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Cleveland-Marshall College of Law

THE GAVEL

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Willey Appointed

Professor Robert Willey has been appointed by Attorney General William Brown to the recently-formed Ohio Juvenile Task Force. The panel will make recommendations for revision of the Ohio Juvenile Code.

Specific attention will be given to the questions of the state's legal approach to status offenders and "dangerous" offenders, notably, whether or not they should be institutionalized.

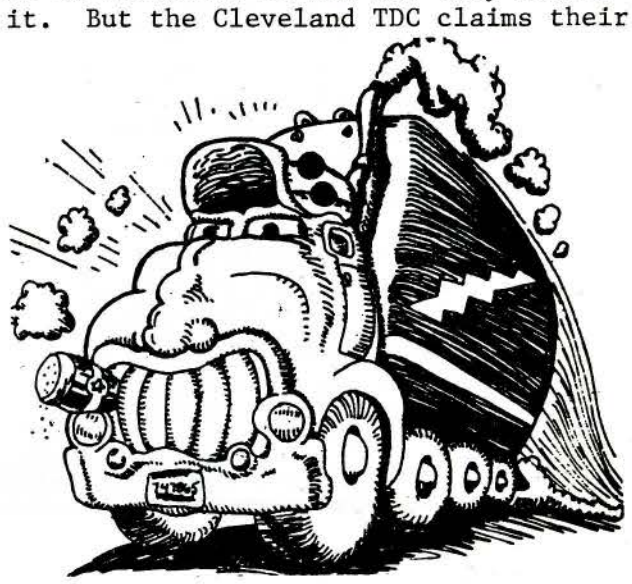
Dissident Teamsters Pressure Fitzsimmons, Sue Local Officers

BY JEFFREY DWORKIN

Out of a dingy Southeast side office over a junk shop with no name, a group of dissident Cleveland Teamsters are organizing their fellow union members as part of a national rank and file challenge to the officialdom of the mighty International Brotherhood of Teamsters.

The fledgling movement, called Teamsters for a Decent Contract (TDC), has, during its six-month existence, conducted a serious effort within Teamster locals across the country to prevent what it anticipates will be a sellout by the International's leadership in contract talks next month with the nation's over-the-road freight haulers.

Unless Jack really killed the Giant, it is difficult to see how they can do it. But the Cleveland TDC claims their



organizing and educational drive has worried the local chiefs enough to cause them to hospitalize a TDC worker distributing the TDC newspaper outside the union hall, rip up their materials, and use red-baiting and obstructive parliamentary tactics to prevent them from speaking at local union meetings. And these methods are only the local version of a national pattern of intimidation, according to Ken Paff of the local TDC.

So Cleveland's TDC is trying to enjoin the local Teamster leaders in the federal district court here, charging a violation of the Labor-Management Disclosure Act, 29 USC 411, which guarantees every member the right to distribut and receive literature.

Issue is Negotiations

TDC was founded in Chicago last August, when Teamsters from ten states, including Paff, met to organize the rank and file to vote down any master freight agreement which would not include essential protections such as a cost-of-living clause, local grievance settlement, safety standards for new equipment, job protection from casual employees, and a one-year health, welfare and pension plan for laid-off workers.

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Dismissed Former Student Sues College

BY LARRY SKOLNIK

With the words "Welcome, fellow defendants," Interim Dean Cohen opened the February 20th faculty meeting and formally advised them that they had been named in a complaint filed in Federal District Court here.

Service of the complaints by the U.S. Marshall was on February 18th.

Former law student Harry Marin is suing the law school for readmission. He is asking for $50,000 in compensatory damages and $100,000 in punitive damages.

The complaint names as defendants the University, the College, the president, the dean and assistant deans, five members of the Academic Standards Committee, nine trustees, twenty-eight faculty members and two students.

Emerson and then a succession of four other instructors.

According to secret faculty minutes of December 12th, Marin needed a 2.45 average in order to bring his average at graduation to a 2.0. The faculty's concensus was that since Harry had never attained a 2.45 in any of his previous quarters, he was a bad risk.

