The Bracket

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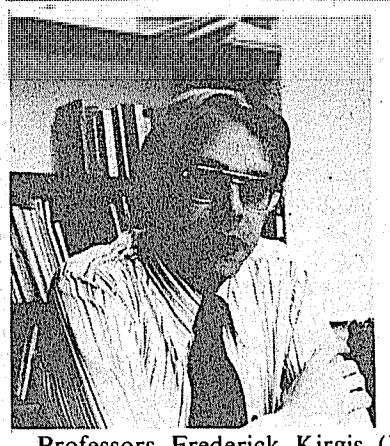

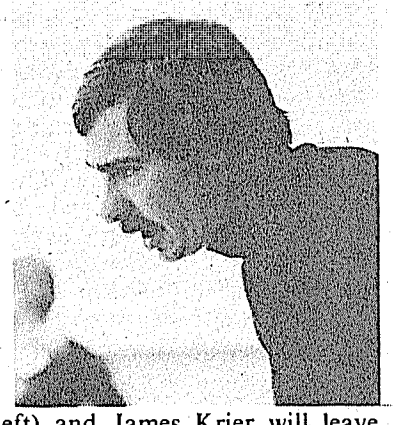

Professors Frederick Kirgis (left) and James Krier will leave UCLA after this year. Kirgis will be teaching and heading a center for legal reform study at Washington and Lee University in Virginia Krier is going to Stanford.

There will be three new faces on the faculty in September, all on one year visiting professorships: Gerald Lopez, a graduate of USC and Harvard Law School, now teaching at Cal Western, Margaret Radin, who sandwiched an adanced music history degree at Brandeis between a Stanford B.A. and a USC J.D., and now teaches at the University of Oregon; and Richard Delgado from the University of Washington by way of Stanford and Boalt.

Moot Court Team Wins Patent Regional

The UCLA team of Sara Pfrommer and John Kasdan have won first place in the regional Patent Law Moot Court competition, and will compete in the nationals this Wednesday, Thursday and Friday in Washington D.C.

Pfrommer and Kasdan made a clean sweep of the competition, taking first places in oral advocacy as well as brief writing, arguing on the copyright potential of computer programs.

Last month, the team of Tom Mabie and Shirley Curfman won the Donald Wright Moot Court Competition (which until this year was the Southern California Moot Court Competition), debating a case dealing with the Robbins Rape Evidence Act and related problems of search and seizure.Curfman was named best oral advocate.

Those victories, plus the first-place finish of Gwen Whitson and Kathy Rower in the Western region of the National Moot Court competition in the fall, have made 1977-78 a banner moot court year, according to tournament coordinator Bob Dawson.

"I think three major first places is unprecedented. To give you an idea, last year we thought we were doing great when we got two seconds."

Dawson attributes the success, not surprisingly, to the quality of the competitors.

"This year we have some people who might ordinarily, in past years, be doing law review instead. They're all good writers and good talkers."

Admissions Applications Up Minority Applicants Down

by Arnie Maurins

Overall applications to the Law School are up 13 per cent this year, while minority applications are down 7 per cent, according to Assistant Dean for Admissions Michael Rappaport.

Rappaport said the Law School received 2,795 applications for the 350 seats in the first-year class. This figure represents an increase of 315 over last year. However, 112 fewer students applied for admission under the Legal Education Opportunity Program (LEOP) for minority students (469 applications opposed to last year's 581).

"You can't blame it all on Bakke," Rappaport said.in

He cited several factors which he thought could be contributing to the downward trend:

1. Other professional and graduate schools are being explored by minority students as paths to a career.

2. Minorities as a group may be more concerned than whites about the current tight job market in law.

3. Fewer minority students are now graduating from undergraduate colleges, and overall the pool of eligible LEOP applicants may just be drying up.

"Minority applications are down all over the country," Rappaport noted.

He emphasized that his office is publicizing LEOP more than ever, and that the Law School is still actively recruiting minority applicants. Pending the Supreme Court decision in *Bakke*. about 20 percent of the first-year class (75 seats) will be reserved for LEOP applicants.

Rappaport said that the 13 per cent overall increase in applications is "really surprising."

Part of the surprise grows out of a comparison of this year's numbers with those of the previous five or six years. Rappaport noted that applications grew steadily in number in the early 70's, reaching the 2,400 level for the 1975-76 class.

Then, in 1976, due to some "misinformation" in the law school catalogue which apparently misled applicants as to UCLA's admission standards, over 3,000 applications poured into the Admissions Office. Last year, the figure dropped back down to 2,480. Rappaport had expected no more than 2,500-2,600 applications for at least the next few years.

Rappaport detailed how the admissions process operates.

First, most applicants are assigned an index number based on their LSAT scores and undergraduate GPA's. The

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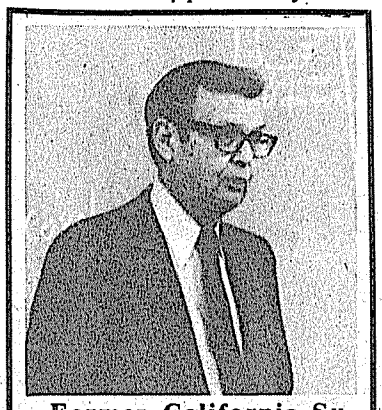

Former California Supreme Court Chief Justice Donald Wright came to the Law School to spend the past two weeks lecturing classes and regaling students with anecdotes about his half-century career in law.

His Supreme Court appointment from the Reagan administration surprised Wright, who remembers saying " 'You can't mean me — you must be crazy.' Later on,' he said, remembering how some of his opinions aggravated the Reagan people, "they thought they were."

Few Jobs For Would-be Naders?

by Diane Sherman

The lawyer steps into the center of the courtroom. All eyes turn toward him as he eloquently pleads the case of his client, a tiny consumer fighting back against a corporate giant or an impoverished citizen trying to gain a measure of justice in a system designed for the rich.

Combing a legal career with a committment to social change is the dream of many law students. The hard truth is that there are very few jobs out there for these would-be Ralph Naders.

Carlyle Hall of the Los Angeles Center for Law in the Public Interest admits that the public interest job market is the tightest one in the country for young lawyers. "It's probably much tougher to get a job in public interest law than one with a large corporate firm," Hall says.

Hall's description of the job market is simple to explain: throughout America there are far more corporate firms than public interest law centers. And while corporate firms are richly financed by clients who can afford skyhigh fees, public interest firms must struggle along from year to year dependent on the generosity of private foundations or on the attorneys' fees which prevailing plaintiffs in certain types of suits are often entitled to collect from the defendants.

Sparse Opportunities

In its latest directory, the Council for Public Interest Law lists only 15 privately financed general public interest law centers. The best known is probably Ralph Nader's Public Citizen Litigation Group in Washington D.C. In California, there is Public Advocates in San Francisco, as well as the Los Angeles Center for Law in the Public Interest.

The Council's directory also lists 16 government financed poverty law centers which provide backup services for neighborhood Legal Aid offices and a couple dozen centers which exclusively represent specific racial or ethnic groups or which litigate solely in one area such as education or auto safety.

Many of the centers indexed in the directory are one-person offices which engage in no litigation.

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High Court Case a Peak For Advocate Firestone

by Howard Posner

Lives there a creature so rare as a lawyer who has argued before the United States Supreme Court?

Well, yes. Nonetheless, only a handful of lawyers ever make an appearance before that august body, and the first time ought to be something of a thrill. For Charles Firestone, who heads the Communications Law program here, it was.

"It was an amazing experience," he recalled. "Fascinating — or thrilling is a better word." His excitement with what seemed half ordeal and half trip through wonderland is not much diminished by what he considers less than sanguine chances of winning.

Before he came to UCLA to head the communications law program, Firestone was in charge of litigation at Citizens Communications Center (CCC), a Washington, D.C., public-interest firm dedicated to increased public access to media.

His Supreme Court appearance January 17 was the result of some unfinished business with CCC in suit against the Federal Communications Commission.

For some years there has been controversy about the propriety of owning different media channels in the same area. CCC has long contended that allowing one owner to control newspaper, television and radio outlets in one market discourages diversity of opinion in the media. Owners of broadcast stations and newspapers say

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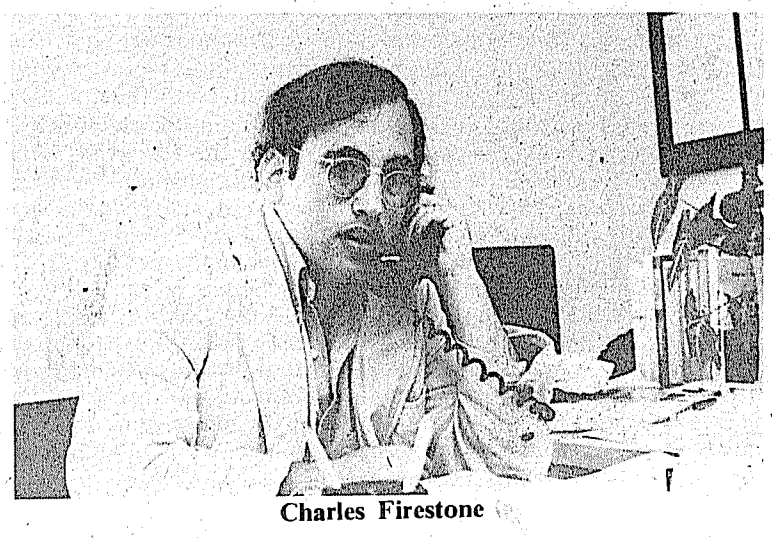

Charles Firestone

Inside

Are Law School Papers Dying?

Will the Docket survive? Does anyone really care?

The publication of the Docket this year has been met with what can only be described as a tremendous lack of support by the Law School student body.

Newspapers do not write themselves and it is becoming increasingly difficult for us to publish the Docket. Because of a lack of articles we were forced to cancel our last issue and we do not intend to publish another one this quarter.

Students tell us that spending time writing for the Docket would put them at a disadvantage in the race for grades. And unlike Law Review or Moot Court, they explain, writing for the law school newspaper will impress no one.

Law school newspapers are perhaps a dying breed in these cutthroat, me-first 70's. Editors at the University of Pennsylvania and New York University law school newspapers recently announced plans to cease publication due to a dearth of staff members.

Only Harvard continues to maintain a flourishing law school newspaper, a tribute either to the literacy of the students at that venerable institution or the fact that Harvard students don't suffer from the second-best syndrome that afflicts many students at schools like UCLA. Sufferers of this syndrome feel they must grind 24 hours a day in order to make up for the fact that they are not attending law school at Yale or Harvard.

Many students here seem unaware of a reality beyond their text books and Gilbert outlines. One student professes amazement that some classmates actually read a daily newspaper. "Where do they get the time?" he asks. Another student finally cracks under the self-imposed pressure and drops out, admitting that she has not done laundry or cleaned her apartment for months.

It's probably better she left. For the rest who remain we can only wonder what kind of contribution they will make to the legal world.

A Case For Preference

by Richard Wasserstrom

Many justifications of programs of preferential treatment depend upon the claim that in one respect or another such programs have good consequences or that they are effective means by which to bring about some desirable end, *e.g.* an integrated, equalitarian society. Many criticisms of programs of preferential treatment turn upon the claim that such programs even if effective, are unjustifiable because they are in some important sense unfair or unjust. Two of the chief arguments offered for the unfairness or injustice of these programs do not work in the way or to the degree supposed by critics.

Opponents of preferential treatment programs sometimes assert that proponents of these programs are guilty of intellectual inconsistency, if not racism or sexism. For at times past employers, universities, and many other social institutions did have racial or sexual quotas (when they did not practice overt racial or sexual exclusion), and many of those who were most concerned to bring about the eradication of those racial quotas are now untroubled by the new programs which reinstitute them. And this, it is claimed, is inconsistent. If it was wrong to take race or sex into account when blacks and women were the objects of racial and sexual policies and practices of exclusion, then it is wrong to take race or sex into account when the objects of the policies have their race or sex reversed. Simple considerations of intellectual consistency — of what it means to give racism or sexism as a reason for condemning these social policies and practices — require that what was a good reason then is still a good reason now.

The problem with this argument is that, despite appearances, there is no inconsistency involved in holding both views. Even if contemporary preferential treatment programs which contain quotas are wrong, they are not wrong for the reasons that made quotas against blacks and women pernicious.

Social realities do make an enormous difference. The fundamental evil of programs that discriminate against blacks or women was that these programs were a part of a larger social universe which systematically maintained a network of institutions which unjustifiably concentrated power, authority, and goods in the hands of white male individuals, and which systematically consigned blacks and women to subordinate positions in society.

Whatever may be wrong with today's affirmative action programs and quota systems, it should be clear that the evil, if any, is just not the same. Racial and sexual minorities do not constitute the dominant social group. Quotas which prefer women or blacks do not add to an already relatively overabundant supply of resources and opportunities at the disposal of members of these groups, in the way in which the quotas of the past did maintain and augment the overabundant supply of resources and opportunities already available to white males.

The same point can be made in a somewhat different way. Sometimes people say that what was wrong, for example, with the system or racial discrimination in the South was that it took an

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Reflecting On a Death

What to you say when a human life explodes?

When it happened, we started with plain statements of what appeared to be facts. Scott Rubenstein shot himself and both his parents to death. Simple enough.

But since Rubenstein was a first-year student at the UCLA School of Law, most of us here felt compelled to say something else, and it wasn't easy. We can understand death to some extent, and even violent and sudden death is common enough or frightening enough to be real.

It is a different thing when living causes such pain that only dramatic, indiscriminate, self-destructive vengeance will salve it. That isn't real, and it leaves us not with grief, but with a dull, uncomprehending numbness.

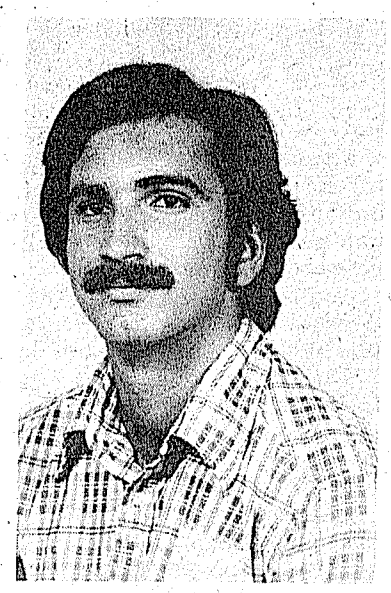
"Whoever would have thought . . ."

"I guess you can never tell . . ."

"You'd never have known from talking to him . . ."

Even those who were closer to him and knew that he'd had a traumatic breakup with his girlfriend, and was seeing a psychiatrist, and hadn't taken his winter quarter exams, are reduced to mumbling "It never occurred to me . . ." (as if there were any way of seeing it coming) or "He just didn't seem the type . . ." (as if there were such a type).

Some of us find anger preferable to numbness, and focus it on the law school, a convenient villain because everyone knows the practice and study of law can be unhealthy. We can all recognize the inbred com-



Scott Rubenstein

petitiveness and institutional insensitivity.

