable opportunity to be cured or to improve his mental condition." The letter asks the court to affirm a CA 5 decision last year which held that a mental patient in a public institution was entitled to positive efforts to cure his condition, and he could collect damages from hospital officials responsible if he received nothing more than custodial care. Donaldson received a $38,000 award from the trial jury.

FRIENDLY, CONFERENCE ON "NEW APPELLATE COURT."

A conference sponsored by the Federal Judicial Center and the National Center for State Courts refrained from taking a stand on a proposal to create a national court of appeals as a "buffer" for the Supreme Court after receiving comments from all corners, mostly skeptical. Factors creating the need were said to be diminished administration of justice due to overworked dockets, a 20 fold increase in Supreme Court cases since 1951, and conflicts among the circuits which burden the high court. One notable opponent to the idea was Judge Friendly of CA 2, who said that such a system would debase the court system. He felt that the overburden in the Federal system could be checked if state courts would properly consider their share of cases. Too many federal judges would dilute their prestige, Friendly said.

Speaking of federal courts, the new rules of evidence, which were proposed in 1971 and which, we've been told, will never be approved, but which we had to learn anyway, will become operative July 1.

SUPREME COURT ON SEXISM IN JURIES.

Taylor v. Louisiana, decided Jan. 21, held unconstitutional a state statute which all but prohibited women from serving on juries (the law, since amended, required women to petition in writing to be considered among potential jurors). The majority of 8, through Justice White, exhibited brilliant analysis and incisive perception far beyond the ken of most of the 6th amendment requires the selection of a jury from a representative cross-section of the community, ergo, women cannot be constitutionally excluded or discouraged from jury service.

The decision will probably have little reform value, since all states have statutes which do not exempt women from juries although they are treated differently and aside from Taylor himself and others who have appeals pending from convictions under the old Louisiana statute, the ruling is of dubious worth to those seeking new trials before Jan. 21st. A later clarification ruled out retroactive application.
We need the Justice Dept. here

[This is a letter James Gay wrote to J. Stanley Pottinger of the Civil Rights Division of the Justice Department.]

This is to respectfully request that the Civil Rights Division of the Justice Department conduct an investigation into the hiring practices of the City of Cleveland, Ohio, Division of Fire, as they relate to equal job opportunities for minorities.

I have been a member of the Cleveland Fire Department since May, 1967 (one black in a class of thirty-eight), and am presently a senior law student at Cleveland State University. I am encouraged to write you because of your successful efforts in Chicago, where that city entered into an agreement to hire fifty percent minority employees for the next five years and because the efforts of those with whom I have worked here, namely, the Legal Aid Society, N.A.A.C.P., and the Ohio Civil Rights Commission, have to some degree, frustrated.

While the black population of this city is approximately forty percent, and the fire department employs over thirteen hundred men, only sixty-eight of these men are black.

When I applied for a job with the fire department of this city, I had every reason to expect I would be hired; I was an outstanding area athlete during high school, I had a college degree and four years teaching experience, and my father had the distinction of being the first "colored" fireman hired by this city in 1943 (he later became the first "colored" lieutenant in 1952, and is now retired after having served honorably for twenty-nine years). My use of the word "colored" is not to be construed facetiously, but rather in a demonstrative sense, because the chief of the fire department, when questioned about the disproportionate number of minority employees, arrogantly responds, "The colored just don't want the job."

We need the Justice Department here.

At my interview, a battalion chief posed such questions as, "What would you do if some of the white firemen call you a nigger?", and, "If your people demonstrate, and you are ordered to turn the hose on them, what would you do?"

Wanting the job, I bit my tongue, swallowed my pride, and gave him the answers I knew he wanted. Later, after a physical examination, the doctor informed me that I couldn't work for the fire department because I was too tall (I am six-feet, five-inches). He was mistaken, however, for there are men on the department taller than I, and the civil service guidelines are silent as to a height maximum. If it wasn't for the fact that my father knew a few people on the department, I wouldn't be here today. I wonder how many other minority applicants have simply walked away without question.

After training, I was sent to an all-white station in an all-black neighborhood. Though I made a sincere effort to befriend my co-workers, I suffered innumerable indignities directly related to my color, including an attempt to nick-name me "Shine." After nearly three years of catching hell and making very few inroads, I requested and was granted a transfer; however, the frustrations continued and I determined that the only way to resolve this problem was to work to bring more blacks into the department.

