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Law Day Project 1975 Honored

by Anthony Gallagher

In keeping with the national theme of Law Day 1975, "Equal Justice Under the Law," the University of Baltimore School of Law participated by presenting a televised panel discussion of the right of handicapped citizens of Maryland to a free and equal education. The program was aired May 1, 1975 by WBAL Television 11. The effort expanded was generously rewarded recently by the American Bar Association

at the Annual Convention in Montreal. The ABA granted its highest honor to the University of Baltimore School of Law by selecting the University's Law Day Project as first in the nation.

The purpose of Law Day is to present a project representative of the involvement of the legal profession in the community at large. With this ideal in mind, the Law Day Project Committee began work on the program in late March, 1975. Research and preparation of questions for the panel were the responsibility of Committee members Jane Sheehan, David Roots and Russell Hewitt. This research was centered around the 1974 Baltimore County Cir-

cuit Court decision, *Maryland Association for Retarded Children (M.A.R.C.) v. Maryland*, Equity No. 77676, which clarified the State commitment to provide a free and equal education for handicapped children.

Panel members were selected from both the legal and educational professions. George Nilsen, Assistant States' Attorney, and Snowden Stanley, counsel to the Maryland Association for Retarded Children, were opposing advocates in the M.A.R.C. case mentioned above. Stanley Mopsik of the Office of Special Education of the State Department of Education and Wendy Kitt,

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restraints upon the practice of law are not illegal *per se*. It held that the fee schedules are valid insofar as their effect is to restrain competition among attorneys.

Although the Fourth Circuit accepted the District Court's findings of fact in reference to home financing and title examinations, it reached a conclusion of law opposite to that of the District Court. Interstate commerce was held to be not affected directly and substantially by the activities of the County and State Bars because law practice is considered an intrastate activity and borrowing purchase money from an out-of-state lender "...makes neither the selling of the house nor the supplying of incidental legal services an interstate activity." *Goldfarb*, 497 F.2d 1, 17 (1974). Thus the impact of minimum fee schedules upon interstate is merely incidental to the Bars' intrastate activities.

The Goldfarbs appealed the Fourth Circuit's decision to the U.S. Supreme Court. The Supreme Court reiterated that minimum fee schedules constitute price fixing. Thus the Court was squarely faced with the issue of whether the minimum fee schedule for lawyers as published by the County Bar and enforced by the State Bar violates the Sherman Act.

The decision of the Fourth Circuit that interstate commerce was not sufficiently affected by the fee schedules was refuted by the Supreme Court. The Court pointed out that in a practical sense title exams are a necessity in real estate transactions, that indeed many purchase loans are secured from-out-of-state lenders, and that a substantial volume of commerce is involved. "Where, as a matter of law or practical necessity, legal services are an integral part of an interstate transaction, a restraint on those services may substantially affect com-

merce for Sherman Act purposes." *Goldfarb*, 43 L.W. 4723, 4727.

The Supreme Court dismissed the Fourth Circuit's absolute statement that the learned profession is exempted from Sherman Act liability by declaring that the nature of the legal occupation along does not provide sanctuary from the Act. The Sherman Act attempts to prevent interstate restraints on commerce by "...every person engaged in business whose activities might restrain or monopolize commercial intercourse among the States." *U.S. v. South-eastern Underwriters Association*, 322 U.S. 533, 553 (1944), cited in *Goldfarb*, 43 L.W. 4723, 4728. The practice of law does have this business aspect, although the Court in a footnote pointed out that the fact that a restraint operates upon a profession — as distinguished from a business — is relevant in determining Sherman Act liability.

Parker was cited by the Supreme Court as support for its decision that the County Bar's and the State Bar's activities are not exempted from Sherman Act liability. The minimum fee schedules were not authorized specifically by the state legislature or the state Supreme Court. *Parker* exemption occurs only when anti-competitive conduct is "compelled by direction of the State acting as a sovereign." *Goldfarb*, 43 L.W. 4723, 4729. The Court found that the State Bar is a state agency for limited purposes only and that when the State Bar established disciplinary measures for violators of minimum fee schedules it was engaged in private anticompetitive activity.

The result of the decision in *Goldfarb* is that minimum fee schedules established and enforced by bar associations which restrain interstate commerce are invalid under the Sherman Act. This decision will not affect the legal profession drastically. Many state bar associations, including Maryland's, have abandoned these schedules; others never had fee schedules. The distinction between the business and the professional aspects of the practice of law somewhat limits this Sherman Act liability. The Supreme Court specifically stated that the holding that certain anticompetitive conduct by lawyers results in Sherman Act liability is not intended to diminish the state's au-

thority to regulate its professions. Thus, future decisions are necessary to determine whether other aspects of the practice of law, such as prohibitions against advertising and solicitation, are within the scope of the Sherman Act.

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former Secretary of the Governor's Commission on the Rights of the Handicapped completed the panel. Michael Steinhardt, author of a definitive *University of Baltimore Law Review* article on educational rights of the handicapped served ably as moderator of the discussion.

Concepts and preparation were coordinated by Committee Chairperson Anthony Gallagher. The panel members were informed in advance by the Chairperson of the questions to be presented, ostensibly to avoid surprise or embarrassment. However, it was the interplay created by the responses to these queries that was designed to reveal important issues and problems that had not been previously aired.

The budget for the 1975 Project was \$450.00 of Student Bar Association funds. However, the Chairperson was able to elicit technical and broadcast support from WBAL television's Community Affairs Director Sidney King and none of the allocated monies were utilized. The expenses of videotaping on 17 April, and broadcast on 1 May were absorbed by WBAL.

Grateful appreciation is extended to all who participated in the 1975 project. Through their cooperation the desired mass media impact was accomplished and Law Day 1975 became a true community involvement experience. The quality and success of the production is evidenced by the First Place Award extended by the American Bar Association.

(Details of the 1976 Law Day Project will be submitted for publication in the next edition of THE FORUM.)