We can also see too much nurturing of the school's growing academic reputation and not enough nurturing of students; and a disturbing tendency to say no to a student with a problem because they said no the last student with a problem — precedent is a precious thing in the law.

Still, it makes no sense to blame Scott Rubenstein's destruction on the grading curve or the lack of counseling services here. People turn into human time bombs outside law schools as much as inside.

If we can't have the emotional outlet of fixing blame, can we have the moral consolation of having learned something important? It always makes us feel better if we can find some purpose in a tragic death. Perhaps we can listen more to one another; perhaps we can be more compassionate; perhaps we can watch and try to save the next Scott Rubenstein. Perhaps. More likely that the improving effects of one event will wear off as the memory of it fades, and even if they don't the next Scott Rubenstein may slip past unnoticed just the same.

But the search for meaning doesn't end merely because the search is futile. There is always something to salvage if nothing to gain; something to touch if nothing to understand.

We who spend so much of our time learning to Think Like Lawyers might remember that truth is not necessarily something arrived at by weighing admissible evidence and applying substantive law; that Cold, objective facts are no more reality than the demons that were real enough to kill Scott Rubenstein; that any system of thought has its head in the sand if it can't consider pain and dreams and love and outright irrationality; and that the games we play in formal clothes and formal offices and formal language are still only games.

When we think about the tragic waste of Scott Rubenstein's life, we inevitably wind up asking whether he lived, and died, in vain. It might help our humanity to ask the same question, from time to time, of ourselves.

— Howard Posner

The Docket

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We encourage contributions from all members of the Law School community. Written contributions should be typed on 50-space lines. The Docket reserves the right to edit all submissions for length and style requirements.

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SBA Upset Over Faculty Nays

by David Harrison

Harrison is the Student Bar Association President

Student government often appears to be an exercise in futility, if not an inherent contradiction in terms, but efforts to amplify its authority at the law school have met with something less than conspicuous success. The SBA this year has attempted to broaden in a moderate fashion the traditional notions of student participation in the management of law school affairs. The response has been not enhancement of the limited student voice, but instead a further weakening.

Student input into administrative decision-making is limited to representation on certain committees. These committees formulate policy and make recommendations to the Faculty Senate, which then decides whether to accept the resultant proposal.

A committee recommendation is in no way binding on the Faculty Senate. An example was the report of the Extern Committee earlier this year, urging that 1) 14 units be awarded for participation in an extern program and 2) that students be permitted to participate in part-time externships in the Los Angeles area on a limited, experimental basis in order to expand opportunities for externships under a semester calendar. Both proposals met with lopsided defeat.

An agreement was reached three years ago by the dean and then-SBA president allowing three student members on each committee. All save one of these committees has six faculty members. The student representation had increased to four as of last year, hardly a significant erosion of faculty control over their work-product and no threat at all to the ability to reject their advisory conclusions.

The response of the Faculty Senate was to pass a recommendation from the Student-Faculty Relations Committee, *without a dissenting vote,* to limit students to a 1:2 ratio. So it's back to three students. Before the vote, the results of the SBA poll, which demonstrated that 76% of the students voting felt that four or more students should sit on each committee, were brought to the faculty's attention. Apparently student opinion is not a particularly persuasive or influential factor.

In addition, the dean of the law school is vested with the authority to appoint student members to these committees, in consultation with the SBA president. As with any paternalistic system, appropriate weight given to student wishes will minimize friction in the implementation of this plan. However, noblesse oblige could work to the severe disadvantage of students when controversies arise.

If the rationale for student representation on committees is, at a minimum, input concerning student views, then the elected representatives of the student body should have the authority to appoint committee members. To take away this right only serves to underscore the tokenism readily apparent in the overall plan.

Two other proposals which the SBA felt should be studied were student representation or participation in other ways on the Appointments Committee and the Faculty Senate. Appointments interviews applicants for teaching positions and recommends to the Faculty Senate.

Professor Rabinovitz, chairman of the Faculty-Student Relations Committee, conducted a survey of other top law schools to determine the extent and nature of student participation in appointments and the related areas of promotion and tenure. Only two of the ten responses indicated relegation of student input to a role similar to that at UCLA — using student evaluations as a guide

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A Roger Diamond Is a Many-Faceted Thing

by Howard Posner

A vision of things to come, 13 UCLA Law Review at 481, 1966:

Almost three years after the Cuban missile crisis, th Secretary of State refused to validate the passport of Bobby Fischer, the chess champion, for travel to Cuba so that he could compete in a chess tournament. He was forced to play his matches by telegraph, though there is little likelihood that he is a "pawn" in the communist movement.

It was, says the author of that student note, the first joke — such as it was — printed in a UCLA Law Review article, and it took two weeks of haggling to get it through.

"It wasn't much, but it was a start," he says, and the comment is revealing. It shows him to be the sort of person who thinks jokes are proper, if not urgently necessary, in law reviews; and perhaps it also indicates a belief that in a better world, a funny case note will be nothing out of the ordinary.

His name is Roger Jon Diamond, and it ought to be familiar. *Diamond v. Bland. Diamond v. USC. Diamond v. General Motors. Diamond v. Allison.* And *Gould v. Grubb, Goodman v. Kennedy, Perini v. Municipal Court, Hayes v. Superior Court,* and enough others to make his name a household word among advance-sheet aficionados.

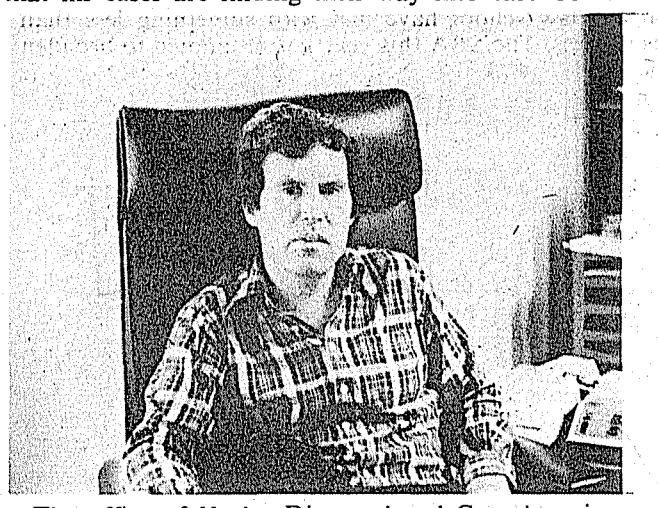
He is an amazing mixture of quixotic fury and off-the-wall invention. He approaches legal problems with the open mind of a child and then attacks them with the intensity of a seasoned professional.

He once sued every major industry, on behalf of every resident and landowner, in Los Angeles County. He has sued USC for Rose Bowl Tickets, UCLA for entry to dormitory floors for voter registration, and the power structure of San Bernardino for access to private shopping centers to gather petition signatures.

He brought the suit that ended incumbent-first and alphabetical listing on California ballots. He lost the suit that would have imposed liability on lawyers for misrepresentations to non-clients.

At 34, he is looked upon as a crackpot by some lawyers, a dynamic force for reform by others, "a very good advocate" by former California Chief Justice Donald Wright, and an anomaly by nearly everyone. His casual manner, boldness, and lack of conformity have made him something of a legend.

It's a legend Diamond doesn't mind talking about in the least, though he seems genuinely surprised to hear that his cases are finding their way into casebooks.



The office of Hecht, Diamond and Greenberg is a comfortable but spartan set of rooms next to a sporting goods store on Sunset in the Palisades — the section west of Will Rogers State Park that always seems like a small town in the middle of the woods to driver along Sunset. It's close to the ocean and close to where Diamond lives with his wife and two daughters.

His none-too-tidy office contains boxes filled with the sort of papers most lawyer put in file cabinets, framed newspaper stories about his cases, two plaques certifying his Democratic nomination to the Assembly (he lost to minority leader Paul Priolo both times) and a desk cluttered with memos, notes and several amicus briefs.

He dresses for business in the sort of clothes typically found on lumberjacks or some law professors (he teaches at West L.A. Law School).

"I sometimes recognize the law is against me and I'm going to have to win on appeal."

"I'd die in a three-piece suit," he says. "Even in court, I try to be comfortable. Running around from court to court downtown, I'd just wilt."

The legend might start with his days at UCLA, where he spend his undergraduate and law school days from 1961-66. In a sense, he is very much a child of that period.

"I suppose I was influenced by the sixties. We took ourselves less seriously down here than they did at Berkeley, but we were involved."

While Mario Savio was making a name for the Free Speech Movement up north, Diamond helped organize the Fresh Sandwich Movement down here, and held a protest, complete with placards, against the sandwiches in the vending machines.

But if anyone could have fun grousing about stale sandwiches, only Roger Diamond could have filed *Diamond v. General Motors.*

"When I graduated from UCLA, I went to work for a big law firm in Long Beach (Graham & James) because their offices were right on the beach. Being an anti-smog person for years, I wanted to work in fresh air. It turns out they did a lot of international law, and represented a lot oil firms and polluters.

"As soon as I graduated from law school I wanted to do something to help get rid of pollution. So I decided to file a gigantic class action suit against all the polluters. I was working on that suit every night at home while during the day I was practicing law at this firm."

The suit listed 293 defendants, mostly automakers, oil companies, and manufacturers. There were 7,119,184 plaintiffs — every resident and property owner in the County.

"The day I filed the suit is the day I quit my firm — February 2, 1969." Diamond walked into a partner's office and said he was leaving to avoid conflict of interest.

"He said, 'When do you plan to file this suit?' I said, 'Today.' This was three o'clock in the afternoon."

Diamond opened his own office, taking overflow work from two other attorneys, and set about serving 293 summonses himself — which made for a tricky situation. He couldn't get proof of summons, because proof must be certified by a non-party to the suit. So if any of the defendants had failed to respond, Diamond would not have been entitled to a default.

When he got calls for extensions of time, Diamond gave them willingly, but always asked for stamped, self-addressed envelopes — an indication to the defendants, if they needed one, that they were dealing with an insolvent adversary. Nonetheless, it worried them.

"The suit turned out to be a WPA for Los Angeles lawyers," recalls Ken Graham, who was Diamond's civil procedure professor when both were in their first year at UCLA law school.

"A lot of the big firms represent more than one industrial client, and there were conflicts of interest

"I don't come up there and boss them around or act like a snob. I think a lot of lawyers do that. They take themselves too seriously. I don't."

because some defenses involved pointing the finger at oter defendants. So there was real scrambling to find lawyers," Graham explains.

Diamond, by the way, calls Graham "my inspiration." Hmm.

The defendants held a mass meeting at the Biltmore Hotel to plan strategy (they notified everyone through an ad in the *Daily Journal*).

"I went to the meeting — it didn't say it was a secret meeting or anything," says Diamond. "I sat down in the second row next to the wall. And I couldn't believe it — right before the meeting one of my ex-classmates walked in, holding the briefcase for one of the big senior partners in one of the big law firms. I figured 'If he sees me I'm dead.' He sat at the table with the panel facing the audience. To this day, I don't know if he saw me, but every time the guy in front of me moved his head, I'd move mine . . . "

About 50 demurrers were filed, attacking the validity of the nuisance and defective product claim, the validity of the class action, and the validity of Roger Diamond. His 113-page memo fired some volleys of its own, catching some prestigious law firms in some idiotic errors and occasionally giving vent to a bit of outrage.

Responding to an argument that polluting vehicles were no more defective than sugar or liquor that could be harmful if imbibed to excess, Diamond sounds like a parent lecturing a dull child:

"The purpose of a motor vehicle is to convey . . . not to poison bystanders . . . Fuel should propel the vehicle. Fuel should not cause clear air to turn to grimy, deadly, noxious and stinking crud. Products which cause this to occur are defective."

A few more samplings of the Diamond style:

"Recalling lemons is not strange to the auto industry . . ."

"This case having been cited by O'Melveny & Meyers memorandum . . . it is surprising that its holding was forgotten eight pages later."

"Now, plaintiff recognizes that at first glance the reference to Nuremberg might seem ludicrous."

"Armco Steel . . . says that this action is a mockery of and an affront to the judicial structure. Nowhere does this appear as a ground for demurrer. See C.C.P. section 430."

The superficial glibness, or the inclusion of Tom Lehrer's song "Pollution" in his memo might give the impression of frivolity. Diamond may be cute, but he is never frivolous.

"I sometimes recognize the law is against me and I'm going to have to win on appeal, but I don't think it's frivolous to file a lawsuit you don't expect to win at the trial level."

To defendants in the GM case who suggested the whole thing was a publicity stunt, Diamond responded in his memo by first pointing out that he hadn't contacted the press about the suit, then by virtually challenging the opponent to file a complaint with the bar association.

The demurrers in the GM case (which trial judge Lloyd Davis called "Diamond versus the World") were sustained, despite a 90-minute argument by Diamond, during which Davis "didn't open up his mouth once — it was like arguing with a crazy guy.

"He sustained all the demurrers and dismissed the case. Six weeks later he went berserk and stabbed his wife in Pasadena. He was, I think, found not guilty by reason of insanity. Very recently he tried to get his job back and there's a published decision — Davis v. Council on Judicial Qualifications or something — where he lost. This was the trial judge who ruled against me."

The Court of Appeals also ruled against him, largely because, wrote Justice Gordon Files, "It was entirely reasonable for the trial court to conclude . . . that such an undertaking was beyond its effective capability"

"A long time after that," says Diamond, "one of the ex-clerks of the Court of Appeals told me the clerks

"I love appellate work, because you're making the law."

recommended reversal — I don't even know if that's confidential. But naturally the justices outvoted the clerks."

It was largely as practice for the GM case that Diamond filed suit against USC.

"Shortly before the time I was going to file the pollution suit, I got this notice from USC saying I would not be able to get my Rose Bowl tickets" (the tickets were promised as an option to all season ticket buyers).

"That I even had a right to the Rose Bowl Tickets, was a fluke. I had Ram season tickets and UCLA season tickets. I'm a big football fan." (Actually, Diamond is a rabid Bruin rooter. He also once sports editor of the Docket.)

He and his football-fan neighbor looked at the USC schedule, "saw a couple of interesting games," and noticed that they could buy "economy" season tickets for about the same price as those two games would cost. Either way, they would sit in the end zone.

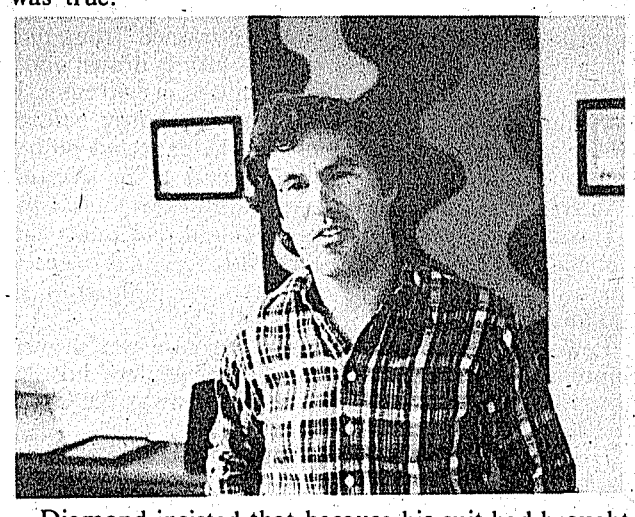
"We hated 'SC — always hated 'SC — but we figured they'd be interesting games. As it turned out, I think they were both on TV."