In 1970, the local newspapers printed a letter that I had written criticizing the fire and police departments for what I alleged to be discriminatory hiring practices. I was immediately placed on departmental charges which I answered generally by saying that the chief and I had both taken an oath to uphold the Constitution of the United States, and asserted my first amendment rights were generally by saying that the chief and I had both taken an oath to uphold the Constitution of the United States, and asserted my first amendment rights.

We need the Justice Department here.

Some time during the fray, a motion was made to approve the arrangements made by the speaker's committee which was defeated by a slightly less than two to one side vote. This failure was immediately interpreted by several of our more or less astute representatives to be a repudiation of the contract made with Dean. These more or less astute creatures delved upon the tidy distinction that the contract would not be broken but that S.B.A. was simply asking Dean to release the school from its obligation; (D. Goshien, would have been proud.) It was pointed out however that a repudiation by any other name is still a repudiation and that these actions would make Cleveland-Marshall look like the south end of a north bound horse, when released to the public.

After further debate it was resolved by a narrow margin that S.B.A. should not seek to be released from the contract with Dean and that the speech should be scheduled as planned.

(The S.B.A. also voted to adopt the Vietnamese student petition.)

SBA REPORT

[This is an anonymous report of the recent S.B.A. meeting. We do not endorse it.]

We need the Justice Dept. here.

S.B.A. met on January 23, with its usual air of decorum and sanctity complete with fearless leader and hangers on.

The most significant order of business presented to this shining star of a body was a description of the arrangement, which had been concluded with the American Federation of Teachers, for no later than March 1, 1975. Applications rendered between March 1 and April 1 will be considered only to the extent that funds are available. S.B.A. must also be returned to the Financial Aid Office by the above-mentioned date.

Financial aid applications for 1975-76 are available from Mrs. Cheryl Galvin in Room 1036. The receptionist will notify you of any scholarship or externship opportunities and will complete the financial aid application forms, if you wish. Applications should be received from ETS no later than March 1, 1975. Financial aid applications must be received by the above-mentioned date.
As far as the conspiracy goes... it's the law that has always been used against all sorts of movements. Conspiracy charges are not unknown to people who read the newspaper. Whether it was the Chicago Seven or Father Phillip Bergin or the Vietnam Veterans Against the War or the Black Panthers in New York or Angela Davis. It's always a conspiracy charge, and there are reasons for this. Conspiracy charges are those which are the easiest to prove because you reason backwards by having the jury bear a great deal of hearsay evidence on the conspiracy itself, and this is the reason from the evidence that there is a conspiracy. It's a nonsensical and ambiguous doctrine, even though it is the law, and all laws are not good.

Justice Jackson of the United States Supreme Court called it an elastic, sprawling, and pervasive offense. Its history exemplifies the tendency of a principle to sinster tone by recent Government cases. You imagine that there is a conspiracy in lieu of prosecuting for the substantive offense itself, or in addition thereto, so that loose practice as to this offense constitutes a serious threat to fairness in our administration of justice. The modern crime of conspiracy is so vague that it almost defies definition. [Justice Jackson]... went on to say, that the "summit meeting" at Mobridge be tween Chinese Communists and Russia was put into this record. That's why the "summit meeting" at Wounded Knee was put into this record. . . Professor Thomas Emerson of Yale University, one of the leading authorities in the field of civil liberties, says: "The doctrine[of conspiracy] has been consis tently and frequently used against emerging groups who are seeking a higher and more powerful status in society."

The word "conspiracy" has been given a very sinister tone by recent Government cases. You imagine a farmhouse on the moon and people coming across the moon and sitting around a table, dressed in cloaks, with candles stuck in the necks of rum bottles, as they decide to do or do not do anything. But the word comes from the Latin word con spirare, to breathe together.

In a speech which he gave the Virginia Bar Association in 1971, John Mitchell, then the Attorney General of the United States, said the threat to our society from so-called domestic subversion is as serious as any threat from abroad. "Never in our history has this country been confronted with so many revolutionary elements determined to destroy by force the Government and the society it stands for. These domestic forces are ideological and in many instances directed and connected with foreign interests."

