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# THE DOCKET

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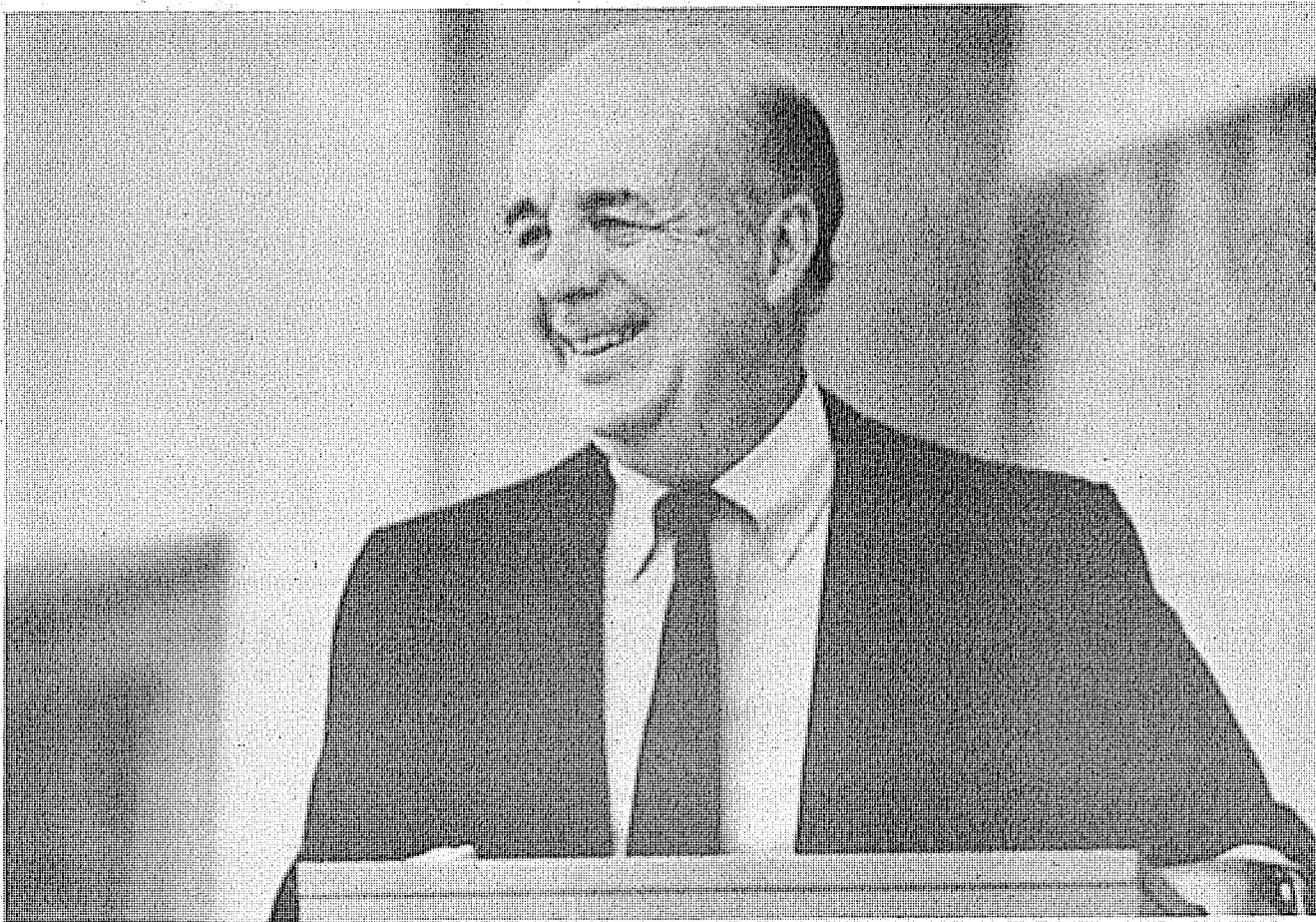
## UCLA SCHOOL OF LAW

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VOL. 34 No. 2

November 1985

### MELVILLE B. NIMMER



June 6, 1923 - Nov. 23, 1985

UCLA Professor of Law Melville B. Nimmer died Saturday, Nov. 23, at Cedars-Sinai Medical Center after a brief battle with cancer. He was 62.

Memorial Services for Professor Nimmer will be held on Wednesday, December 4, at 4:00 p.m. at UCLA Hillel, 900 Hilgard Avenue.