To make a short story short, USC wrote and said there wouldn't be any Rose Bowl tickets and Diamond filed a class action on behalf of the economy season ticket holders alleging anticipatory breach.

"The end result was that 'SC came up with the tickets. I said 'How about that.'

"They said, 'Won't you dismiss your law suit?'

"I said — and of course I was ahead of my time — 'I can't dismiss a class action without court approval.' In '73 the superior court adopted the class action manual which says that. Then it was a little fuzzy whether that was true."



Diamond insisted that because his suit had brought about the benefit to the class of economy ticket-holders, USC owed him attorney's fees because they weren't entitled to bypass plaintiff's representative in settling a class action. That dispute made it to the Court of Appeals, where Justice Otto Kaus ducked the issue entirely by deciding that there was no anticipatory breach.

"The issue he ruled on was never briefed by anyone. It was incredible. USC never raised that issue, never argued it orally, nothing. It came out of left field."

This time, it was Kaus' turn to be glib. He admitted evading the issue and noted that when some judge in the future decided the class action issue, he could always distingish *Diamond v USC* on the grounds that "easy cases make bad law."

Typically, Diamond was furious. He hates losing, "I probably should have taken it to the Supreme Court. I couldn't believe after filing fees, printing briefs, I was out everything. But it was a lot of fun, which is the main thing."

Diamond's sense of humor does seem to cause some

(Continued on Page 15)

Newsman Says

Press Freedom Not Absolute

by Diane Sherman

The news media should give greater weight to privacy. Temporary gag orders in criminal cases are sometimes appropriate. The press should not always prevail.

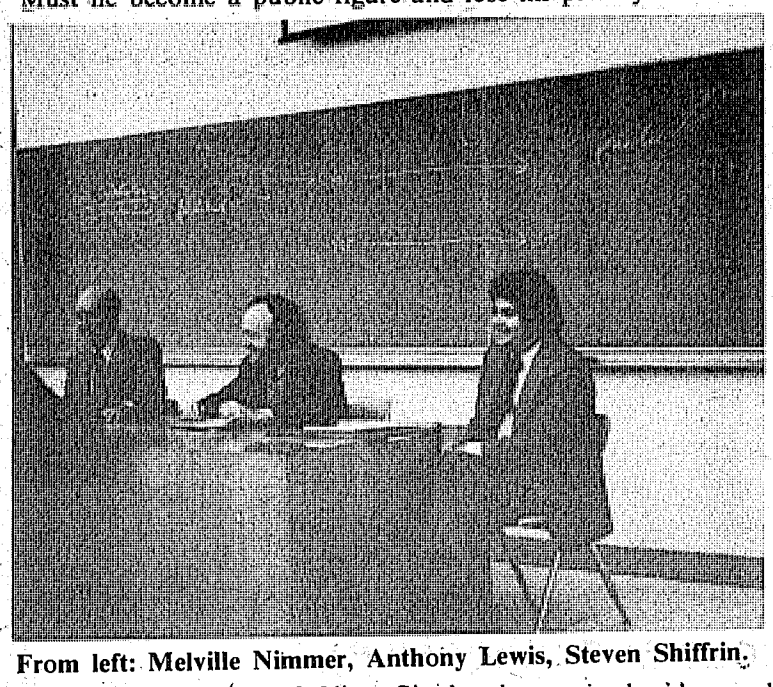
Veteran New York Times newsman Anthony Lewis admits these idea brand him as a heretic in the journalism world. "Most editors and newspaper lawyers don't agree with me."

Lewis, currently a Regents Professor at Berkeley, discussed his views on press freedoms during a Law School symposium on the First Amendment and the Press.

Quizzed by Professors Melville Nimmer and Steven Shiffrin, Lewis stated that if he were an editor he would give considerable weight to privacy in deciding whether to disclose such facts as the name of a rape victim.

Invasion of privacy, whether by the CIA, the FBI, the press or anyone else presents grave dangers, Lewis said. "A sensitive person ought to see the risk."

Nimmer noted that politicians and other public figures have no right of privacy under American law, but that a peculiar problem arises when an individual is unwittingly thrust into public life. "Must he become a public figure and lose his privacy?" Nimmer asked, citing the case of Oliver Sipple who received widespread publicity in 1975 when he helped block an assasination attempt against then President Gerald Ford in San Francisco.



From left: Melville Nimmer, Anthony Lewis, Steven Shiffrin.

Writing in the San Francisco Chronicle, columnist Herb Caen revealed that Sipple was a leading figure in the San Francisco gay community. Sipple brought an invasion of privacy suit against the Chronicle and other newspapers which printed the information. Prior to the news coverage, his family who lived in Iowa was unaware that he was a homosexual.

Gag Orders

Examining the tension which often exists between freedom of the press and the right to a fair trial, Lewis said the press should never be barred from judicial proceedings, but that in rare criminal cases where extensive publicity would prejudice the defendant's right to a fair trial, the media should be restrained from publishing any account of the proceedings until a jury is drawn and sequestered.

Gag orders should never be permitted in civil cases, Lewis added.

Commenting on two press cases currently before the United States Supreme Court, Lewis said he expected both *Houchins v. KQED* and *Stanford Daily v. Zurcher* to be overturned.

In *Houchins,* the Court of Appeals for the Ninth Circuit upheld a trial court injunction ordering the Alameda County sheriff Thomas Houchins to provide reporters with reasonable access to county prisons and to allow the media to use photographic and sound equipment to interview inmates.

Lewis who was present when the case was argued before the Supreme Court last November said the justices' hostile questioning of the KQED attorneys was a dead giveaway the Court of Appeals decision would be reversed.

"I've never heard such antagonistic questions from the bench before in my life."

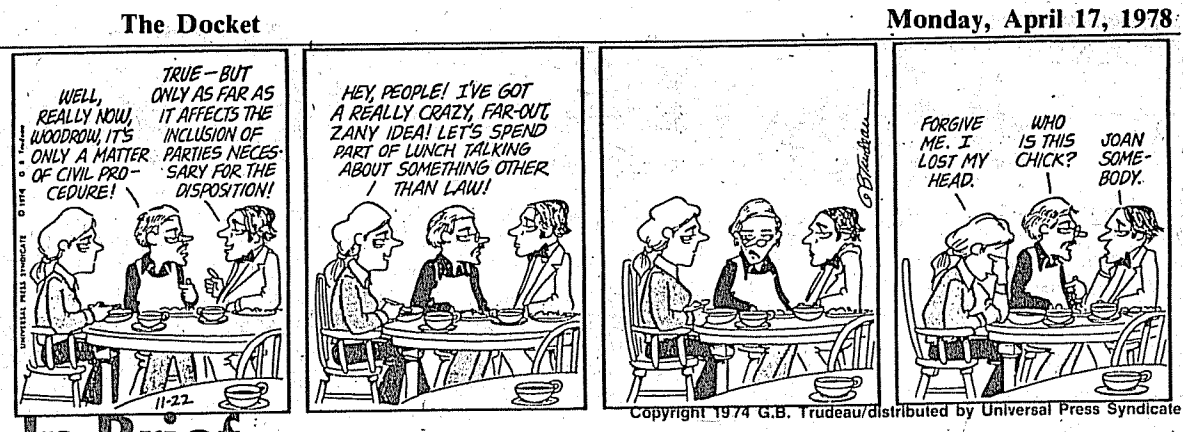
Citing the example of South Africa where the press is forbidden by law to write abouth the prison system, Lewis said he believed some sort of scrutiny of American prisons must be allowed.

In the *Stanford Daily* case, the Court of Appeals for the Ninth Circuit held that a no-notice search warrant violated a newspaper's First Amendment rights. The case arose when the Palo Alto police raided office of the Stanford University student newspaper searching for notes, photographs and other information concerning the identity of participants in a student demonstration which the Daily had covered. The police did not allege that any members of the newspaper staff were suspected of any unlawful participation in the demonstration.

Attorneys for the Daily successfully argued that the information should have been subpoenaed.

Lewis said the odds were that the Supreme Court would reverse the decision. The best strategy for the plaintiffs, he said, is not to argue the case on First Amendment grounds, but rather to assert that no-notice search warrants should not be issued against any third party, not a suspect to the crime.

"The Court will be reluctant to carve out a special exception for the press to the general rule allowing search warrants. Plaintiffs should argue that it is right of any third party to have the opportunity to respond to a subpoena."



In Brief

• A $100,000 Exxon Foundation grant to help women through law school is also a monument to Boalt Hall's most distinctive, if not distinguished, graduate.

The grant will be dispersed in the form of scholarships to women over 30 who have worked in such legal support areas as secretaries, paralegals and court administrators. Each year ten to twelve women will receive an average of $3,000 in scholarships called "Joanie Caucus Awards."

Joanie Caucus, as anyone who isn't a total loss knows, is the denizen of Walden commune in Garry Trudeau's cartoon strip *Doonesbury,* who started law school at the Berkeley campus at the age of 39.

Boalt students and faculty, appreciating the honor or playing along with the gag, readily accepted their paper classmate, and even awarded her a degree (which Trudeau accepted) last June.

• The California Supreme Court will review a Third District Court of Appeals decision that denies unemployment benefits to students who refuse to quit school.

In January, the Court of Appeals ruled that Enid Ballantyne, a third-year student here, was ineligible for unemployment benefits because her refusal to quit school made her "unavailable" for work, even though Ballantyne had qualified for benefits largely by working at night.

• Those fleeting student lounge mailboxes originally scheduled for installation in December, and later expected in February, should make their much-vaunted appearance sometime near the end of this quarter — "too late to do anyone any good this year," noted Dean Warren a bit ruefully.

The latest delays were caused by reliance on a tentative bid to build the mailboxes. Warren explained. The contractor who gave the estimate then refused to bid on the project, which sent the whole project back to the starting point.

Now, however, plans are final and contracts signed, so the decline of the message board is clearly in sight.

At the same time, the law school has contracted to have new furniture built for the lounge. Custom construction solved the problem of finding furniture sturdy enough to take continued use and heavy enough to stay put while still being appropriate for a lounge and not a Victorian drawing room. The furniture, too, should be in by the end of the quarter, God willing.

• The Graduate Student Association (GSA) has a limited amount of money in its discretionary fund this year, available for once-only graduate student programs. The discretionary fund can supply up to $750 for any program.

In the past, GSA has funded speakers, video programs, concerts and plays. Funds are not available for programs which are religious or political in nature.

Interested law student groups can pick up applications for funding in the GSA office, in 301 Kerckhoff.

• Blood tests for Tay-Sachs disease will be given in the law school lounge next Thursday, April 27 from 10 am-2 pm and 5-7 pm. Testing is free, but donations will be accepted.

A fatal genetic disorder, Tay-Sachs can be inherited from two healthy parents who carry the gene and know nothing about it.

'Son of S1'

New Federal Crime Bill Attacked as Repressive

by Ruth Fisher

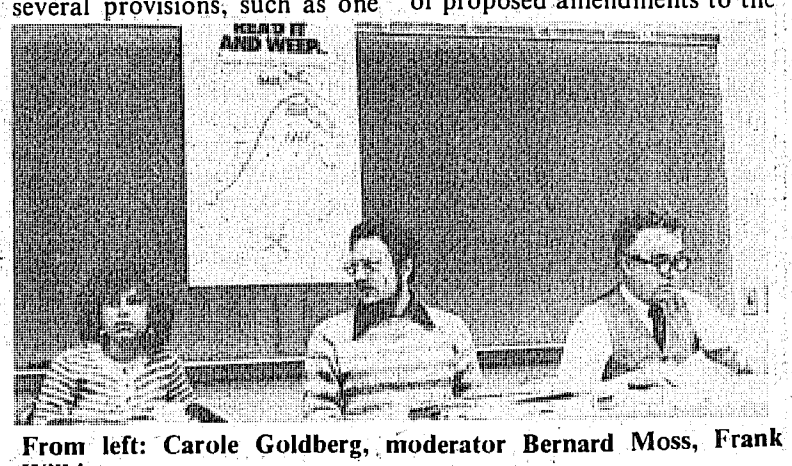
Speakers called the proposed Federal Criminal Reform Bill (Senate Bill 1437) a "repressive measure" in a noon discussion here April 5. Professor Carole Goldberg pointed out similarities between the bill, now before the House, and the controversial S.1 that failed a few years ago, while, Frank Wilkinson, director of the National Committee Against Repressive Legislation (NCARL), complained of the "falsehood, misrepresentations and legislative chicanery" used in getting the Senate to approve the bill, known to its critics as "Son of S.1".

Goldberg said the current bill started with a drive during the Johnson administration to reform the Federal Criminal Code. The primary goal of such legislation was to make Federal statutes more consistent and comprehensive. An appointed committee chaired by former Governor Pat Brown of California came up with a bill which was rewritten by the Nixon administration and presented as S.1. That bill, attacked as restrictive of civil liberties, was defeated.

Senator Edward Kennedy (D-Mass.) pushed for another criminal reform bill, and introduced S.1437, cosponsored by Senator Strom Thurmond (R-South Carolina). Goldberg characterized S.1437 as redrafted in an effort to eliminate sources of controversy in S.1, yet retain most of the provisions in S.1 which threatened civil liberties.

Stressing that she was addressing only a few of the problems of S.1437, Goldberg noted that the bill limited the criminal defenses of insanity and entrapment, did not lower sentences as recommended by the Brown Committee, and over-protected the government at the expense of individual rights to free speech and assembly.

She also pointed out that several provisions, such as one which prohibits any advertising for abortions, could be challenged on constitutional grounds; however, the cases would probably come before the conservative Burger Court, with unpredictable results.



From left: Carole Goldberg, moderator Bernard Moss, Frank Wilkinson.

Calling the title of the "Criminal Reform Bill" a misnomer, Wilkinson credited the rapid advance of the bill through Congress to the successful steamrolling tactics used by cosponsors Kennedy and Thurmond, with push from Attorney General Griffin Bell.

The methods used to get the bill through the Senate backfired in at least one quarter: the Los Angeles Times came out with an editorial against the bill because, although bill supporters promised full hearings on S.1437 in the Senate, only five days of "structured" hearings were in fact held. Wilkinson noted that the hearings were marked by offhand treatments of proposed amendments to the bill, with little time given to opposition groups such as the ACLU, which received half an hour to make their presentation.

Echoing Goldberg's remark, Wilkinson stated that he could not even list all the repressive measures in the bill, and focused on a few provisions. He noted that the bill would eliminate bail for prisoners considered "dangerous," would use the "local standards" test for obscenity trials, and resurrected the 1799 Logan Act which was used as a tool for repression during the Vietnam War protests.

To all UCLA Law School Faculty, Students and Staff!