The complaint states that the decision of the faculty is not supported by the evidence; that the evidence was insufficient to support the belief that he could not function as a law student and attain the 2.0 required for graduation.

Student sources close to former Dean Christensen told the *Gavel* that they had information of minority students with grade-point averages less than Marin's who had been readmitted.

Dean Cohen being served with Marin complaint by U.S. Marshal.

Marin, admitted in September, 1975, was on academic probation during the 1974-75 school year. In July, 1975 he was dismissed because his average was below a 2.0. He was attending summer school when his spring grades were received in July, so that action for readmission was deferred pending his summer grades.

The course that put Marin below requirements for readmission was a business corporations class taught originally by Professor Frank

Harry Marin's case sets out the complaint that there are no set standards for readmission. The committee has the power to act at their whim. As a result, people with the same grade-point or less have been readmitted. This is Marin's "reverse discrimination" claim: that minority students have their petition granted and similarly situated white students have theirs denied.

The case also sets out the ques-

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Evans Succeeds Dworkin

This issue marks the last for Jeffrey Dworkin as editor-in-chief of the Gavel. Graduating this month, Dworkin's place on the staff will be filled by Mike Evans, who will come in as a co-editor.

Asked if he had any comment regarding his departure, Dworkin snapped, "I don't care what they print about me in the 'Chester Izvestia'."

THE GAVEL

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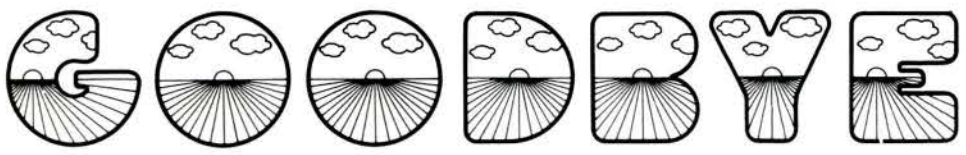
Jeffrey Dworkin — editor-in-chief
Joe King — associate editor
Kirk Stewart — associate editor

Mike Evans, Mike Ruppert, Carol Vlack; Rick Dellaquila, Dan DeSiena, John Lawson, graphics; Marty Schneider, Larry Skolnik, photography; Betsy O'Neil, secretary.

The Gavel, Cleveland-Marshall Law School, Cleveland State University, Cleveland, Ohio 44115. (216) 687-2340.



In a slightly different context, Thomas Paine wrote: "The long and raging hurricane that should cease in a moment, would leave us in a state rather of wonder than enjoyment; and some moments of recollection must pass, before we could be capable of tasting the full felicity of repose."

A retrospective by someone about to depart is especially susceptible to self-indulgence and a little vengefulness. It is also irresistible.

There are at least two approaches to self-appraisal which are especially relevant to this academic community at this place in time. One is the 'brutal frankness' school, of which this newspaper has been a proponent throughout the year. The other is the 'rising level of pretensions' theory, which would find the prime factor in the progression from mediocrity to competency, as lying in the careful cultivation of our pretensions.

Given the inadequacy of both approaches, I take this one parting shot at frankness, since in my view pretensions need no further attention or respect here than they already have.

Schooling in law surely teaches something about law, enough, at least, to pass a bar exam. But we all realize sooner or later that the subject matter, while complex and at times confused or tricky, is not intellectually difficult. The concepts are usually manageable, the rules available. We soon feel comfortable wrestling with such either/or's as public/private and proprietary/governmental. Law lays upon reality a grid of rules, and one tries to develop an eye not only for traversing the grid, but also for playing in its interstices.

Meanwhile, there exists a parallel schooling which squanders enormous amounts of our energy. It is a soulless *rite de passage* which its initiants accept as a cost of doing business. It is a schooling which guides one from a previous state, through a liminal phase of fear, and into the world of, in the words of one teacher here, The Big Bluff. It is one thrust of our legal education which we will all learn too well.