A member of the UCLA School of Law faculty since 1962, he was an authority on American and international copyright, entertainment law, and freedom of speech. His four-volume treatise on copyright law is regarded as the bible in its field. As a civil liberties lawyer, he won significant victories in freedom of speech cases before both the U.S. and California Supreme Courts.

In the two decades since his treatise titled "Nimmer on Copyright" was first published in 1963, Professor Nimmer's influence in the field became so great that his work was cited in most judicial opinions on the subject. "The treatise stands alone as the most comprehensive in the field," said Professor Alan Latman of New York University School of Law, who was co-author with Nimmer on a world copyright law treatise.

The National Law Journal, which recently included Professor Nimmer in its list of the "100 most powerful lawyers" in the nation, described him as "the king of copyright."

Though a new copyright statute was enacted by Congress in 1976, there remained a host of legal issues raised by new technology such as computer software and home videotapes. In the ensuing litigation, Nimmer's treatise became a well-thumbed bible. The views which Nimmer advocated on protecting creative works and intellectual property were so often quoted in the nation's courts that his treatise, in time, became regarded as the law.

Born in Los Angeles in 1923, Nimmer was graduated from Los Angeles High School in 1941 and from the University of California, Berkeley in 1947. At Harvard Law School, where he received his bachelor of laws degree in 1950, Nimmer learned copyright law by reading cases because no formal course was then offered in the subject.

His first job was with the legal department of Paramount Pictures, and six years later he opened an office in Los Angeles with Paul Selvin. At that time, Nimmer was general counsel for the Writers Guild of America; he acted as chief negotiator for the guild in the five-month strike of 1960, where the right to receive residuals for exhibition of theatrical films on free television was established.

While writing his treatise over a period of five years, he reached the decision to teach law and was appointed to UCLA's law faculty in 1962. That year, UCLA law Dean Richard C. Maxwell correctly predicted that the new copy-

right professor "no doubt will stand as the leading authority in the United States in this important field."

Throughout his scholarly career, Nimmer continued to practice law. He was "of counsel" to the Beverly Hills firm of Kaplan, Livingston, Goodwin, Berkowitz and Selvin and later to the Los Angeles office of Sidley and Austin, a Chicago-based firm.

He lectured on copyright and freedom of speech at academic institutions in countries around the world, including Israel and Australia—where he taught during the summer of 1985.

Another major treatise titled "Nimmer on Freedom of Speech" was published in 1984, in which Professor Nimmer analyzed the massive body of case law on free speech. In that work, he argued that symbolic speech should be given "full and equal status" under the First Amendment. "Recognition of such equality would mean that no one will be penalized because he is only able to or chooses to communicate in a language other than that of conventional words," Professor Nimmer wrote.

Professor Nimmer sometimes spoke of his civil liberties cases, which he handled without pay for the American Civil Liberties Union, as the most satisfying part of his career.

He won in the U.S. Supreme Court in 1971 the case of *Cohen v. California*, involving freedom of speech right of a young man who was arrested for wearing a jacket bearing the words "Fuck the Draft." On a wall in Professor Nimmer's office hangs a black and white photo of the long-haired client, superimposed over a framed copy of the opening pages of Nimmer's brief. The case can be found today in most constitutional law textbooks, and Professor Nimmer's oral arguments before the Supreme Court are recounted in Woodward and Bernstein's bestseller, "The Brethren."

In the California Supreme Court, he won the case of *Morrison v. State Board of Education*, involving a high school teacher who had his credential revoked for being a homosexual (at a time before there were legal sanctions against such discrimination).

Among his other works is a casebook, "Cases and Materials on Copyright and Other Aspects of Law Pertaining to Literary, Musical and Artistic Works."

Members of his family are his wife and partner in all his endeavors, Gloria; a daughter, Rebecca Marcus, a social worker in Tucson, Ariz.; two sons, Laurence Nimmer, a video producer in Van Nuys, and David Nimmer, an Assistant U.S. Attorney in Los Angeles; and five grandchildren.

A memorial fund to honor Professor Nimmer is being established at the UCLA School of Law.

## CHILD ADVOCATES CONFER AT UCLA, PROPOSE REFORM

Child advocates, government officials, law enforcement officers, legal experts, therapists and concerned parents gathered at the UCLA School of Law on November 16 to discuss and formulate new laws aimed at protecting child witnesses from trauma in the courtroom, and out of that conference came several proposals for reform which may be introduced in the 1986 California legislative session.

The Children's Legislative Organization United by Trauma (CLOUT) used the conference as a brainstorming session to prepare for the organization's upcoming presentation at a special hearing in Los Angeles on December 2 before the California Assembly's Public Safety Committee.