Law Revue ★

is coming to the UCLA Law School
for its third annual appearance.

Saturday Evening
May 13
5 p.m. — ? ? ?

We want you on-stage

— acts and skits

— performers and musicians (both serious and otherwise)

or behind the scenes

— technical assistance with props or electrical know how
— decorations
— stage managers
— ticket sellers
— talent recruiters

Law School Groups — We need your participation in providing entertainment and in sponsoring a food and refreshment booth.

★ **Law Revue** — the annual law school "folies", amateur "talent" show and general good-time evening with students, faculty and staff participating. Shows will be followed by a dance in the Law School Foyer

→ For further information,
Check the SBA Bulletin Board,
Contact Ralph Fertig or Inese Lacey,
or leave a note in the Law Revue mailbox
at the Information Window.

Finding a Niche in Public Interest Law

Hall: From Corporate Law to Skid Row

by Diane Sherman

At 34, Carlyle Hall Jr. is one of the few attorneys who have carved out successful niches for themselves in public interest law. He has a fancy office in Century City with a glass elevator and a balcony overlooking the smog. His name is listed as either one of the attorneys for the plaintiff or as an amicus curiae in the report of almost every major California case involving the public interest.

Most recently, Hall handled the celebrated Sundance drunk tank case for the Center for Law in the Public Interest of which he is one of the founders. Hall, along with Center attorney Timothy Flynn, argued on behalf of former Skid Row alcoholic Robert Sundance, that the current system of jailing public drunks should be abolished in favor of civil detoxification centers.

Superior Judge Harry Hupp agreed with Hall and Flynn, but decided that he did not have the power to abolish the system and order civil detoxification. Hupp did, however, order improvements in Los Angeles Police Department drunk tanks, including improved medical screening and better provisions for rest and nutrition while in jail.

A Harvard graduate, Hall taught law in Africa for three years and then joined the prestigious Los Angeles firm of O'Melveny and Myers where he remembers mostly working on cases where one oil company was suing another for some uninteresting reason.

He knew it was time to quit when he was asked to spend four nights in a row working because somebody had thought up an ingenious way whereby a client's $20 million settlement could be increased by another million. "I thought they were already getting a terrific deal with 20 million. I couldn't see making personal sacrifices like working overtime, so they could get more money. It was less than fulfilling."

Hall, along with three other young attorneys at O'Melveny left to form the Center. They got a "seed grant" which enabled them to live for six months while they raised enough money to open an office. The Center is funded primarily by foundations, including the Ford Foundation.

They decided right away to pay themselves salaries of $30,000, a luxuriant sum compared to the $9,000-20,000 earned by most public interest lawyers.

The salaries are structured to accomodate people who are making a long-term committment to public interest law and who are raising families, says Hall.

"With low salaries, public interest law tends to become something that lawyers do for a few years after law school before going out into private practice."

According to Hall, one of the best avenues for a student who wants to work in public interest law is to take a job for a few years with a large corporate firm and get some litigation experience.

Is there any conflict in an aspiring public interest attorney working in corporate law?

"Well, there's what you might call your basic neutralist approach," Hall says.

The approach goes something like this: first, everyone is entitled to legal representation, even large corporations. Second, a lawyer's role is also that of an advisor. He can educate his corporate clients about the complex public policy aspects of law, explaining that if they act against the public interest, they might have to face lawsuits seeking to hold them accountable. Third, if a case is particularly reprehensible, the lawyer can always refuse to work on it.

Hall cites the Santa Barbara oil spill case as one which he would not have touched when he was at O'Melveny.

An attorney who eventually wants to practice public interest law will not be seduced by the financial rewards of private practice if he is really committed, says Hall. "If you know public interest law is what you want to do, you won't be dissuaded. You'll get to that goal."

It is feasible, he adds, for young lawyers to establish their own public interest law center, although not when they are right out of law school.

Yavenditti: Storefront Lawyer in Echo Park

by Diane Sherman

Sandwiched between a used furniture store and a Foster's Freeze, it does not look much like a typical law office. The visitor is jarred by the shelves of law books which appear incongruous next to the brightly painted walls and the posters for every conceivable left-wing cause.

When Kate Yavenditti graduated from UCLA Law School in 1976, she knew she did not want a traditional legal job. Before coming to law school, she had worked as a paralegal for two years in a large corporate firm and during law school she clerked in a small but traditional firm. But she could not stand the political compromises she had to make.

So upon receiving her degree from UCLA, Yavenditti joined four other lawyers at the Echo Park Community Law Offices, a private firm, or collective as they prefer to call themselves, providing low cost legal services.

Only a few miles down Sunset Boulevard, Echo Park is in reality many light years away from the shiny affluence of Westwood. Fading and grimy, it is populated primarily by low-income families, many of them Asian or Chicano.

The Echo Park Community Law Offices offers this community legal services priced at $25 an hour, far below the $60-$150 rates of most firms.

More than low fees, however, differentiate Yavenditti's office from traditional firms. For one, there are no secretaries. The lawyers do all their own clerical work because the office cannot afford additional staff. Everyone in the Community Law Offices receives a salary based on need and if the collective were to hire secretaries, they would be compensated on the same basis as the lawyers.

That rate of compensation is very low. Yavenditti earns $125 a week. The highest salary in the office is $175. The fact that she lives in a house purchased for her by her parents and thus does not have to pay rent helps Yavenditti scrape by on her meager earnings. She admits that she would like to make more money, but says, "This is the way I want to practice law. The sacrifices are worth it."

Yavenditti views her mission as twofold: to provide low cost routine legal services to the poor and to blue-collar workers, while at the same time trying to politicize her clients.

"I try to help my clients understand why they are so oppressed in what is supposedly a democracy. I try to explode the myth of our bogus legal system and to show whose interests it really protects."

Yavenditti handles mostly domestic cases — divorces, child support, paternity actions, battered women, along with some landlord-tenant actions and routine procedures such as name changes. Others in the office specialize in criminal, immigration and military law.

The collective cannot afford to bring any affirmative action or class action suits, but they do try to work gratuitously on at least one major political case a year. Last year, they aided the American Civil Liberties Union lawyers who were defending 14 black marines charged with assaulting Klu Klux Klan members at Camp Pendleton.

Yavenditti views the main advantage of working in a collective rather than in the Public Defender's office or in Legal Aid as the total freedom to decide which cases to accept and which to reject. Her collective will not defend rapists or large-scale drug dealers who they feel prey on poor people

"The problems in working in a collective are clear," says Yavenditti. "But there is a tremendous amount of satisfaction. You don't have to compromise things that are important to you."

Tithing to Fund Public-Interest Law

Not every law student can or wants to work in public interest law. But upon graduation every law student can financially support public interest law.

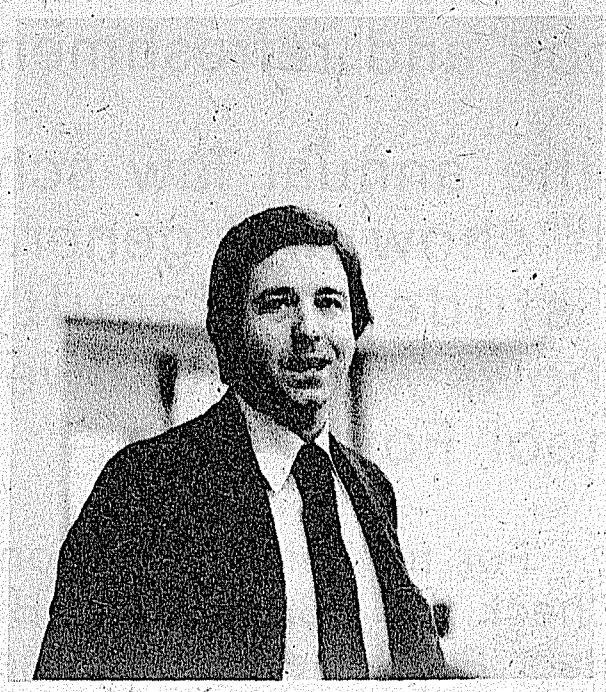
That proposition has given birth to the Equal Justice Foundation (EFJ), a Ralph Nader sponsored proposal for a "new grassroots, contributor-controlled public interest organization based on the principal of tithing and dedicated to improving access to justice for America's citizens."

Third-year students are being asked to pledge one percent of gross employment income per year. Quarterly payments will not begin until the January after graduation. The money will be collected only if sufficient pledges are made to lead EJF organizers to believe that establishment of the organization is feasible.

EJF organizer Jim Lorenz told UCLA students early this month that EJF will allow lawyers to "influence both the federal and state systems and to have a real impact, even in these apathetic 70's."

Lorenz, founder of the California Rural Legal Assistance (CRLA) and currently director of the Council on Public Interest Law, is expected to become the first director of EJF, subject to membership approval.

According to Lorenz, EJF will litigate, draft and lobby for legislation, conduct research, publish reports and monitor federal regulatory agencies. The group's headquarters will be in Washington D.C. Local chapters will also be established, some affiliated with law schools. Chapters will retain a portion of the money tithed and decide how to use it.



Jim Lorenz: "Law students can have an impact, even in these apathetic 70's."

EJF organizing drives are currently underway at law schools across the country. As of February, EJF chapters had been established at 21 schools.

The organizing drive is focusing on third-year students, Lorenz said. Lawyers currently in practice will subsequently be asked to tithe as well. There are no plans to organize outside the legal profession, but non-lawyers are welcome to tithe and become members.

Members will elect a board of directors and shape policy through referenda and surveys.

The success of the Berkeley Law Foundation, begun at Boalt Hall in 1976, is a sure sign that EJF can work, Lorenz said. Last year, 27 percent of Boalt Hall graduates contributed money to the Berkeley Law Foundation to fund a variety of public interest projects.

Despite the success of the Berkeley organization, Lorenz said that it is not a good idea for students at individual law schools to organize their own foundations. "Units that small can't have any significant impact."

Lorenz also said that organizations like the ACLU and the National Lawyers Guld are not effective, especially at getting legislation through Congress, because they do not have a mass enough membership and cannot raise significant amounts of money.

—Diane Sherman

public interest law jobs...

(Continued from Page 1)

Of the 462,000 attorneys in the United States, only 600 are in public interest law. In 1975, the budgets of all public interest law centers totalled only about $40 million, less than the combined incomes of two major Wall Street law firms, according to Council Director Jim Lorenz.

The figures, then, tell the story. Lack of money means few public interest law centers and few centers mean sparse job opportunities.

Opportunities are somewhat better in the federally funded Legal Aid offices which provide free legal services for the poor. But here too jobs are becoming increasingly competitive. More people are applying for Legal Aid positions and because salaries have been improving fewer attorneys are leaving, according to Aviva Bob, executive director of the Legal Aid Foundation of Los Angeles.

Breaking In

For the student who wants to break into public interest law, the place to start is most definately not the UCLA Placement Office.

Only one public interest center and two Legal Aid offices recruited at UCLA during this year's interviewing season, compared to 198 traditional firms and corporations.

This lack of campus interviewing has prompted much criticism of the Placement Office by students who want public interest jobs.

According to Placement Director Diane Gough, such criticism is unfair. "They [students] are angry, so they blame us. But it's beyond our control," she said.

Gough explained that public interest and legal aid offices simply cannot afford to send attorneys recruiting at law schools. Even if the Law School would subsidize air fare and other travel expenses, these offices would not be able to spare an attorney from legal tasks for an entire day in order for him or her to interview interested students, she said.

"Students who want public interest jobs just can't rely on us. They have to make their own opportunities."

For the job seeker interested in making his or her own opportunities, clinical courses and an externship in a public interest office are musts. A post-graduate fellowship or a stint with VISTA may also help the job seeker get a foot in the public interest door.

The Center for Law in the Public Interest has a fellowship program which allows graduating law students to spend a year working with the Center. The competition for the fellowships, however, is stiff. The Center only interviews at top law schools and usually over 100 students apply for the five available positions.

Working on Spec

A law graduate who has a spouse willing to support him or her or who has wealthy parents is probably in the best position for obtaining a public interest job. Such a person can almost always find a center willing to take him or her on to work entirely on speculation, meaning at no salary but having a right to share in the attorneys' fees which the center may collect in the event of a successful suit. The attorney working "on spec", as it is called, will usually have to wait at least two years to see any money.

The Center for Law in the Public Interest had just such an arrangement with a young lawyer for several yars. An expert in discrimination litigation, the attorney was supported by his wife while he worked with the Center, but eventually did receive a sizeable amount of money in attorneys' fees.

Attorneys' fees are in fact the one encouraging sign on the public interest horizon, at least on the state level. Many thought that attorneys' fees were the answer to all of public interest law's financial problems until the 1975 United States Supreme Court decision in *Alyeska Pipeline Service v. Wilderness Society* which held that federal courts have no power to award attorneys' fees to prevailing public interest litigants absent a specific statutory authorization to do so.

In California, however, the attorneys' fee situation has been much more promising, leading public interest lawyers to speculate that the state will become an increasingly important center for public interest law in the next decade.

The California Supreme Court, in *Serrano v. Priest,* ruled last October, contra to *Alyeska,* that California courts have the equitable power to award reasonable attorneys' fees to plaintiffs whose suits confer benefits on the public at large.

That decision reinforced a California Assembly bill, AB 1310, signed into law a week prior to *Serrano,* which states that a court may award attorneys' fees to the successful party in a case which results "in the enforcement of an important right affecting the public interest."

Despite these recent advances in California, the prognosis is still not good for the public interest job seeker. The young lawyer who does not have a spouse or parents who will support him or her while he or she works in public interest law and waits for the attorneys' fees to come rolling in faces a bleak situation at best. Most students will simply have to go to work for those who have the money to pay for their services and relegate their idealism to after hours.

PLACEMENT

Salaries Up -- or Down, Depending Where you Go

Salaries offered to 1978 law school graduates range from a high of $29,000 offered by a large corporation in New York City to a low of $8,000 offered by small firms in Buffalo and Ithaca, New York, according to a survey of legal employers conducted by member law schools of the National Association of Law Placement (NALP) under the direction of Nick LaPlaca at the McGeorge School of Law.

The starting salaries offered by private firms, corporations and state and local government agencies in more than 70 cities across the nation were sampled during August 1977. The survey included a sampling of small cities as well as major metropolitan areas.

The Midwest offered the highest salaries of any region in the country, ranging from $9,500 to $24,000. In the Far West, salaries ranged from $8,500 to $22,000 and in the Northeast from $8,000 to $21,000. New York City ($29,000) and Washington, D.C. ($25,000) offer the highest salaries in the country. NALP said these salaries are listed separately because they are not representative of the Northeast region as a whole.

In each area, the range of corporation salaries generally starts several thousand dollars above the lowest salaries offered by the small firms, and in some areas goes higher than top salaries offered by the large firms.

The government salaries sampled range from $8,600 in El Paso to $20,400 in Bakersfield. Most of the salaries fall into the middle of this range, and are comparable to the salaries offered by small and medium sized firms. The salaries offered by state and local governments in most cases are lower than the salaries offered to beginning attorneys by the Federal government: $15,096 at the GS-9 level, or $18,258 at GS-11.