This transition is all-too-often supervised and enforced by a technique which ludicrously claims to be the Socratic Method. That method, if my memory is right, was used by a master who had an appreciation for exasperation rather than humiliation, who engaged in skillful dialogue rather than inquisition, and whose purpose was wisdom, not power. It was also engaged in by a disciple whose participation was grounded in respect for his mentor's purpose and integrity, and who was not afraid to be wrong.

Our climb out of mediocrity must begin with our collective destruction of these types of pretensions. We are at a critical moment in the school's growth, a moment presenting us the choice between The Big Bluff, and learning.

From an outgoing editor who perhaps, as someone said the other day, took his job too seriously, good luck.

J.D.

On The Committment of Minors

BY JAMES W. ELLIS

(The author is a staff attorney at the Mental Health Law Project, 1220 Nineteenth St., N.W., Wash., D.C. The views expressed are his and not official positions of the Project. This article was originally published in R.T.: A Journal of Radical Therapy, *in the Feb.-Mar., 1976 edition.)*

In about forty states, statutes permit parents to place their children in mental institutions without any form of judicial hearing or other legal safeguard. These laws are currently being attacked as unconstitutional, and the result of this battle will be extremely important in shaping both mental health law and the rights of children.

The theory which allows parents to commit their children without due process of law holds that the children are "voluntary" patients because their parents have "voluntarily" chosen to hospitalize them. The result of this legal fiction is that the children involved have neither the rights of adult voluntary patients nor of adult involuntary patients. Adults who are voluntary patients have the right (at least theoretically) to leave the institution when they choose. Adults who are involuntarily committed have the right to a hearing and a lawyer and various procedural safeguards (whose effectiveness in protecting their rights varies widely). But juveniles who are "volunteered" by their parents have none of these rights--they have the worst of both worlds.

Pennsylvania's law which allowed such commitments was struck down by a federal court recently in the case of *Bartley v. Kremens*. In this important class action case, the children were represented by David Ferleger of the Mental Patients Civil Liberties Project. The *Bartley* court first held that children have constitutional rights of their own. While these rights may differ somewhat from those of adults, they cannot be denied altogether. The court then held that the parents could not waive the children's rights (by hospitalizing

the kids "voluntarily") because there was a potential conflict of interest between the parents and the child.

Having reached those conclusions, the *Bartley* court ruled that children for whom institutionalization is proposed have a right to a hearing, to a lawyer, to notice of the alleged reasons for the need for hospitalization, to confront and cross-examine witnesses, and similar procedural protections. While the court made clear that the parents could not waive any of the child's rights, they concluded that the *child* could, after being fully informed, waive any of his rights except those of notice and counsel. For example, a

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Letters to the Editor

To the editor:

Your recent coverage of the problems associated with the library budget has left me confused. The letter signed by some members of the SBA Library Committee seemed to indicate that Dean Cohen is justified in not having taken any firm action on behalf of the law library because 1) he prefers teaching to administration, 2) he accepted the position reluctantly, and 3) a long-term solution is needed.

The recent *Gavel* article which outlined the Trustees' views on the library budgetary problems seemed to indicate that 1) the Trustees weren't even aware of the problem, and that 2) the Trustees would not oppose, and would indeed welcome, efforts by Dean Cohen to present the problem to them.

The SBA Library Committee has been reporting to the SBA/Committee of 1000 meetings regularly. Based upon these reports, it seems that the SBA Library Committee has been focusing on short-term, stop-gap measures, such as writing letters to Alumni for donations.

Several questions come to mind. How is inaction by Dean Cohen construed as "a course of action that in the long run will benefit the law school?" How does the SBA Library Committee rationalize their efforts towards short-term solutions when Dean Cohen and Librarian Bardie Wolfe have clearly indicated a need for long-term solutions. What are five members of the SBA Library Committee doing public relations work for a dean who is not doing the job which we are paying him to do? Finally, why do we have a dean who doesn't want the job?