Assemblyman Burt Margolin, who addressed CLOUT's inaugural session in September, spoke to the heart of the issue when he said, "Children are not adults and do not have the intellectual or emotional capacity

to cope with a very tough adversarial system that is a challenge to adults."

At this month's UCLA Law School-hosted conference, members focused on several procedural reforms it would like to see included in a hoped-for Omnibus Child Witness Act, a comprehensive package of bills aimed at alleviating the further victimization of children in the judicial system.

Among the proposed reforms: a hearsay exception to permit the admissibility of out-of-court statements of young witnesses in both preliminary hearings and trials; an elimination of the preliminary hearing in child abuse cases to allow the prosecution to proceed directly from Grand Jury to trial; a clarification of judicial authority repetitive questions by multiple defense attorneys; and a broadening of judicial discretion.

Many believe that judicial discretion could have a substantial impact on lessening the



threat to a child's fear of testifying and sense of privacy. Judge Benjamin Aranda of the Torrance Municipal Court noted, "The knowledge and sensitivity of the judge, rather than a modified physical structure in the courtroom, will be most important in improving the experience of a child witness in a criminal trial."

CLOUT members also discussed ways of sensitizing the legal process to children's cognitive development, attention span, and sense of privacy and fear. It was suggested that experts in cognitive development be used in the courtroom to determine the clarity of questions posed to children during testimony.

The CLOUT conference also considered the impact of extending or eliminating the Statute of Limitations in child abuse cases, court appointment of attorneys or advocates to represent the interests of child witnesses, and some supplements to the recently enacted California law which provides for some child witnesses to testify via closed circuit television.

CLOUT was formed in August. UCLA Law Professor Henry McGee and Class of 1985 graduate Everado Vargas Valencia both serve on the board of Directors, and helped arrange to bring the recent conference to UCLA.

CLOUT can be reached at South Bay Center for Counseling, 2617 Bell Avenue, Manhattan Beach, CA 90266. Annual dues are \$10 for members, \$25 for Contributors, \$50 for Sponsors, and \$100 for Advocates.

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### PILF TURKEY TROT CANCELLED

For the second straight year, the PILF Turkey Trot, intended to be an annual event by its founders in 1979, was cancelled and events unrelated to the race could spell at least a temporary end to the series.

Held for five consecutive years on the Sunday before Thanksgiving, the course started and ended at UCLA Law School and raised money for PILF's many programs.

But last year a runner was fatally injured on Circle Drive on a weekday afternoon. Although the runner was not participating in any race sponsored by a campus organization, Chancellor Young established a new policy allowing only one 10K running or cycling race on campus per month. The policy also mandates a course which runs through the middle of campus and requires that all races start at 8:30am and end by 10am. The new rules further require the sponsoring organization to pay \$200 in fees to the university.

Because the new policy would force a change in the Turkey Trot course and start time, race organizers felt the spirit and social atmosphere which traditionally accompanied the race would be lost. Because of the change in fee policy, event officials felt the Turkey Trot would be of limited effectiveness as a fundraiser. Consequently, it was decided not to hold the race this year or in the future unless the Chancellor's new policy is made more flexible.

# LITTLE KNOWN TORTS

During our years of researching dusty, dank, dingy law libraries and other known (and even some unknown) niches and crannies in search of potentially bizarre bar exam questions that might be sprung on unsuspecting students, we discovered certain "little known torts" that have yet to appear on any exam. As a special student service, we thought it only fair to bring one of these unknown torts out in the open, just in case.

After a long, arduous journey across the bounding main, wracked with scurvy, beri-beri, hideous storms and sea serpents, the sailing vessel "Mayflower," complete with ship's company, landed safely at Plymouth Rock.

Unfortunately (and not at all in keeping with other historical records) mayhem broke loose in the form of Private Peter Pilgrim.

As Peter Pilgrim was disembarking from the ship, the wet gangway slipped off Plymouth Rock, propelling him over the rock, landing on (and destroying) a festive table, laden with mouth-watering goodies painstakingly prepared by Chief Chuckie Cheez and his tribe.

Chief Chuckie Cheez, after reviving Private Peter Pilgrim (and removing mass quantities of cranberry sauce from his nostrils and a drumstick from his left ear) sued Private Peter Pilgrim for damages for destruction of property.

Private Peter Pilgrim in turn sued Captain C. Way for negligence for allowing him to disembark on the wet gangway.

Captain C. Way in turn sued Far Flung Funships (owners and operators of the "Mayflower") on the grounds that the vessel was equipped with an unsafe gangway.

Far Flung Funships then sued Gangway Gratings Ltd. for product liability since the gangway was "guaranteed" to be "slip proof."