That's why the "summit meeting" at Mobridge did have a meaning for American people, fostered for many years in this country, and that's what John Mitchell is in the record. Don't be stampeded. You know now where the threat to our society comes from. You know now who all the time you are dealing with, and you know it wasn't the Russell Means and Dennis Banks and Martin Kings. I think now all Americans know where it came from and who were the very men who warned about domestic subversion.

So keep that in your mind and don't be stampeded. You know now the threat to our society is not against the past are allowed to discuss the issues, to raise the issues, to bring home to the American people things that sometimes only elements like occupying an auto company or a Wounded Knee can do.

... [The prosecutor] will tell you this is just a criminal trial, not a political trial. That's why he used the words, "I don't care." Put aside everything else - divorce it. Just a criminal trial, just as Socrates was condemned in a criminal trial and Jesus was condemned in a criminal trial and Jesus and Socrates were both criminals in a criminal trial. They're all just "criminal trials." That's the attempt - to distill it down to nothing, to take it out of its social context and make it appear to be just something of criminal law.

Is it really such a criminal trial? Do you believe that we sat here eight months over larceny and some assaults?

KUNSTLER SPEAKS FOR THE DEFENSE

[In the trial of Russell Means and Dennis Banks for Frank Hugel's Wounded Knee, William Kunstler summed up the case for the defense. By the end of his oration, tears were flowing freely in the courtroom. Even a U.S. marshal dried his eyes and remarked, "My God - that man is something else."

When Kunstler finished, his heart aches some diminution made its summation, the judge gave his instructions, and the jury filed out to consider its verdict. These are excerpts from the address of William Kunstler.]

I have done this for a quarter of a century. As I come up here, I do not think of any case that has to do more than this one. Like my brother, Mark Lane, I came late to the Indians' case. I knew nothing about it. I was a judge then. I was a judge then. I was a judge then, and a great man, later to become Walter Ruther and the United Automobile Workers when the first sit - in strike occurred in 1933.

I didn't understand, and when you don't understand, you don't know. 

... [This] case affects all of us. What you do here - while it won't bring in the millenium - may be part of something you don't know.

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QUESTIONNAIRE

O.R.C. 371941 - Purchase, use of, possession or control of, prohibited.

"No person shall, with intent to produce hallucinations or illusions, purchase, use, possess, or have under his control an hallucinogen."

Whoever violates this statute shall be imprisoned for no more than one year nor fined more than one thousand dollars.

The Gavel, recognizing that the opinions of the legal community in regards to a controversial law will be noted by the community as a whole, wishes to poll the students and faculty of C-M regarding their stand on whether single possession of marijuana should be a criminal offense in Ohio.

Please check the appropriate box, indicate student or faculty, and deposit in the suggestion boxes provided in the lounge and outside the library.

The results will be published for the benefit of all.

☐ In favor of law making possession of marijuana a criminal offense.

☐ Opposed to such a law

Comment:
And that would be the answer of every human being who is driven into a corner from which there was no logical or reasonable escape. Didn't they do that at Bunkers Hill? What would Mr. Hurd say if he were here today the prosecutor for crimes charged against the likes of Samuel Adams? This is nothing like the American Revolution. This was not a revolution. It was an attempt to secure some reason for remaining alive—some reason so that Indian children wouldn't have the same fate.

That's what was at stake in this courtroom. That's what was at stake in Wounded Knee. That's the real issue. You have to think of these defendants and think of where they were here before any of our ancestors even thought of making that perilous journey across the seas.

I read in a very poor novel recently about a doctrine called "one-race thinking." This is an attitude that believes that it has a ring to it— if you create conditions that are such that you threaten to destroy people, and the remedies are tried and unlawful, it is always criminal to save yourself, or it is.

An old revolution from the French Revolution, when questioned long after the revolution, was asked about the guillotine and about the blood that was shed, and the attackers said, "It is easier to believe something because somebody is true." He said, "In France a storm has been gathering for a thousand years. It burst—and you cannot change that country.

Just a century or so ago, there was a massacre at Wounded Knee. It occurred in what Black Elk has called the Mop of the Plains. Black Elk was 27 years old, a medicine man, a man whom the people believed had prophetic vision, and he heard the guns, the Hotchkiss guns firing from two hills over the river, of the dry creek of Wounded Knee, and he rode toward Wounded Knee from Pine Ridge. He knew that a bedraggled band of Minnesota Sioux was being hunted by a tubercular chief by the name of Big Foot, a dying man who could no longer ride his horse but was pulled in a little cart, went through the reserve. And he rode up there when he heard the rumbling because he knew this was a thing that was to be occurring. And he stood on a hill on his horse, and he watched what the Seventh Cavalry did to some three or four hundred people who were not criminals but just some people were males — those same people who are buried next to that church in Wounded Knee.