Sincerely confused,
Jack Kilroy

To the editor:

At the last SBA/Committee of 1000 meeting, a motion was proposed which asked for a committment from the SBA that the Committee and the SBA continue to meet together. In proposing the motion, its authors sought the SBA's recognition of the present arrangement as a future rule of procedure. The argument in opposition contended that the present but out-going SBA senators and administration have no right to determine how the next administration should structure SBA meetings. With some very unhealthy and elitist sentiment that all student government should be left in the hands of elected SBA representatives, the motion was defeated, 10 to 8.

This letter will not stoop to address the argument that all stu-

(see page four)

Democratic Hopefuls Approach Armageddon

BY JOHN MACCALLUM

The initial primaries have a way of blowing up assumptions about presidential candidacies. For months I was told by various in-the-know types what a true heavy Birch Bayh really was; that he might not look like much, but the pragmatic liberals and labor just loved him. Mind you, these people were also talking about what Ronald Reagan was going to do to poor old Jerry Ford. Primaries take care of that kind of talk and those kind of candidacies, and that is refreshing. Now anyone can draw his own conclusions. Here are mine.

The Democrats are now in the middle of a scramble in their right-to-center between Jimmy Carter and Scoop Jackson, while George Wallace and his radical right supporters gum up the works. On the left, Morris Udall has emerged as a consensus candidate after eliminating Birch Bayh, but he has yet to catch fire with the voters and there is fear he will never do so.

Clever Carter

The first week of the primaries could not have been kinder to Jimmy Carter. The newsweeklies gave him their covers after Scoop Jackson gave him New Hampshire, and the toothy peanut farmer-nuclear physicist continued to ride the wave of good luck, smart strategy, and organization that began in October with R.W. Apple's front page article in the New York Times.

But Carter has more than momentum to spare. No other candidate has touched his ability to gauge voter sentiment and exploit it posivitively; he is above all saying what the voters want to hear, and in a manner that puts together coalitions. One question is how well he will wear. But, with the Democrats in a pragmatic mood, this clever, eager politician is the first Deep Southerner since Underwood with a serious shot at nomination.

It is one of those fine political ironies that the Carter surge has provided the impetus to get the Democratic left behind Udall, while Carter still has to wade through Jackson. That task will not be easy; but worse, it is time-consuming. Jackson has a large bankroll, his strategy was to endure rather than to wilt in the early going like a high-risk liberal candidate. As a national candidate, Jackson is a loser, as one poll said, "the only candidate whose political wake will be attended by a Brink's car," but he must be disposed of before Carter can get at Udall.

Armageddon

The New York primary on April 6, then, may well be a great muddle on the Democratic right, with Carter, Jackson, and the uncommitted slates under Hugh Carey slicing up that half of the pie, but the Democratic left should fall to Udall by default. So, while Jackson should fade after New York or surely after Pennsylvania, he will allow Udall a chance to catch up with Carter.

The decks will then be cleared for the main event, a protracted action between Udall and Carter. Armageddon will come on June 8th, the day of the California, New Jersey, and Ohio primaries, when 540 delegates come up for grabs.

Who will win? Clearly, Carter is a formidable candidate with a convincing scenario. But both Gary Hart, the main strategist of the McGovern operation and now Senator from Colorado, and Jack Anderson, the most widely read columnist in America, offer a thesis that weighs against his chances: that at least for selecting presidential hopefuls, the dominant part of the Democratic party is its left wing, and that if it coalesces around one man soon enough, he will be the nominee.

That such a thesis worked for George McGovern hardly says it will work for Udall. The classic liberal vote so far has been strikingly scanty. Beyond that, the Wallace delegates and the uncommitted and favorite son delegations may well reach the proportions for deadlock, a prospect that makes Hubert Humphrey brighten.

Moose in Rut

A politician, Hunter Thompson once said, is like a bull moose. One of the shrewdest animals in the forest, the bull moose is untrackable and practically unhuntable. A moose hunter may well find it hunting him. But, when the bull moose is in rut, he goes hog-wild crazy, crashing through the forest, into trees, and blundering into the rifle sights of any idiot who can shoot straight. Politicians after the presidency, Thompson concluded, are like a bull moose in rut.