Gangway Gratings Ltd. sued Chief Chuckie Cheez for negligence for improperly using Plymouth Rock as a disembarking place since it was moss encrusted and was therefore a dangerous mooring facility.

After a long and very vocal trial, Judge N. Jury ruled and his verdict is one of the answers listed below.

So, to add a little enjoyment to the story and in "thanksgiving" of the verdict, if you send in an answer by November 29, and it matches the Judge's, we'll send you a coupon worth \$25 off a Josephson/Kluwer Bar Review Course or Josephson/Kluwer Workshop.

Oh, and that's in addition **\$100** to the current fall discount of

Answers (check one)

- Private Peter Pilgrim was held liable because he was clumsy.
- Chief Chuckie Cheez was held liable because he knowingly placed the dinner table too close to the "slippery" rock.
- All parties were held to be partially at fault and ordered to sit down at a dinner table and to "give thanks" that no serious damage was done and to celebrate the momentous occasion at least once a year.

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## LITTLE KNOWN TORTS #1

# ENTERTAINMENT SYMPOSIUM AT UCLA DEC. 13-14

Recent changes and future trends in the motion picture and television industries will be examined by industry experts at the 10th annual UCLA Entertainment Symposium Dec. 13-14 in the Ralph Freud Playhouse of Macgowan Hall on the Westwood campus.

Titled "Back to the Future—Prognostications on the Future of the Motion Picture and Television Industries," the symposium is presented by the UCLA School of Law and the UCLA Entertainment Symposium Advisory Committee.

Hours of the sessions are 2:30 to 5:30 p.m. Dec. 13 and 9 a.m. to 3:30 p.m. Dec. 14. The program will feature speakers from

the entertainment and legal communities.

The symposium is being coordinated by Michael I. Adler of Mitchell, Silberberg & Knupp and Keith Fleer of Warner Brothers.

Sessions on Dec. 13 will examine talent deals, changes in the fragmented television medium, and developments in financial markets.

Eric Weissmann of Weissmann, Wolff, Bergman, Coleman & Warner Brothers will consider the increasing requests of talent to be compensated in both dollars and ownership and the response of employers to such requests.

Television, with its splinter-

ing and changing market shares in the pay, first-run syndication and barter areas, will be examined by Henry Siegel of LBS Communications, Jerry Katzman of the William Morris Agency and Larry Gershman of MGM/UA Entertainment.

The Dec. 14 schedule will begin with a session on financial markets. Alan Kassar of First Manhattan Company, Jonathan Taplin of Merrill Lynch Investment Banking and Roland Betts of Silver Screen Management will review past and future developments in the financial markets, with their increasing focus on Hollywood and its assets.

Changes in media and territo-

ries distribution will be discussed by Austin D. Furst Jr. of Vestron, John Hyde of Producers Sales Organization and William C. Soady of Universal Pictures.

Richard Zimbert of Paramount Pictures Corporation, Jeff Berg of International Creative Management and Jonath-

an Krane of Blake Edwards Entertainment & Management Company will explore both continuity and change in studio-financed and independently financed motion pictures.

Students interested in enrollment should contact Paula Jenik, UCLA School of Law, Los Angeles, Calif. 90024, phone (213) 825-2899.

## DEAN PRAGER ADDRESSES STUDENT CONCERNS

Concerned UCLA Law students took advantage of two opportunities to talk to the school's deans on November 12 and 19.

Dean Susan Prager, Associate Dean Carole Goldberg Ambrose and Assistant Dean of Students Barbara Koskela all appeared at the open forums, sponsored by the Student Bar Association, and for two hours at each of the two sessions candidly responded to questions,

## BAR TALK

An Interview with Brian N. Siegel

**Last year, the Bar passage rates in California were 33.2% in February and 41.8% in July. Why are the Bar passage rates in California so low?**

First, the exam is texturally difficult. Many of the Essay questions contain only five to seven issues. If you fail to identify two or more, it's mathematically impossible to pass that question. The Performance Test requires students to read, assimilate, organize and write about a "practice" type over 50 pages of materials within three hours.

Second, many students who know the law simply don't have a clear enough perception of what the Bar graders want. Despite the Essay section instructions to answer the questions in a "lawyer-like" manner, many students respond with a silver from a hornbook. A recent Performance Test required applicants to write a *persuasive* letter. Yet I was advised by Bar graders that about 70% of the students wrote a *demand* letter. If you don't at least attempt to answer what's been asked, the Bar graders will come down very heavily upon you.