In general, firms of the same size have similar salaries regardless of the size of the city in which they are located. Thirteen thousand is an average salary offered by firms of less than 10 attorneys, and $15,000 is common in firms with 10-40 attorneys. It is the firms of 40 and more lawyers who offer the highest salaries. These salaries average about $19,000 in most of the large cities, except for New York City. Large firms there average more than $25,000.

These top salaries in the large firms and corporations ge the most attention, and many surveys, including the NALP statistics for 1976, paint much too optimistic a picture of what the average law school graduate can expect by featuring these salaries and neglecting those offered by smaller firms, corporations and government agencies, particularly since they employ the majority of law graduates. The 1977 NALP survey categorizes the size of the smallest, medium and largest firms in each city surveyed, and gives the median salary offered in each category.

The top salaries have risen about $1,500 in most cities since 1976. Comparison of low salaries with previous years is difficult since the 1977 NALP survey is one of the first to adequately sample the small firms and government agencies. It appears that the bottom salaries have remained about the same for the last 2 or 3 years. If this is true, the effect of inflation on such salaries means that prospects for some young attorneys are gloomier than for their predecessors.

Notices

• Students entering their second or third year may take advantage of one of the UCLA Law School's externship programs. The way to see the inside of a public interest law or government agency, or the chambers of one of the nation's federal or state trial or appellate courts is to fill out an application, submit a resume, have an interview and make a commitment to 16 weeks of intensive practical experience.

There are 81 second-year students in externships this Spring. Thirty-four students are working in agencies all over the country, several in Washington, D.C., including the FTC and the FCC. Nineteen have chosen to stay in Los Angeles government and public interest agencies such as the National Health Law Program, the Center for Law in the Public Interest, the State Public Defender's or County Counsel's Office. There are also 47 students clerking for judges; 30 outside and 17 inside the Los Angeles area.

Besides being an opportunity to discover an interest in a particular type of law practice, an externship is a chance to use practical lawyering skills and get into the legal community before graduation. It also serves as an excellent resume entry.

See Marilyn Friedman for information, Placement Office.

• The Placement Office has recently received the *Summer Projects 1978* booklet put out by the National Lawyers Guild. It contains a brief description of public interest groups desiring summer help.

• The Placement Office subscribes to the "Harvard Pro Bono Survey," which is an annual questionnaire sent out by Harvard Law School to thousands of offices all over the country involved in public interest/public serve/pro bono work. The results of this survey are on file in the Placement Office. The listings include descriptions of the work of each office, as well as positions the office is seeking to fill.

• If you are thinking of going into legal services as a career or have already decided that you wish to do so, you should attend the panel sponsored by the Placement Office on May 1, 1978 from 3:00-5:00 in room 1327. Panelists will be: Moderator, Paul Boland; Pat Tenoso, Western Center on Law & Poverty; Percy Anderson, San Fernando Valley Legal Services; Steve Belasco, CRLA, Santa Maria. The major thrust of the panel will be a description of the work of legal services attorneys, how to prepare for a legal services career while in law school and how to apply for a position with a legal services office.

• McGeorge School of Law, in conjunction with the Austro-American Institute of Education and with facilities at Salzburg University, offers both a post-graduate in Advanced International Legal Studies and a summer program abroad.

The schedule for the year-long program is as follows: European portion — September 10-December 9, 1978 — Pre-internship seminars in Salzburg, September 10-29. Internship assignments (with private law firms and government agencies) during October and November. Post-internship seminars — December 3-9. Private firms generally pay interns $200 to $300 per month Students should plan on spending $2500-$3000 for the year; tuition is $875.

The summer program runs from June 25 to July 27 and combines academic courses in comparative and international law with opportunities for observing European society, culture and legal systems in action. The annual itinerary includes lectures and visits in Vienna and Budapest. Applications are on file in the Placement Office.

Statistics

Employment Record

Class of 1977

The following statistics are taken from the annual report conducted by the Placement Office on the graduates from the class of 1977:

Employed — 90.3% or 205 graduates (of those who have passed the bar and are therefore eligible for employment)

Type of practice:

Private practice — 64.3%
public interest practice — 1.4%
indigent legal services — 3.4%
business concerns — 1.4%
government — 11.2%
judicial clerkships — 9.2%
Academic community — .48%

Geographical area:

Northeast region — 9.6%
Southeast region — .96%
Great Lakes and Plains — 3.9%
West and Southwest — 85.3%

Salary Report

Law Firms in Los Angeles

small	*medim*	*large*
(2-10 attorneys)	*(11-25 attorneys)*	*(26-50 attorneys)*
range	*range*	*range*
$18,000-$21,500	*$15,000-$22,500*	*$17,000-$24,000*
median	*median*	*median*
$18,000	*$21,000*	*$20,000*

very large (over 50 attorneys)
range — $18,000-$22,500
median — $20,500

Corporations in Los Angeles
range — $15,120-$19,500
median — $18,500

Federal Government:	***Local Government***
Range — $15,000-$20,000	*Range — $16,000-$18,600*
Median — $18,250	*Median — $17,000*

Law Firms Outside of Los Angeles

Small firms	*Medium firms*	*Large firms*
(2-10 attys)	*(11-25 attys)*	*(26-50 attys)*
Range	*Range*	*Range*
$15,000-$18,000	*$15,000-$20,000*	*$18,000-$19,500*
Median	*Median*	*Median*
$16,000	*$17,000*	*$18,500*

Very large (over 50 attys)
range — $21,000-$22,000
median — $21,500

New York, New York: Practicing in the Big Apple

by Diane L. Gough

"What are we doing wrong? Why aren't more Californians interested in coming to New York?" Joanne Brewster, recruiting coordinator for White & Case, New York's second largest law firm, asked UCLA students in a two-and-a-half-hour talk sponsored by the Placement Office.

Brewster said she wanted to interest UCLA students in practicing in New York City in general and at White & Case in particular.

A native of New York, Brewster stressed the positive aspects of life there, including a myriad of cultural events and an excellent system of public transportation.

The cost of living in the city is of concern to some people considering moving to New York. However, at a starting salary of $28,000 at White & Case, new associates can afford to live well.

Partners can live much better. *Fortune* recently quoted atronomical figures for major partners in New York City. In 1976, the average income of Wall Street partners was $165,000; a few top lawyers draw $500,000.

In its March 13, 1978 issue ("The Wall Street Lawyers are Thriving in Change") *Fortune* said, "Shrouded in almost judicial majesty, at the pinnacle of the legal profession, sit the Wall Street law firms. From offices that speak quietly of wealth and authority (and are as often found in mid-Manhattan these days as in the financial district), an elite corps of about 4,500 lawyers counsels the nation's leading corporations on matters ranging from SEC registration statements to the most complicated mergers and reorganizations."

Gough is Director of Placement

White & Case is a member of this "elite corps." Because of the high quality of work and extremely sophisticated matters that firms like White & Case handle, Brewster said that the training a new lawyer receives in these firms, cannot be matched anywhere in the country. White & Case has a national and international practice, with offices in New York, Washington, D.C., Paris, London, Brussels, and one to be opened in Hong Kong. While new attorneys are primarily hired to work in New York, they may also rotate to the Washington, D.C. office.

White & Case annually visits the "best" law schools in the country searching for promising legal talent. Brewster stressed that her firm hires people who they believe will become partners in an average of seven to eight years.

New lawyers spend time in a rotation program within the office. For the first year the lawyer will spend approximately four months in each of three of White & Case's four departments, generally both corporations and litigation, and either tax or trusts and estates. According to Brewster, the rotation period furnishs an informed basis for the associate's ultimate departmental decision.

A first-year associate's work usually includes participation in conferences involving litigated matters, commercial transactions, and estates and trusts and tax matters, legal research, participation in pretrial procedures and assistance at trials and the drafting of the documents and papers.

A certain amount of travel is to be expected. Lawyers are encouraged to participate in public service legal activities on a voluntary basis. The firm encourages recent graduates to take judicial clerkships before joining their office.

White & Case also has a substantial summer program for second-year students. The firm does not hire first-year students, although other major New York firms do. As with new associates, summer clerks are rotated throughout the firm. Brewster said clerks improve their research and drafting skills, assist in trials and depositions, and meet with clients. The firm likes to do most of its permanent hiring out of the summer program.

White & Case and several other major New York law firms will be interviewing second and third year law students next fall.

preferential treatment . . .

(Continued from page 2)

irrelevant characteristic, namely race, and used it systematically to allocate social benefits and burdens of various sorts. The defect was the irrelevance of the characteristic used, *i.e.* race, for that meant that individuals ended up being treated in a manner that was arbitrary and capricious.

I do not think that was the central flaw at all. Take for instance, the most hideous of the practices, human slavery. The primary thing that was wrong with the institution was not that the particular individuals who were assigned the place of slaves were assigned there arbitrarily because the assignment was made in virtue of an irrelevant characteristic.

Wasserstrom holds a joint professorship in law and philosophy here. This article is adapted in part from "Racism, Sexism and Preferential Treatment" which appeared in 24 UCLA L. Rev. 581 and from a series of lectures on "Justice and Preferential Treatment" which Wasserstrom delivered at Notre Dame last month.

Rather, it seems to me that the primary things that was and is wrong with slavery is the practice itself. It would not matter by what criterion individuals were assigned; human slavery would still be wrong. And the same can be said for most if not all of the other discrete practices and institutions which comprised the system of racial discrimination even after human slavery was abolished. The practices were unjustifiable — they were oppressive — and they would have been so no matter how the assignment of victims had been made.

Again, if there is anything wrong ith the programs of preferential treatment that have begun to flourish within the past ten years, it should be evident that the social realities in respect to the distribution of resources and opportunities make the difference. There is simply no way in which all of these programs taken together could plausibly be viewed as capable of relegating white males to the kind of genuinely oppressive status characteristically bestowed upon women and blacks.

The second objection is that preferential treatment programs are wrong because they take race or sex into account rather than the only thing that does matter — that is, an individual's qualifications. What all such programs have in common and what makes them all objectionable, so this argument goes, is that they ignore the persons who are more qualified by bestowing a preference on those who are less qualified in virtue of their being either black or female.

There are, I think, a number of things wrong with this objection based on qualifications, and not the least of them is that we do not live in a society in which there is even the serious pretense of a qualification requirement for many jobs of substantial power and authority. Would anyone claim, for example, that the persons who comprise the judiciary are there because they are the most qualified lawyers or the most qualified persons to be judges? Would anyone claim that Henry Ford II is the head of the Ford Motor Company because he is the most qualified person for the job? When it comes to the alleged qualifications for most desirable social positions — that is, jobs — the qualifications claimed to be required are not even capable of anything like systematic or statistical measurement or assessment.

Many programs of preferential treatment are directed at increasing the number of blacks in jobs in areas such as the police force, the building trades, and the corporate structures. Traditionally, they were excluded from these desirable vocations by policies of racial exclusion. In many cases black applicants today are qualified for the positions as the whites who obtained them in the past and obtain them still.

The problem here is that there are typically no agreed upon, or objectively defensible, measures of relative qualification for many of these positions. The accepted and prevailing method of entry into these vocations depends heavily upon such factors as whom one knows, how one presents oneself, and the subjective, ill-defined evaluations of qualification made by those already engaged in the management and control of the activity.

Programs of preferential treatment which make race relevant are right and desirable here both because they break the chain of interlocking factors which trade upon the favored place of whites in the society and because the whites who make the subjective evaluations concerning whom to hire are not likely to do so in a wholly fair and impartial manner.

Both objective and subjective determinations of who is the most qualified are often properly subject to the charge that what will count as evidence of superior qualification will have embedded within it an astonishing degree of preference for the perpetuation within institutions of persons, with attitudes, attributes, and styles most like those of the persons doing the selection and which have nothing very much to do at all with any genuinely definable qualifications for the job.

Given the social reality of racism and the concomitant presence of this phenomenon, a program of preferential treatment can plausibly be defended as making it more likely that positions will be filled with equally or more qualified persons than would be the case in their absence.

It is important to note, too, that qualifications — at least in the educational context — are often not connected at all closely with any plausible conception of social effectiveness. To admit the most qualified students to law school, for example — given the way qualifications are now determined — is primarily to admit those who have the greatest chance of scoring the highest grades at law school. This says little about efficiency except perhaps that these students are the easiest for the faculty to teach. However, since we know so little about what constitutes being a good, or even successful lawyer, and even less about the correlation between being a very good law student and being a very good lawyer, we can hardly claim very confidently that the legal system will operate most effectively if we admit only the most qualified students to law school.

"To admit the most qualified students to law school is primarily to admit those who have the greatest chance of scoring the highest grades. This says little about efficiency except perhaps that these students are the easiest for the faculty to teach."

"To be a member of a student body, even a member of a faculty, is not like being a violinist in the Philadelphia Orchestra or the pilot of a commercial 747."

To be at all decisive, the argument for qualifications must be that those who are the most qualified deserve to receive the benefits (the job, the place in law school, etc.) because they are the most qualified. The introduction of the concept of desert now makes it an objection as to justice or fairness of the sort promised by the original criticism of the programs. But no reason to think that there is any strong sense of "desert" in which it is correct that the most qualified deserve anything.

that the most qualified deserve anything.

There is a logical gap in the inference from the claim that a person is most qualified to perform a task, *e.g.* be a good student, to the conclusion that he or she deserves to be admitted as a student. Of course, those who deserve to be admitted should be admitted. But why do the most qualified deserve anything? There is simply no necessary connection between academic merit (in the sense of being the most qualified) and deserving to be a member of a student body.

Suppose, for instance, that there is only one resource of a certain sort in a community and that some people are more qualified to use it than are others. That means, I suppose, that they are better at using it, or that they will use it better than will others. Suppose it is a tennis court. Is it clear that the two best tennis players ought to be the ones permitted to use it? Why not those who were there first? Or those who will enjoy playing the most? Or those who are the worst and therefore need the greatest opportunity to practice? Or those who have the chance to play least frequently?

We might, of course, have a rule that says that the best tennis players get to use the court before the others. Under such a rule the best players would deserve the court more than the poorer ones. But that is just to push the inquiry back stage. Is there any reason to think that we ought to have a rule giving good tennis players such a preference?

Someone might reply, however, that the most able students deserve to be admitted to the university because all of their earlier schooling was a kind of competition, with university admission being the prize awarded to the winners. They deserved to be admitted because that is what the rule of the competition provides. In addition, it might be argued, it would be unfair now to exclude them in favor of others, given the reasonable expectations they developed about the way in which their industry and performance would be rewarded.