All of which contributes to the sheer unlikelihood of the Udall candidacy. He seems to lack that naked lust for the presidency, that fire in the belly that men like Humphrey and Carter so obviously possess. Instead, Udall comes on like a reasonable man who does not give off the impression that it would be a body blow to his life if he were not president.

Such a hallmark to reality has not been a consistent attitude of recent American presidents and we have suffered for the lack of it. It would be high irony indeed if the rigors of the presidential selection process eliminate those best suited for the office, but nothing suggests that, in this race at least, the best men are running.

By the nature of their ambition, they are compromised men. They let themselves be handled by advertising agents. They wear cosmetics. They use other men's thoughts and other men's words without acknowledging that these are not their own. They are alien to poetry, have little interest in love, and abase themselves by smiling constatnly when there is nothing to smile about. In short, when you have admired one President, you have admired them all, as well as all who want to be President.

—Russell Baker, New York Times

... Dismissal Suit

tion whether any student once admitted should be academically dismissed. Is anyone harmed by allowing him to continue? Certainly persons denied admission because of Marin will not benefit by his dismissal. Should legal education be as diffuse as possible, allowing a person to continue whether or not they graduate or practice law? Conceivably, at the end of the 126 hours required for graduation he may attain a 2.0 average. Having been warned that he may not get a degree, should he be allowed the decision to continue?

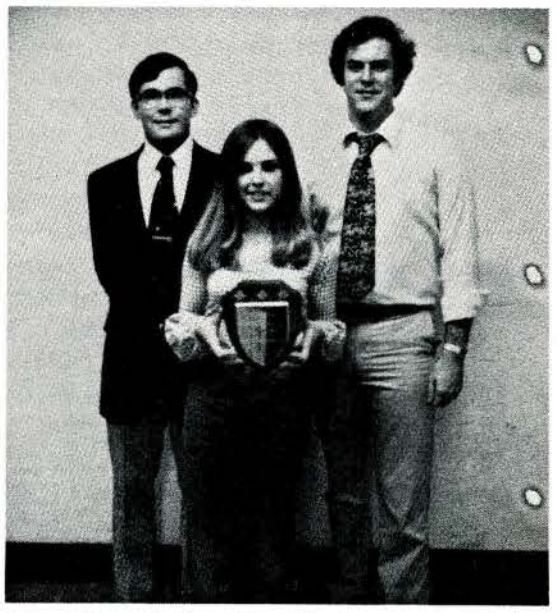
On the other hand, Marin might be depriving transfer students an opportunity to attend. According to Jane Picker, these transfer students are predominantly women who follow their husbands to new jobs.

It might be argued that those students who are performing poorly depress the level of discussion and require extensive commitment of scarce faculty and other resources, if there were better faculty and resources to begin with.

Moot Court Wins Second

Cleveland-Marshall placed second in a field of ten schools at the 1976 Niagara International Law Competition, held in Toronto, Canada, Februrary 5-7.

The winning team was Saint John's College of Law, New York City. Cleveland-Marshall received a plaque for having submitted the best brief in the competition.



Teammates Nalazeh, Montgomery, Weber.

Cleveland State's Moot Court team was represented by second-year students K.j. Montgomery, Paul Weber,and Kent Nalazeh.

The other Ohio teams were Case Western Reserve and Tolede College of Law.

...Teamsters

"TDC is a result of the fact that the companies have been taking away jobs and job security, that working conditions have worsened, that wages have gone down. The union has not stood up to this, and we don't think it will stand up to it in this contract," said Paff, who during the day is a trailer driver for a dispatch company, and who is a member of the national steering committee for TDC.

"We haven't really created TDC--the companies have, and the union, with its do-nothing approach, has created it," he told the *Gavel*.