**Your course prepares applicants for the Essay and Performance Test sections of the Bar. Don't students get enough training in these areas during law school or in their substantive Bar courses?**

I don't know if they're receiving insufficient practice from a volume standpoint or simply inadequate training. The FACT is that statistics issued by the Committee of Bar Examiners for the February 1985 exam reveals that 78% of the Bar applicants failed the Essay portion and 76% failed the Performance Test. Obviously, there's much room for improvement.

**How did your students do on the February exam?**

Of the 93 enrollees who took the February exam and we were able to contact, 81 either passed the Bar, passed the essay section, or improved on that part of the exam; an 87% success rate! Specifically, 44 passed the exam. Nine passed the essay section, but did not pass the Bar because their scores on the rest of the exam were too low. Twenty-eight other students showed improvement ranging from 2 to 80 points on their essay scores; the typical increase being in the 20-40 point range. Eleven applicants had lower scores, and one who did not pass was a first-time taker.

The results described above are extremely significant when you remember that the statewide Bar passage rate was 33.2% and that only 22% passed the essay section.

**Why did your students do so well?**

First, there's quality control at Siegel's Writing Course ("SWC"). I personally critique a majority of each enrollee's assignments via audio cassette and oversee the comments made by my assistants. Since we limit enrollment to about 100 students and spend 20-25 minutes per paper, the critiques are the most personalized and extensive in town. The graders at the major courses are an ever changing group of part-time persons who are generally paid \$1.50 to \$2.00 per paper. The result is superficial and cursory comments. As one of my former students put it, "they told me what I was doing wrong, but you explained to me how to correct it."

Second, at SWC there is a strong emphasis on staying within the time constraints of each question. On the Essay section, for example, enrollees are methodically trained to write superior answers within a 32-36 sentence format. From my experience, this is all that the average student can write within one hour. Other courses simply show applicants a "perfect" paper. The problem is that these answers are often so long that they probably could not be copied in an hour. Seeing a model answer which is impossible to replicate is more frustrating than it is helpful.

**What advice would you give third year students who want to avoid the Bar ordeal a second time?**

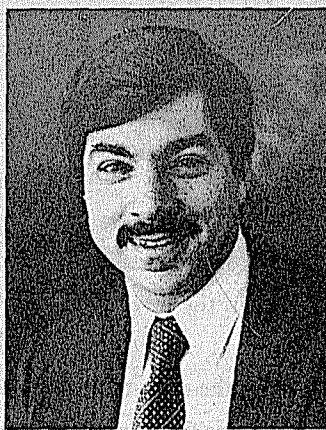
First, I would try to take all of the Bar courses in law school. While the traditional review courses help you recollect the law, they don't impart an understanding of how the legal principles in a particular course spawn issues in the context of a hypothetical. It's this application of the law which is crucial on the Bar exam.

Second, they should begin synthesizing their Bar courses during the last year of law school. The eight week period immediately prior to the Bar exam should be spent in reviewing every MBE, Essay and Performance Test which can be obtained. After graduation the optimal position for a student is to be able to work on application, rather than mere memorization, of the law.

Finally, they should consider enrolling in SWC. Since the course meetings are usually scheduled on weekends, there is very little conflict with the daily Bar lectures. If I can't persuade your readers to enroll in SWC, I certainly recommend they purchase the Essay and Performance Test books for the California Bar which I recently authored. These works contain the most recent Essay and Performance Tests and model answers. They allow an applicant to self-test and offer a very clear insight into what is expected of them on the exam.

**If someone wanted more information about SWC, what should they do?**

They can call (213) 475-0166. I'll be happy to personally answer their questions about the course or the books.



Susan Westerberg Prager

comments, suggestions and criticism of the law school and school policy.