Today, when he was interrogated by John Howard Griffin, a white writer, the Indians called Flaming Rainbow, he told him through his interpreter what that was and how it affected them. He said:

"It was a good winter day when it all happened. The sun was shining. But after the soldiers retired away to camp, a heavy snow began to fall. The wind came up in the night. There was a big blizzard, and it grew very cold. The Seventh Cavalry was never satisfied with the crooked guilch, and it was one long grave of butchered women and children and babies who had never done any harm and were only trying to run away.

"I did not know then how much was ended. When I look back now from this high hill of my old age, I can still see the butchered women and children lying heaped and scattered all along the crooked gulch as plain as when I saw them with eyes still young. And I can see that something else died there in the bloody mud and was buried in the black dirt of the Seventh Cavalry's dream died there. It was a beautiful dream.

"And I, to whom so great a vision was given in my dream, I knew then that a faithful old Indian who has done nothing, for the nation's hoop is broken and scattered. There is no center any longer, and the sacred tree is dead."

"They are like Moses, who, defining custom and habit, are giving up ease and security, and having the nations in their hands. They would see off something better than the world had known. They have led their people through long years of struggle. And they have been defeated. But their poets have never seen that land, for when they reach that spot, their eyes were too dim to see, or they were laid in a felon's grave while the time-servers watched over their bodies to the goal.

"What do you suppose would happen to the world except for these rebels? I wish there were more of them. What do you suppose would have happened to the workingmen except for the rebels all the way down through history? If there had been only these, you, gentlemen would be hewers of wood and drawers of water. You gentlemen would have whatever you have and whatever you hope for to those brave rebels who dared to think and dared to speak and dare to act.

"And if this jury should make it harder for any man to be a rebel, you would be doing the most you could for the damnation of the human race. It is easier to believe something because somebody tells you it is true. It is easy to run with the hounds and bay to death those who may be better than yourself. It was easy for the people of New England to join in the mad rush and hang old women for witchcraft. It was easy for the people in the days of the Inquisition to light the fires around men who dared to think; but it is these same rebels whose burning bodies have been the flame that has lighted the human race to something better than the world has ever known.

"You have a role in a revolution. You have a role in a revolution that is dangerous; it causes death, as it has been in this case to two young Indians, but it is the way the world changes.

Those who never speak never bring about change. Those who never act continue the same dreary path. Those who never act go down in chains eventually, and all of us with them.

You have a role in that. You have a role to judge whether these men are felons and should be sent to jail. You have a role in a revolution that is the real criminals of this world, or whether what they would do was something that had to be done, and that you — were you — were you tomorrow, Chipewa, or an Ogla硅a Sioux, or a Sisseton Sioux, or a Hunkpapa or a Winnebago — might have done as you watched the sun rise."

The sacred tree is alive, ladies and gentlemen, because of what happened at this same place just a year or so ago. At the Great Sioux Battle in the snow, and where any of you who have read Bury My Heart at Wounded Knee can remember that photograph of Little Big Man on that ridge, to the north, as the soldiers shot down in that battle, the crooked grail as plain as when I saw them with eyes still young. And I can see that something else died there in the bloody mud and was buried in the black dirt of the Seventh Cavalry's dream died there. It was a beautiful dream.

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buried all our hearts at wounded knee. it's time each and every one of us understood that we have a stake in that. every man's heart should be buried at wounded knee. it's time each one of us understood that we have a stake in that.
Free food? here's how it works

By C. J. King

With the rising cost of food these days many a student is visiting the local health and nutrition centers. Here they receive a monthly supply of anything they desire for any form of food, usually in the form of a deluxe frozen pizza for a late night munch. The game is easy, all that’s needed is a little understanding of the Federal Food Stamp Program.