A clearer picture of just how much of a following TDC has acquired, and how much pressure they can bring to bear on the International's negotiating stand, may emerge this week, when TDC rallies will be held across the nation, including a Cleveland Akron rally.

Golfing with Mafia

"We have no bone to pick with our local officers, neither here nor around the country," said Paff. "They don't have much power.

"But Frank Fitzsimmons and other top union officials make over $100,000 a year and have no interest in the two million members of our union. We have no faith in these parasites.

"They accuse us of being anti-union and of dual-unionism. Yet, they try to make people feel weak. We try to organize them, to band together.

"Fitzsimmons dines with executives and golfs with the mafia, and accuses us of trying to destroy the union. It's ridiculous."

As to the future of TDC, "We don't have a plan beyond the contract," said Celia Dunlap, a TDC worker who is also a dock employee for United Parcel Service.

"Most TDC core people would like to see a rank and file movement beyond the contract, to issues of union reform, to rebuilding the union to make it a democratic one that people have some control over," she said.

Anticipating other legal battles, she also noted that the group would need legal help from lawyers, law students, and legal workers, and that interested persons should contact TDC.

...Committment of Minors

child could waive his right to a hearing (and thus enter the institution voluntarily), but only after he had been informed of the proposed commitment and had consulted with a lawyer appointed to represent him.

It now appears very likely that this issue will reach the United States Supreme Court within the next year. The State of Pennsylvania has appealed the *Bartley* ruling, and the Supreme Court has issued an order delaying the effect of the *Bartley* reforms until it has heard the issues itself. How the Supreme Court will deal with the merits of this case is extremely uncertain. In this century the Supreme Court has only taken one case involving a civilly committed mental patient--the case of Kenneth Donaldson last summer--and it handed down a very narrow ruling at that time. And while the Court has recently expanded the rights of juveniles, it has done so at the expense of the state's power rather than limiting parental power.

Currently there are lawsuits pending in a number of states attacking statutes similar to the one struck down in *Bartley*. The fate of those cases may depend on what the Supreme Court does in the Pennsylvania case. But whatever the Court chooses to do, there are important questions which lawyers and concerned citizens must consider in the wake of *Bartley* and similar cases.

The first question concerns alternative placements for children. Parents are often wrong in their conclusion that their child needs hospitalization in a mental institution. But even in these cases, the parents may be correct in concluding that the family can no longer live together with the child in the same household. Whatever the reason, it may be that the family situation has totally broken down.

Suppose that such a child has been brought before a judge in a post-*Bartley* hearing, and that after considering the evidence and the lawyers' arguments the judge decides that that child does not need hospitalization. Where does the child go? In some cases the child can go home, but in other cases this may be physically or psychologically impossible. Some older minors may be able to live on their own in the community. For many other children, there simply isn't an adequate system for taking them out of an impossible home situation and caring for their needs without also violating their legal rights. We need a more imaginative set of choices than just hospitalization, an inadequate system of foster care, or the disastrous family situation which produced the problem in the first place.

The other major question concerns consent to treatments other than hospitalization. Under the laws of most states, parental consent is all that is required for medical treatment (including psychiatric treatment) of minors. The wishes of the child are generally viewed as having no legal significance. While this may be a sensible system for the tonsilectomy of a four-year-old, I seriously question whether a parent should be allowed to consent to (order) psychosurgery for a teenager. And at the opposite end of the spectrum, I believe that a teenager who wishes to voluntarily seek "talking" psychotherapy or counseling should not have to get the permission of his parent to do so.

New legislation is needed which will allow juveniles to participate in their own treatment decisions, but which will also protect them when their inexperience or immaturity might lead them to a decision which could prove hazardous (For example, I am not comfortable with the idea of allowing a four-year-old to consent to ECT--the risks involved make it unwise to extend children's rights that far.) I would propose that the legislation cover various forms of treatment according to the hazards they may present to the patient, providing strict scrutiny for potentially dangerous treatments such as antipsychotic medications while allowing children the right to consent to (or refuse) relatively safe treatments such as group therapy.