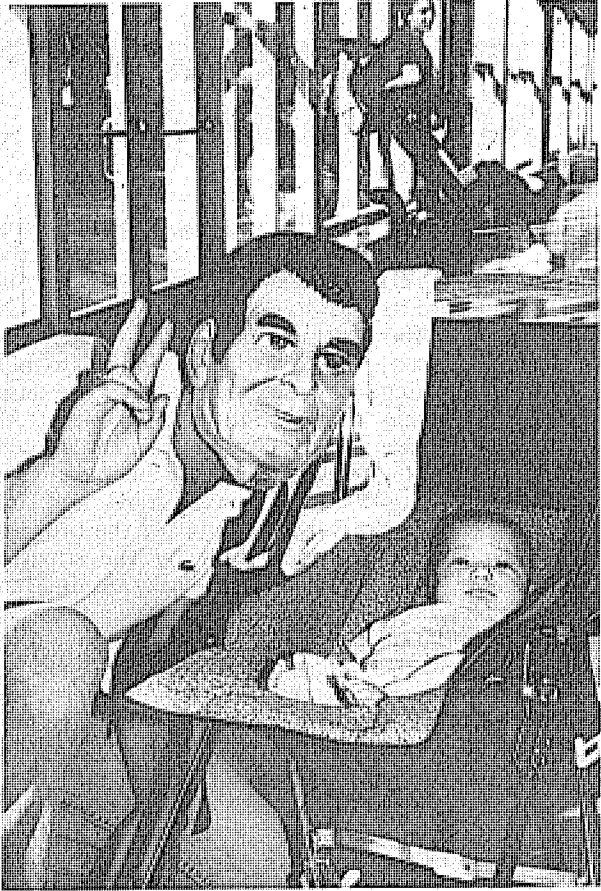
Among the 34 issues discussed, some students attending the forum expressed concern about the number of non-law students in the law library. Dean Prager indicated that since the library is public, public access cannot be denied. However, she said the law library is restricted during special times, such as on weekends and during final exams.

On the issue of law school security, Dean Prager said that she is looking into limiting access to the building on nights and weekends. A student suggested that the school install a security phone in the library for students to call the campus escort service.

In response to student concerns about the new construction, Dean Prager said that normal class schedules will have to be changed considerably. In fact, the administration is considering holding classes only in the late afternoons and evenings. Dean Prager said she'd welcome student input in reaching an agreeable solution to the disruptions the construction will cause.

Other issues discussed at the forum include Pass/fail deadlines, the declining rate of UCLAW students who pass the bar, and law school maintenance and litter problems.

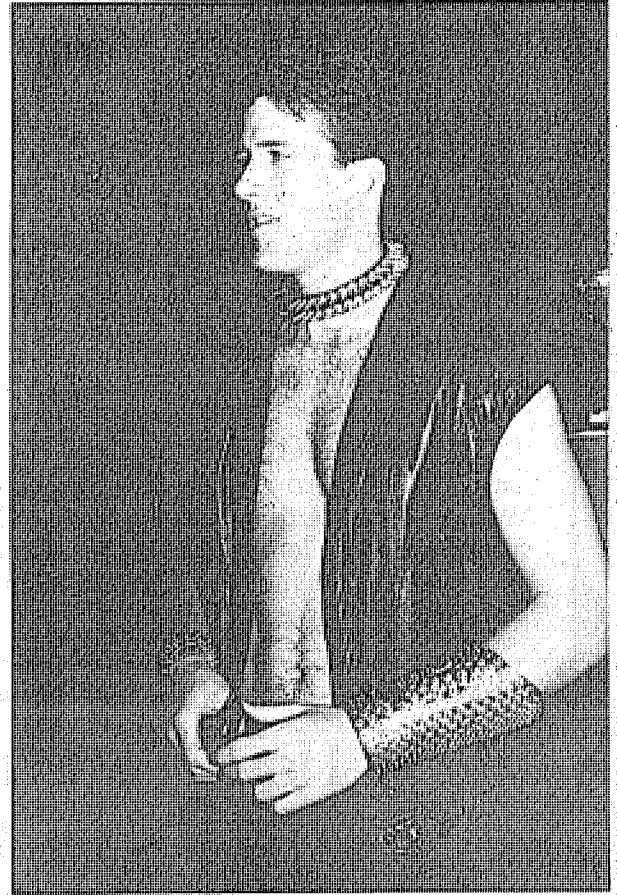
The open forums were campaign promises by SBA President Joanne Morris. Dean Prager said she welcomed the opportunity to meet directly with students about their concerns and expressed a desire to have another forum again. SBA President Morris also felt the forum was productive and said another one will be held next semester.