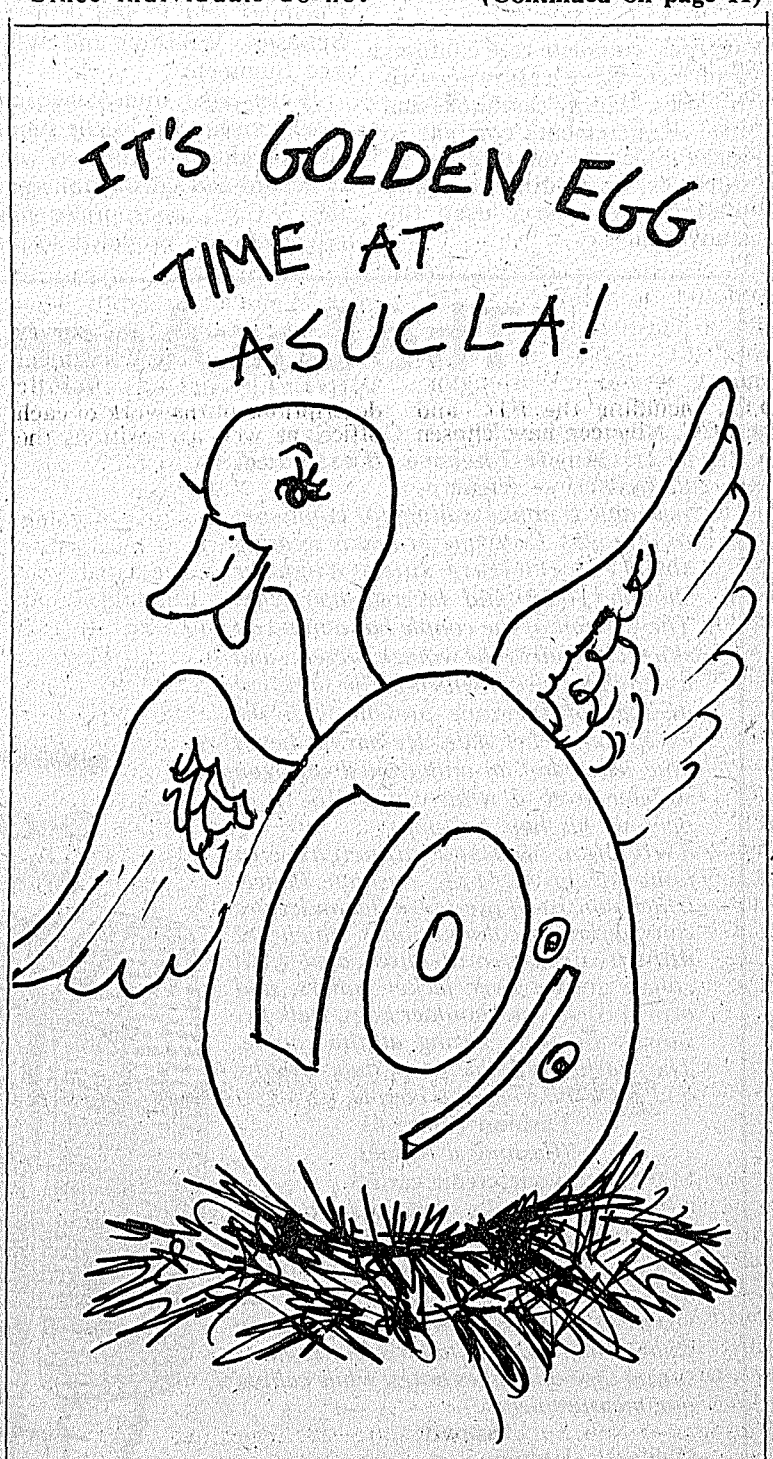
There are several problems with this argument. The most substantial of them is that it is an empirically implausible picture of our social world. Most of what are regarded as the decisive characteristics for higher education have a great deal to do with things over which the individual has neither control nor responsibility: such things as home environment, socioeconomic class of parents, and, of course, the quality of the primary and secondary schools attended.

Since individuals do not deserve having had any of these things *vis-a-vis* other individuals, they do not, for the most part, deserve their qualifications. And since they do not deserve their abilities they do not in any strong sense deserve to be admitted because of their abilities. Nor can they claim that they deserve to be admitted because their qualifications are evidence that they expended more effort than did others who now seek to be admitted.

I do not know to what degree effort either is or ought to be an important or dominant desert-making characteristic. But I do know that, if it is, it cannot also plausibly be claimed that there is any rationally defensible congruence between being the most qualified — in the sense of academically most talented — and being the highly motivated or having put out the greatest effort.

Unless one has a strong preference for the status quo, and unless one can defend that preference, the practice within a system of allocating places in a certain way does not go very far at all in showing that there is the right or the just way to allocate

(Continued on page 11)



Emanuel: How to Outline Your Own Business

by Diane Sherman

Five years ago Steven Emanuel was just another first-year law student struggling with the intricacies of civil procedure and looking to Gilbert outlines for guidance. With one difference: Emanuel decided he could build a better mousetrap. So, he wrote his own civil procedure outline and sold it to his classmates at Harvard Law School.

Emanuel, now an attorney in New York, expects to gross over $100,000 this year from sales of the four outlines which make up his Emanuel Law Outline series. Last semester, more than 4,000 students bought his revised *Civil Procedure* outline. He also sold 3,500 *Contracts*, 2,000 *Criminal Procedure* and 2,000 *Secured Tranactions* outlines.

These figures may not exactly have Gilbert executives cowering in fear, but if Emanuel is not number one, he tries harder.

'Cadillac of Outlines'

Considerable detail, case analysis, complete case citations and extensive references to treatises, leading casebooks and the Restatements combine to make Emanuel the Cadillac of outlines, according to many students who have used the study guides.

Steven Emanuel: "I looked at Gilbert and decided something more sophisticated could be done."

Emanuel's *Contracts* outline, for instance, has voluminous references to the Second Restatement, the Uniform Commercial Code and to Corbin, Calamari and Perillo, Murray, Simpson, Williston and White and Summers.

If the eager student becomes totally enthralled by the synopsis of White and Summers' view of accord and satisfaction under the U.C.C., appropriate page references are provided so that the student may turn to the original text for further enlightenment.

Not for Cramming

Because of the detail, Emanuel does not recommend that students attempt to use his outlines as crash reviews at the end of the semester.

"You can't buy the outline the night before the exam," he said. "It works much better when you use it as a tool throughout the course."

The outlines are sold most heavily in September and October, he noted.

Although Emanuel has not yet made a large dent in the California market, perhaps because California is Gilbert's home territory, he has a devoted following at Eastern law schools. As might be expected, the outlines sell particularly well at Harvard where last year over half the first-year students purchased one. "Emanuel has become de rigueur here,' a Harvard student noted.

What gave a first-year law student the temerity to believe that he could compete with the established giant of law study guides, Gilbert?

In a telephone interview from his office in Manhatten, Emanuel recalled that he was appalled at the quality of Gilbert outlines. "I decided right away that something more sophisticated could be done," he said.

In the Family

It was feasible for him to think of publishing his own civil procedure outline since his father is a printer. Emanuel's father still prints the outlines at his plant in Teaneck, New Jersey, and serves as his son's business manager as well.

Emanuel always intended his civil procedure outline to be commercial, although he never expected it to be a nationwide success.

"I never would have written it just for study group," he said. "It's much too long."

Working feverishly throughout his first year, Emanuel managed to have the outline ready by finals. Nine chapters appeared in March selling for $6 and the remaining two chapters were brought out a month later.

By the end of the school year, Emanuel had convinced 100 of the 125 students in his civil procedure section to purchase an outline. Emanuel notes that the outline did not help the class to achieve spectacular grades. Everyone in the section did poorly and Emanuel received his lowest grade in law school — a B. He attributes the mediocre grades to a vindictive, cantankerous old professor who was unhappy about Emanuel supplying the class with outlines.

"Because of that professor, our section really got screwed when it came time for Law Review," Emanuel recalled with a trace of bitterness in his voice.

Despite his B in civil procedure and another in commercial transactions, Emanuel managed to graduate from Harvard cum laude. The rest of his grades were all A's.

The Los Angeles Fashion Police: A Play

By Thomas Bliss & Gary Gam

(Ext. Movie Theatre (Westwood, California) — Night

A couple is in line waiting for admission to a movie. Everyone in line is wearing solid-color leisure suits. All have shoulder bags and layered hairstyles. The woman of the couple has a mid-calf skirt, as do all of the women present, and a matching jacket which is the same cut as that of everyone present with the exception of her date. He has on Levi's blue jeans and an unbuttoned cardigan sweater over a white shirt. His tie is narrow, his hair unkempt.

Two men, dressed identically in uniforms of the L.A. Fashion Police, which consist of pre-faded denim leisure suits, brightly colored shirts which are unbuttoned to mid-chest and with collars folded over jacket collars, and brown cordovan shoulder bags, walk by, slowly, furtively gazing at the couple. The Fashion Police stop, talk briefly, and walk back to the couple.

Fashion Police #1

(flashing a badge)

May I see your credit cards?

The crowd backs away as Fashion Policeman #2 begins measuring the male suspect's clothing. The Fashion Policeman pays particular attention to the suspect's tie width. The Fashion Policemam uses a tailor's cloth measuring tape and takes notes, while calling out measurements.

Suspect

Uhh . . . Ummm . . .

(feels pocket)

I must have left them in my car.

Woman

Oh, God, I told you that the sweater clashed with my outfit.

F.P. #1

Where is your shoulderbag?

F.P.#2

Would you please hold out your arm?

Fashion Policeman #2 measures the suspect's sleevelength.

Suspect

(extending arm) I must have left it in the restaurant.

In one Scene

Docket drawing by Susan Schwartz

F.P.#1

Where did you get that sweater?

Fashion Policeman #2 writes down sleevelength measurement and looks at the suspect sharply.

Woman

It was a gift.

F.P. #2

(suspiciously to woman) Oh? From you?

(F.P. #2 pulls a foot-ruler out of his shoulderbag and places it on the ground. Speaks to suspect) Step onto this please.

Woman

Yes, it was a birthday present.

F.PL#1

Do you realize that this makes you an accessory to the crime?

Suspect

What crime?

F.P. #2

(Stands up after measuring suspect's shoe size. He speaks these lines authoritatively and counts off the "crimes" on his fingers harshly) Failure to conform. Improper dress. Violation of the clothes curfew and no major credit cards, just to name a few.

(F.P. #2 handcuffs the suspect)

F.P. #1

And your friend here . . . *(motions to the woman)* She has contributed to the delinquency of your wardrobe by providing you with an unsanctioned cardigan which you have irresponsibly chosen to display in public. *(with emphasis)* After dark.

(F.P. #1 handcuffs the woman.)

Suspect

(he and the woman look at each other, trembling with fear and outrage. Pleading) Let her go. I asked her for the sweater.

Woman

It's 100% Alpaca wool.

F.P.#2

(as the Fashion Police begin to lead the two away) Looks synthetic to me . . . *(to woman)* Come along. We'll be needing you as a material witness.

The Subtle Art of Pornography Defense

by Terry Wood

"The first thing you've got to do is understand the difference between socially redeeming bullshitting and 1st Amendement fucking."

That was Burton Marks's response when asked how he defined terms like prurient interest and redeeming social value.

Marks, a 1958 graduate of UCLA Law School, is according to some, one of the best Constitutional lawyers in the country. His most noteworthy case, *Katz v. United States,* was argued before the United States Supreme Court in 1967 and involved the admissability of evidence obtained without a warrant by means of an electronic listening device attached to the top of a public telephone booth. The court ruled it inadmissable in a landmark decision. But Burton Marks is also well known for his legal expertise in another area — Pornography.

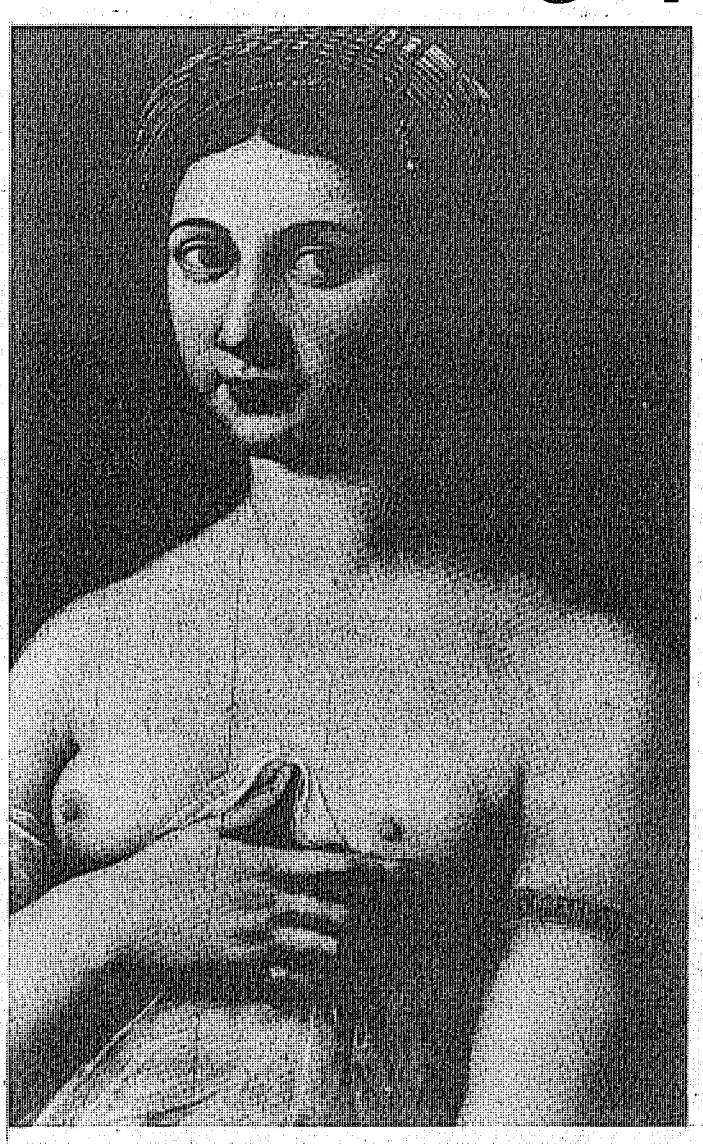
9911 West Pico, the Century Park Center with its tennis courts, health club, shops . . . From the street it's a massive, shiny rectangular structure with mirror-like windows, the kind you can't see through but feel certain they can see out of. On the tenth floor a barrage of glass, mirrors and woodgrained floors are evidence of the building's moderness. A waiting room as big as, if not bigger than, some student apartments is furnished with dark blue velvet sofas and a round wooden table displays a number of magazines neatly stacked in a circular pattern.

From waiting room to Marks' office, a walk down a long hall which, when it's not broken by some subordinate's door, is lined with the Federal Reporter. Sitting behind a desk in a large corner office is Burton Marks. He waves his visitor to a seat as he continues to speak on the telephone. Gray hair and a pale, rather harmless-looking face are the greeting. West's California Codes; Municipal Court rules; Witkin on something; and other such books take up a good part of one wall. You can see out those windows.

"Back in 1961 a statute went into effect in California and the police started raiding all of the arcades down on Main. One of the owners, Harry Shackman, called me up and asked me to defend him. For 5 years running his were the only arcades open."

That's how Marks got his start in pornography. He began his career working for a firm at a $400 a month salary. Primarily through his defenses for prostitutes, gamblers, pornographers, and the like he built up his reputation as a criminal lawyer while accumulating material assets.