The Food Stamp Program is conducted under the authority of the Food Stamp Act of 1964 and pursuant to regulations issued by the Department of Agriculture. Section 2 of the Act declares that it is the policy of Congress that the nation’s abundance of food should be utilized cooperatively by the States, the Federal Government, and local governments to the maximum extent practicable to safeguard the health and well-being of the nation’s population and raise levels of nutrition among low-income households 7 U.S.C. Sec. 2011.

The Food Stamp Program is available only “at the request of an appropriate State agency” 7 U.S.C. Sec. 2013(A), and standards of eligibility for households are those determined by the State with the approval of the Secretary of Agriculture. The Act directs that participants must pay out the maximum amount allowed for food. It should be noted here that under the Act all households may have up to $1500 in liquid assets. Thus a participant can have a combination up to that amount in cash, saving accounts, checking accounts, stocks, bonds, etc.

To illustrate all of this, say you are a student with a nice little nest egg to start the Winter Quarter with. After you pay your tuition, rent, three months’ utilities, and any other payments, such as insurance, medical or drug cost, etc. you have your balance to be allocated to food for the rest of the quarter. This remaining balance will be used as a criterion for your eligibility. And if you are either employed, have received a loan or grant, or have any other kind of financial resources; these too will be used to determine eligibility subject to the chart listed above.

There remain two more riddles to put more simply, the “normal food expenditures” are determined by deducting all non-food expenses of the house- hold, leaving a balance to be allocated for food. It should be noted here that under the Act all households may have up to $1500 in liquid assets. Thus a participant can have a combination up to that amount in cash, saving accounts, checking accounts, stocks, bonds, etc.

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CONT'D FROM P. 1

provided that in the case of bystanders. Our forefathers demonstrated that the democratic process should never be bypassed in the case of the 25th Amendment.

The post-Watergate era should teach us the following lessons:

1) To convert the Attorney General's office into a European type of Ministry of Justice independent of the Executive branch.

2) If the above recommendation is contrary to our tradition, we should establish an independent Special Prosecutor's office, mandated by Congress to investigate improper conduct by the executive branch.

The office of the Special Prosecutor will have the power to start court proceedings to annul elections when it is proven that the election process, as in the case of Watergate, was tainted by fraud, deception, or misrepresentation. In such a case, the election will be annulled and a new election will be held. The situation will be rectified and the trauma of a Watergate will be avoided. This is the proper lesson to be learned from this tragedy.

My reflections on the post-Watergate era would not be complete without mentioning George Washington. The President's pardon power to instances in which the accused one is guilty after indictment and has to prove his innocence. It is stipulated that pardon by a president of those civil law countries can take place only after conviction.

Invoking again the Greek invention of logic I find that if the President can use the pardon power to instances in which the accused one is guilty after indictment and has to prove his innocence, it would be learned from this tragedy.

In civil law countries where the inquisitorial system of criminal justice exists, the indicted one is guilty after indictment and has to prove his innocence. It is stipulated that pardon by a president of those civil law countries can take place only after conviction.

It is obvious that the Special Prosecutor has the power to challenge the pardon and if the Supreme Court would surely choose to rule on the scope of the President's pardon power. Still fresh in my memory is my study of the American Constitution by William E. Lockhart, et al. On page 1, the prelude to their analysis of the presidential pardon power: 'Absolute authority to interpret any written constitution any line of kings and prime ministers known to me in modern history...Few of them have ever been dictators, when chosen...then have dug out of their latent forces and brought to bear upon their awful task such common sense, strong will, noble industry, uprightness of purpose, that the Great Office still wears more than to dully to enrich the imagination and to inflit the faith of mankind.'

Let us hope and pray that the enrichment of the gallery of our future presidents elected by the people of the United States fit the mold described by this historian.

They don't need you now, but just wait ten years

Conceding that the current job outlook is bleak for new lawyers, the president of the American Bar Association said today that vast numbers of new lawyers will be needed in the coming decade to meet the public demand for legal services.

James D. Fellers, Oklahoma City attorney, said in an address to the Hofstra University College of Law that 70 per cent of the American public is without legal services.

Not the least of reasons for this is that they believe legal services are too expensive, Fellers said.

He predicted that, through efforts of the organized bar, dramatic steps can be taken to lower the cost of legal services and to help provide reasonable ways of financing legal aid.

Ways to cut the cost of legal services, Fellers said, include greater use of paraprofessionals, lawyer specialization, professional publication of the results of legal services and increased use of technology, such as computer programs.