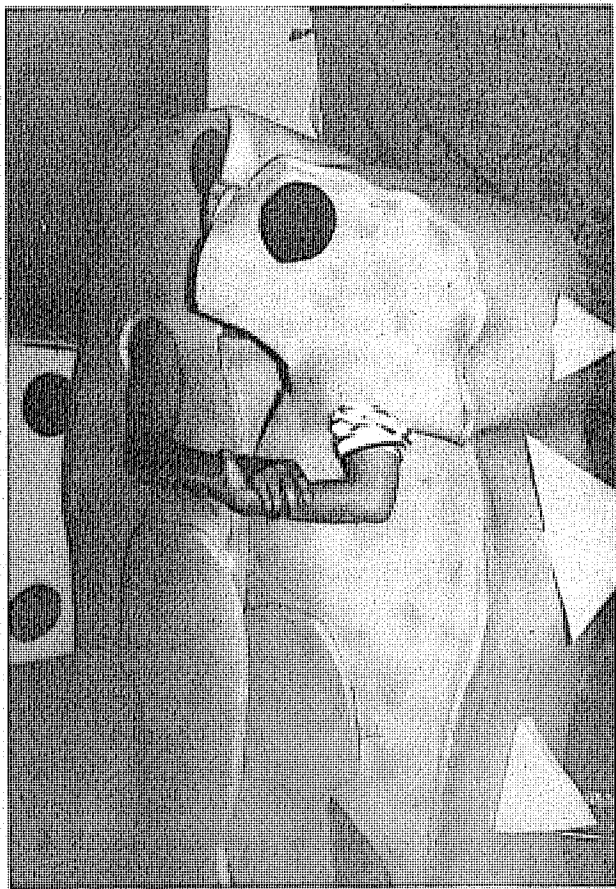
The President and Class of 2009



Kitty Koskela



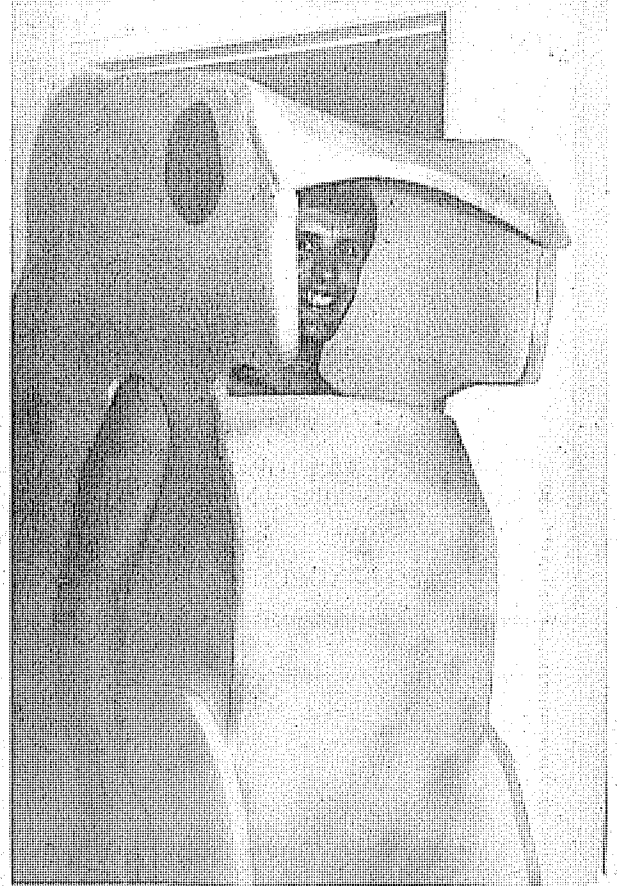
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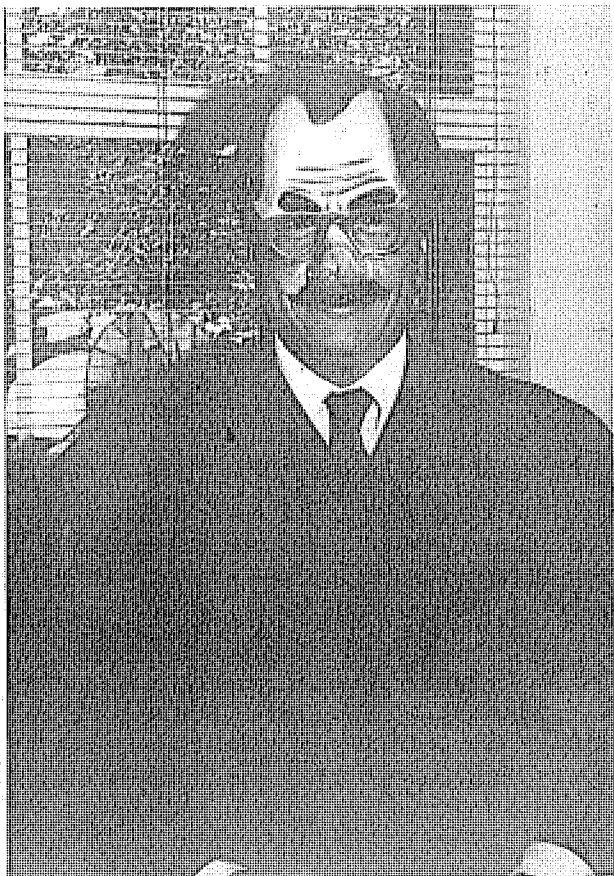
Mating dance of the Tortasaurus Rex