A home in Malibu and this office complex are two visible signs of Marks' success. But he contends that he is not a good trial lawyer, that he just doesn't handle juries very well. Not a good *trial* lawyer, but he admits to being an excellent appellate attorney.



Appeal to prurient interests? Docket drawing by Raphael

At the trial level he works to set up as many points as possible to use later in arguing that the decision be overturned. But something more interesting goes on in the courtroom when Burton Marks is working a pornography case and it's caused by an overwhelming sense of embarrassment.

Judges, jurors, prosecutors, and spectators all react on the basis of closely held personal beliefs when faced with the sexual portrayals of different sorts put forth when questions of obscenity-versus-art are litigated: outburts of giggling; spectators and jurors sitting straight up in anticipation; prosecutors fumbling around in their frustration in a manner which serves to increase the seeming ludicrousness of the proceedings; and judges who through it all must strain to keep order and appear dignified.

One of the problems that Marks faced took place during the jury selection process. Prospective jurors would be asked it they would be prejudiced against the sight of oral copulation and would automatically say no. But as Marks points out, it's quite another for them to be physically confronted.

Because of this he once took large blown-up pictures of a couple engaged in oral copulation and flashed them before the people as he asked the question. He saw quite a few prospective jurors dismissed in that Orange County case and seemed proud of his method.

"One woman actually broke down and cried when I showed her the picture.

"The personal involvement people have with sex is always a factor in these cases."

You can take polls and most people will agree that consenting adults should be able to do as they please. But then you confront people with it and emotional reactions take over.

What about the reactions of judges?

"The same. Some of the best lawyers I know — really intelligent men — are judges, but you show them a picture and they turn off. They don't go to movies, they're very insular. And prejudice against change is very prevalent among them."

Marks uses expert witnesses to testify on behalf of his clients and finds that prosecutors are easier on women. Carolyn See testified in a number of Marks's cases and later wrote a book, *Blue Money,* about the pornography industry.

See, now an English professor at Loyola Marymount University, is certain that her being a woman was a factor during her court appearances.

"If I were a man they [prosecutors] would have asked me questions like how do you react to that picture; are you aroused? But, you know, women don't have prurient interests."

See found the trials fun. People gigled; Marks would crack jokes. And she would sit there and state that there was redeeming social value in whatever Marks was defending. Of course, she was paid for her time, not her opinion.

How did she find such value in porno books?

"Well, there's a social value in anything. You know, pig shit is very big in China.

"Shown a picture of six big burly black men attacking a small helpless-looking white lady, I could say it's a reflection of a reaction to racial oppression or something."

Is there a lot of money in porno cases? Marks thought a moment, then answered.

"There's a lot of money available and they tend to be bigger cases, and so for that reason I guess you could say there is. But I don't charge someone a higher fee — it's just that they can better afford me."

Dope cases, pornography, prostitution, gambling — Burton Marks sees his practice as generally concerned with cases which involve a conflict between the government and the individual citizen.

That sounded reasonable enough and as I sat duly noting the statement and preparing to thank Burton Marks for his time he asked me if I'd seen the picture on the wall behind me. Visions of a 3 by 3 foot picture of oral copulation went through my mind and I hesitated.

"Go ahead, turn around."

A reproduction of the painting in the Cistine Chapel in which Adam is reaching up for God and God is stretching his hand out to Adam. But there's a difference: in this painting Adam reaches up and God gives him a closed fisted thumbs down reply.

preferential treatment...

(Continued from page 9)

those places in the future.

As I see it, there is no single, unified theory of the right relationship between the idea of being the most qualified, or the best, and deserving anything — except perhaps the description of being the most qualified or the best. Here again, contexts and situations appear to make major differences.

Where the differences in ability are very slight so that, for instance, the differences in levels of performance are correspondingly small, I see no reason why in principle other criteria, such as the race of the individuals, could not justifiably be taken into account in order to achieve a better result overall.

However, to be a member of a student body, even to be a member of a faculty, to say nothing of being a banker, lawyer, policeman, or corporate executive, is not like being a violinist in the Philadelphia Orchestra or the pilot of a commercial 747. What all of them do have in common is the need for certain, identifiable competencies. What differentiates them is the magnitude of the defensible degree of difference between the wholly competent and the most able.

It is, however, a caricature of programs of preferential treatment to suppose that any of them do take qualifications to be wholly irrelevant — or even unimportant. They do not do so because, in the first place, given the existing structure of any institution, there is, almost always, some minimal set of qualifications without which one cannot participate meaningfully within the institution.

In the second place, there is no question but that the qualifications of those involved in the enterprise or institution will affect the way the institution works and the way it affects others in the society. And the consequences will vary depending upon the particular institution. They are always a part of the calculus. But all of this only establishes that qualifications, in this sense, are relevant, not that they are decisive.

This is wholly consistent with the claim that race is today also properly relevant when it comes to matters such as admission to college or law school, or entry into the more favored segments of the job market. And that is all any preferential treatment program — even one with the kind of quota used in the *Bakke* case— has ever tried to do.

The Only Bar Review That Matters

Being a law student is hard work. We spend long hours studying and outlining, reading all night until our eyes are bloodshot and looking like the morning after when there wasn't even a night before. It becomes necessary to find some type of occasional diversion, some way to get away from the books. Time limits how far you can go and for most students the expense of a weekend at Mammoth makes that alternative impossible.

There, are, however, other alternatives such as the famous lost weekend, or its more civilized version, the lost Friday night. If you remember to take two aspirin before bed you can still be up in time to watch Bugs Bunny Saturday morning and get to the library by noon. It's not good to get to the library much before noon on Saturday anyhow, because if you make a habit of it people will begin to talk behind your back and your reputation as a human being will suffer. There is still more to life than the gospel acording to Kadish and Paulsen. I think.

Drinking can be seen as a legitimate way to unwind. You just need to take care that you don't get too loose. I like to think of drinking as the reasonable man's substitute for jogging. Drinking is much easier on your shoes and if you're reasonably neat you don't need to shower afterwards. In addition you can do it in any kind of weather. Some friends who are ardent joggers suffered terribly when their daily routines were interrupted by the recent rains, but while they got behind in their training schedules we drinkers were able to continue with our daily workouts unhindered by the elements. We have the same motto as the U.S. Post Office, and roughly the same efficiency.

It is helpful to have some idea of the type of bar you're looking for. Some people like places with a nice atmosphere, sort of restrained with a bit of sophistication (you know the kind I mean, where the guy at the next table is always talking about what was on the educational channel the night before. Remember in this situatioin not to laugh at him; this is Southern California and he's doing the best he can).

Some people like their bars with music, any kind of music, and for those people there are alternatives ranging from the Fox Inn with its beer-guzzling piano player to any of Los Angeles' several disco bars. For those who like the disco type of place, you have my deepest sympathy and my sincere wishes for an early and complete recovery.

My own criteria for selecting a drinking establishment is the ceiling. Remember that the ceiling may be the last thing you'll remember seeing and if the ceiling had major flaws you may have nightmares.

The most popular bars in the immediate area of UCLA are The Bratskellar and Clancy's. They are both within walking distance of the law school and if you're careful the law school is also within walking distance of them.

Both bars are described more accurately as places to be seen than as places to drink but for social drinkers they are very nice. They are a little inconvenient for the serious drinker because of the expense of getting suitably bombed and the fact that you must face Westwood traffic when you leave.

Many Los Angeles residents are not understanding about an occasional need to sleep in the streets. In fact, some people get positively hostile.

Overall I would rate these two nearby bars good places to get together with a group, provided you can get a group of people out of the library long enough to have a drink. The first time I was invited to the Bratskellar I thought it was a subterranean day-care center, so be sure to explain the purpose to persons not familiar with the area. If you have an option between Clancy's and the Bratskellar take Clancy's: the Bratskellar has a tendency to fill up with rowdy and objectionable law studemts for several hours on Friday afternoons.

The Jumping Frog has found a way to preserve a mellow atmosphere and keep out rowdy drinkers — it's too expensive to drink. You can eat popcorn to pass the time but if you get thirsty you had better have your American Express card with you or a few blocks of Xerox.

As a further caution I might mention that the Jumping Frog is participating in a new experiment to control the number of drunk drivers on the street during rush hour. If you park your car on the street in front the police will tow it away at 5:00. I have my own suggestion for easing frustrations in rush hour: drive-thru bars. The traffic would be just as slow but nobody would care. Why do you think all those people are rushing anyway?

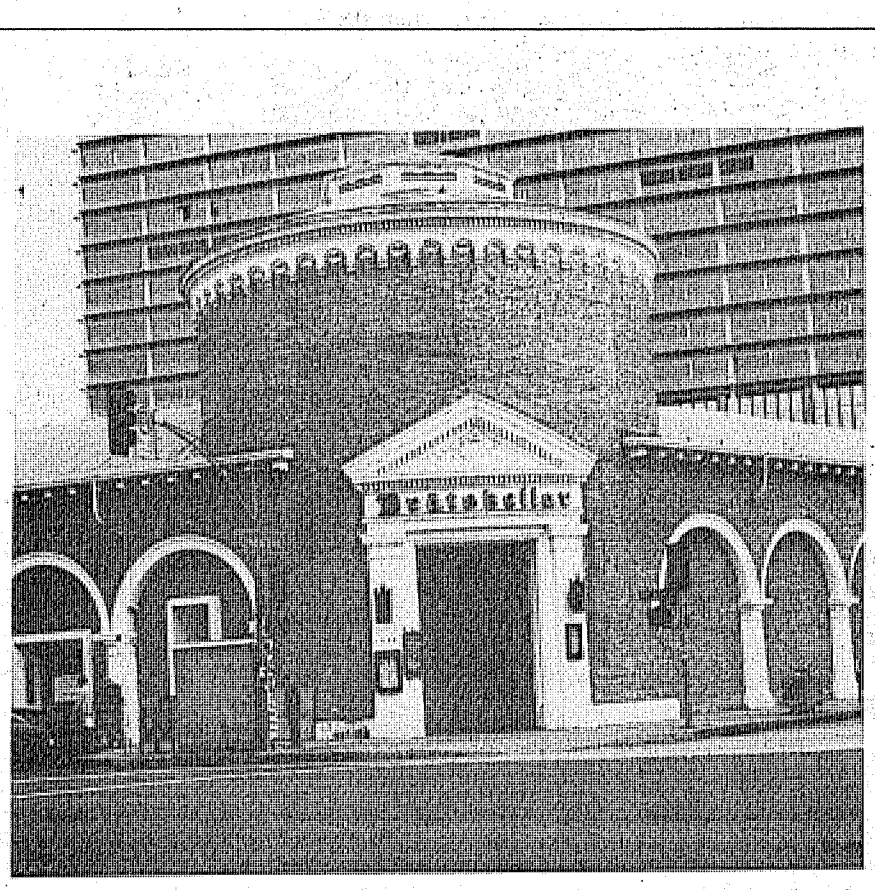
The Jumping Frog does have some food lying around during happy hours, thereby eliminating the need to break up an otherwise well-spent evening by having to stop for dinner.

The San Francisco Saloon Company, on Pico just off Westwood, has a nice combination of casual atmosphere and decent drinks. If you haven't found a place you especially like and are interested in a good place to begin an evening out, take a look at the S.F.S.C.. It's a few miles from UCLA but that may add to its attraction.

After going through several of these nice respectable bars I felt a need to look for a less reputable establishment, something a little more familiar. The Tap and Cap is a little dive down in Palms with beer by the glass or by the pitcher, and if you're a good shot on a bar-size table you can win enough beer shooting pool to satisfy your thirst. It is not recommended for those with delicate sensitivities, but if you like to drink and are not too concerned with where you do it, this is the place. It reminds me a little of a place in Arizona with a sign in the window,"A fight a night or your money back."

This is by no means a comprehensive review of the area bars but is more of a reflection on what I've seen so far of the state of the art in L.A. In the name of research I will be anxious to accompany anyone who is interested in further exploring this aspect of modern urban life. I may specialize in the night life and low life of West Los Angeles since I obviously will not be busy with Law Review or Moot Court.

The author is a first-year student who would prefer, for obvious reasons, to remain anonymous. But it's no use — everyone in Section Three knows who he is.



"Give me your tired, your poor, breathe free. The wretched refuse your huddled masses yearning to of your teeming law school."

Firestone and the Supremes . . .

(Continued from page 1)

that crossownership is a necessary financing device in time of hardship for newspapers, and that their interests are in any case protected by the First Amendment.

First Amendment or no, broadcasting is regulated by the FCC, which has the power to grant — and deny — licenses.

In 1975, after considerable waffling on the issue, the FCC finally ruled that future acquisitions would be barred if they involved crossownerships, which is to say that newspaper owners would not be allowed to acquire broadcast stations in the same market.

At the same time, existing crossownerships would not be broken up unless they monopolized the market. This meant that crossowners would be required to divest only in small towns, leaving the largest combinations in 16 large cities untouched, unless they "abused" their privileged status or violated the Sherman Act.

CCC objected to the FCC's "Grandfather clause" provisions allowing the large combinations to stay, and filed suit directly into the D.C. Circuit Court of Appeals.

"The FCC's position seemed inconsistent to us," said Firestone. "If crossownership is contrary to the public interest, how could grandfathering the existing crossownerships be in the public interest?"

The court agreed with CCC that FCC regulations were "arbitrary and capricious" — the magic words that allow a court to invalidate an agency ruling. Many crossowners looked around to arrange trades with other crossowners so that their crossowned holdings wouldn't be in the same market.

"We got a decision that went all the way if not more," Firestone said. But it was hardly a surprise, since the D.C. Circuit has in the past been very sympathetic to such challenges to the FCC. For this case, the panel was David Bazelon, Skelley Wright, and Spottswood Robinson — three liberals.

"It was like a slot machine jackpot — like getting three cherries in a line," Firestone said. The implication, of course, is that CCC may not do so well with the Supreme Court, which may be more inclined to see a businessman's right of ownership, protected by the First Amendment.

"It's going to be an uphill battle," Firestone conceded. Still, he was pleased with his performance.

"I felt I peaked. I had been working with people here on my speaking for months, and they got all the uhs and ums out. They may be creeping back in now."

He also worked on the brief in the Faculty Library until the early morning hours most days of the week. "When it's for the Supreme Court, you want it to be the best." There was help in preparing the brief from two students in the Communications law program, Fern Kaplan and Linda Lacey.

Students also bought him a good-luck tie, dark blue with little gold UCLA's running in diagonal stripes. "It turned out to be a good conservative tie. The letters showed only as stripes," unless someone looked closely.

Bedecked in his new tie and a new, dark, conservative suit, Firestone waited through the case scheduled before his own and then through the arguments of the three other lawyers in his case.

"They have you sit through the case before your own. You gain confidence as you watch and the mystique of the place wears away. I realized I knew the stuff better than the justices — and the other attorneys."

Firestone had no dearth of practice on his argument. Most valuable, he said, was a dry run before seven faculty members, who were ruthless. "As usual, the moot court was tougher than the real one."