I would also treat children differently according to their age--teenagers should have more freedom to consent or refuse than infants.

Finally, I would ban certain treatments altogether from being administered to children. Medical literature indicates that the hazards posed by psychosurgery and ECT far outweigh whatever limited usefulness they might have for children.

This kind of statute will be very difficult to draft and will probably be very controversial. But this kind of measured approach and the procedural protection provided by the *Bartley* decision are necessary if we are to protect children both from the hazards of dangerous psychiatric treatments and from the violation of their constitutional rights.

Humphries Wins At BALSA Conference Here

BY DONET GRAVES, BALSA President

The chapters of the Black American Law Students Association of Cleveland State University and Case Western Reserve hosted the BALSA Midwest Regional Conference February 26-29. Approximately 95 delegates from the 35 law schools in Ohio, Kentucky, Indiana, Illinois, Iowa, Wisconsin, Missouri, Michigan and Minnesota attended.

One of the activities that generated the most interest was the Frederick Douglass Moot Court Competition. A joint team from Cleveland's chapters, represented by Rich Humphries of CSU and Sherman Anderson of CWRU, won the top honor among the ten schools participating.

The team of Humphries and Anderson also submitted the second best brief in the competition. This year's topic was school desegregation. The team will now proceed to the National Finals in Washington,D.C. on April 15.

The convention activities were culminated by an awards banquet Saturday evening at Case, during which the keynote address was delivered by Congressman Louis Stokes. Plaques were presented to both chapters for their outstanding service to BALSA by providing what was considered the most outstanding conference in the history of the organization.

Notes & Briefs

✶ Movies ✶

CSU Film Society

The Damned	2:00	Mar. 12
	8:00	
	11:00	
	8:00	Mar. 13
	11:00	
The Autobiography of Miss Jane Pittman	8:00	Mar. 19
	11:00	Mar. 20
Take the Money and Run	8:00	Mar. 26
	10:30	Mar. 27

✶ Events ✶

Assembly Series: Joseph Heller
Tuesday, March 9 at 2:30 p.m. in University Center Auditorium. Author of Something Happened and #1 best-seller Catch-22.

Cleveland-Marshall Fund Lecture
Dean Soia Mentschikoff, Univ. of Miami Law School. Tuesday, April 6 at 3 p.m. in University Center Auditorium. Topic: The Lawyer Universalist.

...Letters

dent government should be left to elected SBA senators. However, the argument that present SBA senators should not decide how the next administration will structure its meetings is misleading.

A standing resolution is subject to repeal by a simple majority at any time, i.e., the motion asking for continued encouragement of "SBA/1000" participation in no more binding on future SBA members than they desire. The motion suggested that the present SBA establish a procedure which would reflect this school's highly successful experiment with democracy, a procedure which could be changed by a future majority of the SBA. Ironically, some of the opposition complained that the Committee of 1000 *obstructs* good government. Such contemptible ignorance fails to acknowledge that the Committee of 1000 does exactly what it was designed to do--infuse student government with democratic decision-making and opinion-formation.

Perhaps the opposition to the Committee forgets the budget meeting where members of Women's Caucus, NLG and BALSA, vested with their groups' status and the common status of members of the Committee of 1000, struggled, compromised and raised their view, via non-binding vote, as to how the 25 senators should spend the money of a thousand students. Under the scrutiny of their peers, how could an SBA Senator forget the efficiency of democracy in action? Can the senators in opposition forget the "Sonnenfield" issue in which over a hundred students crammed into 2089 because they cared about student-faculty relations?

Perhaps the reason that certain Senators opposed support for the joint meeting of the SBA and the Committee of 1000, and sought aggrandizement of their political power over that of their fellow students, is because they cannot appreciate the political beauty of a truly representative democracy wherein the title "SBA Senator" connotes little more than resume fodder.

Scott Mahood
Michael Ruppert
SBA Senators, 2nd Year

Cathy Harris
Ilene Klein
Committee of 1000