Don Alejandro de la Sacks



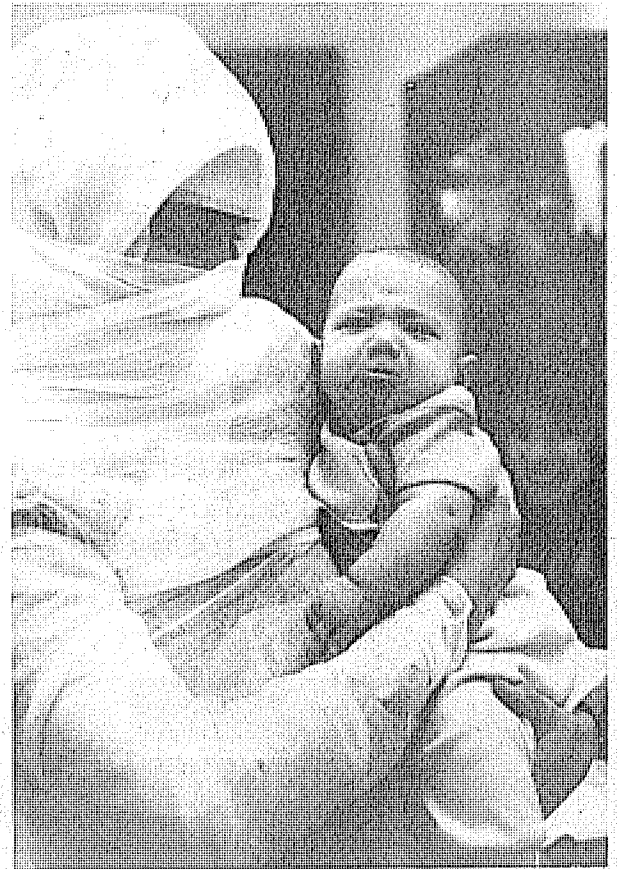
Stuart Price



Hank who?



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## TORTFEASORS LIVE UP TO NAME IN V-BALL

After two building seasons, the "Tortfeasors," UCLAW's best "C" League volleyball team, is finally coming into its own. With only one loss after an arduous three-game season, the team continued its winning tradition by ruthlessly thrashing the frat boys from Sigma Nu, 11-4, 11-8.

The Sigma Nu team, averaging 6'3" per man, play well, but was no match for the Tortfeasors who have gelled this season into a true I.M. powerhouse. Led by the intimidating net play of Sean Hargaden, the opposition was playing catch-up from the start. Hargaden, who sports a .384 kills percentage, raised his season beta to 1.8 with several crushing spikes and a truly picturesque reverse backhanded knuckle dink at a pivotal point in the third game. Dan Encell bolstered the offense with his patented "Rainmaker," a high-arching serve which gathers condensation in the rafters of Pauley and drops down too wet to be returned.

The only loss of the year came at the hands of a disciplined Japanese National Team playing exhibition matches in the SoCal area. Team Captain Rick Aldrich attributed that loss to mid-semester malaise and the onset of daylight savings time. Aldrich, who has honed the squad into a perfectly balanced mixture of power, grace, and consistency, admitted the task was made easier by the superior blocking of lanky Alan Manning and the passive presence of Brian Copple. Together they were able to rapidly derail the comeback attempts of frustrated opponents. Aldrich, who himself has attained a conversion ration of 3 in the last two games, credits the aggressive defense of Harris Kane with much of the team's stability. Kane, who gets very, very low digs, is an accomplished bumper with good hands and strong fundamentals. Look for the Tortfeasors in the Finals, to be played in Pauley Pavilion later this month.

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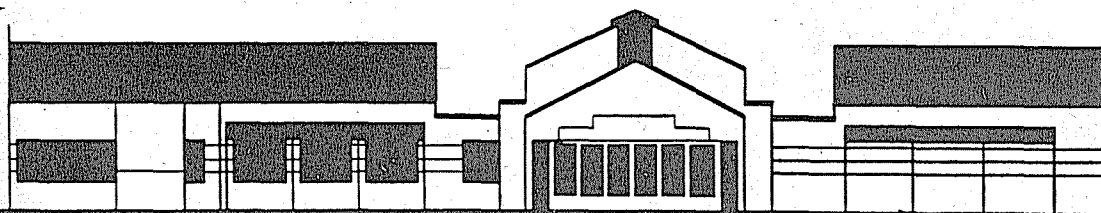
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