Not that the real justices weren't probing enough. "Rehnquist questioned the value of diversity in the media. His questions were really basic — he took nothing for granted and wanted explanations for everything."

Justice Marshall appeared hostile to the idea that "someone could own General Motors, Atlantic Steamship Lines, Amtrak, four bars and grills and operate a broadcast station but a newspaper can't." He also noted that the FCC ruling, which took the agency five years to develop, "may have been arbitrary but it was certainly not capricious."

An attorney who feels like answering such a witticism had best think twice, Firestone said. "There's nothing worse than humor falling flat in a situation like that."

There were four parties to the suit. At one extreme was Firestone, arguing for affirmance of the Circuit Court's decision. At the other extreme, representing publishers and broadcastersd, was former Solicitor General Erwin Griswold, who argued against any restraints on crossownership. For the FCC, Daniel Armstrong argued the validity of the prospective ban on crossownership and the grandfather clause. Finally, Deputy Solicitor General Lawrence Wallace represented the Justice Department's view, which differed from Firestone's only on whether the Circuit Court exceeded its authority by dictating a specific rule to the FCC (something CCC and Firestone don't believe it did).

Each attorney had 19½ minutes allotted for argument. When the end approached, a red light, visible only to the lawyer arguing, would go on ("I think the justices had a light of their own").

Firestone was struck by the physical closeness of lawyers to the Justices. "We couldn't have been more than ten or twelve feet from them — much closer than you get to the judge in a trial court. It was surprising."

Women in the Law Mill: Profs Ponder Progress

By Diane Sherman and Terry Wood

"Sexism in classes was blatant. For example, some professors would pick the shyest woman in the class to ask about hypotheticals with sexual overtones so that the student would become embarrassed, red in the face."

One of 17 women in a class of 290, Barbara Brudno went to law school at Boalt Hall from 1964-67. Even though she graduated first in her class, she received neither a nomination for a United States Supreme Court clerkship nor the job offers extended to her male peers.

"They [firms] interviewed me because if they came to the law school they had to interview the people at the top of the class. And the firms that wouldn't offer me a job were wining and dining lots of men below me in the class."

Brudno was the first of the four women law professors hired by UCLA. Carole Goldberg, Alison Anderson and Susan Prager all arrived three years later, in 1972.

How do they recall their law school years when they were oddities among a sea of males? How much have things improved for women law students?

Goldberg: Women still have to be twice as competent to get the same jobs.

Supreme Court clerkship, even though she was at the top of her class.

"They told me they wouldn't waste it on a woman because they knew a woman wouldn't be accepted."

Anderson ended up clerking on the Fourth Circuit in Baltimore, Maryland for one of the few judges who would accept a female clerk.

Goldberg, who attended law school at the University of Pennsylvania and at Stanford, says women were exposed to a constant barrage of double

Brudno: Sexism in classes was blatant.

Anderson, who attended Boalt Hall and graduated the year following Brudno, says she remembers hearing about professors who were sexist, but personally did not experience any problems in class.

Remarks such as "why aren't you at home with the kids" did not upset her. She considered them stupidities rather than intentional, sexist attacks.

Like Brudno, Anderson was fused a nomination for a U.S.

entendres and sexist comments in the classroom.

She notes that when she graduated in 1971, it still had not become acceptable for women to become lawyers.

"People in general thought something was wrong with you, wondered why you were there [law school]."

According to Goldberg, hiring practices are not much better now than when she was a law student.

It is still true that women have to be at least twice as competent as men to get the same jobs, she says.

Most women in firms are still on the bottom level, notes Goldberg. And the senior partners are men who went to law school when there were no female professors and few women students; men who have not yet fully accepted women lawyers as equals.

Sex discrimination is not pervasive at UCLA, according to Prager, a UCLA graduate herself.

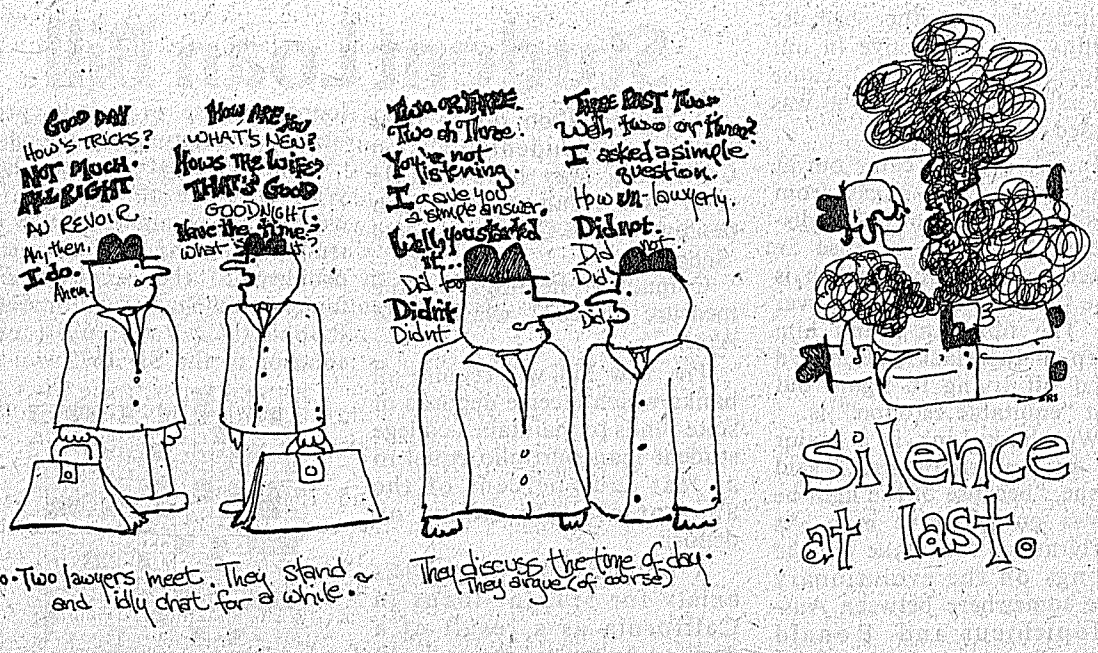
"Three women were hired here at one time. That says something."

The first woman editor-in-chief of the UCLA Law Review, Prager says she never experienced any discrimination when she was a student here.

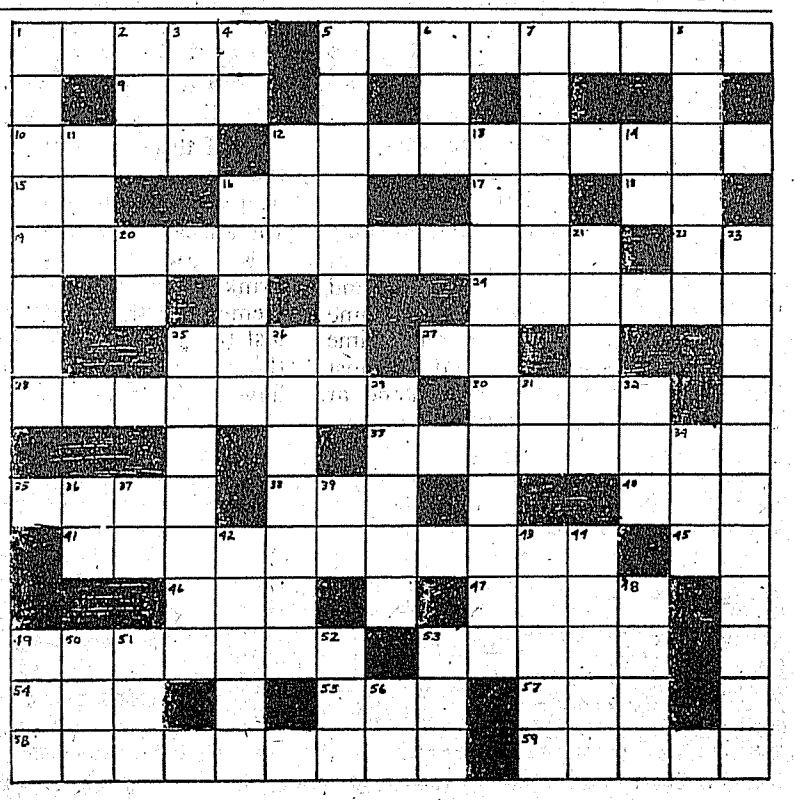
She does feel that sexism was a factor in interviews and hiring. Not hired for a summer job following her second year, Prager says she resented the fact that firms which were not interested in her then, later became interested after she had become the first female editor-in-chief of the law review.

Is it important for law schools to have women professors?

"Yes, until the society gets beyond notions that women don't participate fully in the society. It's important for younger women to see that women before them have been able to complete law school and use their educations in a productive way," says Prager.



Docket drawing by Susan Schwartz



by Dave Wright Dave Wright 2/10/78

ACROSS

1. " . . . civil wrongs not arising from contract . . "
5. fault's consequence
9. women's rights push
10. not difficult
12. change of venue (slang)
15. street (abbr.)
16. the jurisdictional "thing"
17. slangy greeting
18. Philly mayor (init.)
19. Real Property Rule
22. JFK commanded one
24. an attorney's role
25. a conspiracy
27. morning
28. almost a hit (two words)
30. above
33. Mr. Copyright (two words)
35. lawyer's favorite four-letter word
38. FDR program
40. numero —
41. she had a tort run-in with the Long Island R.R. (two words)
45. Nixon interview (init.)
46. screw-up
47. helpful reference works
49. give possession to
53. organizational rule
54. S. Ct. abortion case
55. Amateur Athletic Union
57. Int'l Union of Electricians
58. famous Constitutional litigator/author, Anthony —
59. decree

DOWN

1. an advocate must also be this
2. — judicata
3. hear a case
4. continent below us (abbr.)
5. lawyers' goldmine
7. what I do at Bruins' game (two words)
8. miler and football star, Jim —
11. consumed
12. a group of items
13. hero of 19. across, John —
14. Radio Frequency (abbr.)
16. Kingdom
20. in —: concerning
21. Biblical salt city
23. jury's role (three words)
25. hero of 1. across
26. spectre of world's energy future (two words)
29. hit
31. musical note
32. Pacific Methodist Univ.
34. omega, e.g.
36. Carson's straight-man (init.)
37. FDR's spouse (init.)
39. Hollywood Squares "regular' (init.)
42. ugly laxative
43. unite (var.)
44. willful deceit
48. "two" in Bonn (var.)
49. large time period
50. — de plume
51. Time Encoding System (abbr.)
52. small amount
53. Bowery resident
56. over-drinkers' organization

Solution on page 14

Practice in Africa No Vacation, Says Alumnus

by Terry Wood

Governmental instability and inpenetrable regulations can turn the life of a lawyer practicing in Africa into a nightmare, according to attorney Howard Manning who spoke here on Law and Trade with Western Africa. A 1974 UCLA Law graduate, Manning represents American businessmen who trade with private companies in Nigeria and Ghana.

Laws and regulations are apt to change overnight in Nigeria and Ghana, Manning said. He attributed this to the "inherently unstable" military tribunals which rule both countries.

"It's extremely difficult for an attorney to predict with any degree of certainty the government's long-term reaction to a product," he said. As an example, he pointed to the Nigerian government's recent decision to ban champagne because officials had determined that Nigerians were drinking too much of it.

"You can spend hours in the basement of the UCLA law library before you get on a plane to Nigeria only to find that when you land there's an entirely different body of law."

It also is often difficult for the American lawyer to penetrate the complicated overlapping system of English common law and tribal law which exists in Western Africa, Manning said.

And there are more mundane difficulties. Telephones do not work, traffic tie-ups make travel a problem and a simple task such as engaging a taxi is time consuming and nerve wracking. The upshot—business meetings are almost impossible to coordinate.

Despite these difficulties, West Africa has tremendous growth possibilities, according to Manning.

"Since Nigeria, the Cameroons and Ghana provide almost the entire world supply of cocoa, the three could establish the sweetest little cartel you ever saw," he said.

The fact that the Chase Manhatten Bank gives Nigeria a D credit rating is anomalous in light of Nigeria's continually expanding economy, said Manning. He pointed out that Nigeria's gross national product was $27 million last year—just one-tenth lower than that of South Africa. The D credit rating means that little capital is currently available for Western investment in Nigeria.

From the Docket Wire Services

• First-year student Baxter Hadleydale of Section Three has filed suit in L.A. Superior Court for severe emotional trauma suffered at the hands of his professors. One hour after Arthur Rosett correctly remembered Hadleydale's name in class, barbara Brudno not only did the same, but pronounced 'Ybarra," "Saglimbeni," and "Pfaffenbach" flawlessly.

The University, in its answer, calls those allegations "preposterous," but 79 witnesses say they saw both incidents and saw Hadleydale go into shock when Brudno tossed off that final "Pfaffenbach," with all the consonants in the right places. Some section 3 members say they are considering similar suits, noting that they were in the zone of danger and it was mere fortuity that they were not called on both times.

Another student, Porky Porkora of Section Three, is suing the University for tortious tediousness resulting in physical injury. His complaint states that he emerged from his legal research class in a state of dazed boredom, trudged up the second floor of the library in a trance, then fell over the railing into the reserve room below while reading an ALR annotation on singing mice.

The University's answer raises the defense of contributory somnambulism.

• Johann Jacob Froberger, a recent Ph.D. recipient in the Philosophy Department here, won a unique battle in court last Friday as well. During his eight years at UCLA Froberger never got a parking permit, and parked his 1963 Studebaker illegally virtually every day, collecting parking tickets, which he never paid, in the amount of $13,975.

When he was pulled over for a defective trunk, police discovered his delinquency in routine check and arrested him on the spot. He spent the month of January in jail awaiting his hearing, at which the judge attempted to impose the death sentence. When that didn't work, the understanding jurist allowed Froberger to roll dice for the whole amount, double or nothing. He made his point on the third roll and left court a free man. Police now want him for questioning in the Strangler case.

• University officials have confirmed that a prehistoric humanoid was found alive during the recent construction in the Law Library.

"Our hypothesis is that the creature" was quick-frozen in some Ice Age long ago and thawed during fall quarter when the temperature in the Law Library was raised above 29 degrees for the first time in history," said Desmond Moshe of the Anthropology Department.

Vice-chancellor's Special Assistant in Charge of Stuff Nobody Else Wants Roger Blomy told reporters, "We think he was aroused from hibernation by the sound of the high-speed dentist drills used in the building the new reference desk."

"Apparently," explained Moshe, "he went into hiding instinctively — either because timidity was instinctive in our biological ancestors, or because he realized how poorly he was dressed.

"In any case, he came out at night to feed on pages from Mississippi casebooks. We discovered him only because he started reading them, which is more than any law student ever did. The librarian found him asleep in the stacks, after he'd dozed off trying to figure out what "equitable estoppel" is.

"We think Link is a major find for anthropologists," said Moshe, "because of the light he throws on primitive man. As nearly as we can make out, he belongs on the evolutionary scale somewhere between Australopithicus and Ronald Reagan."

— Howard Posner

It was just like any other visit by a former president to speak at the UCLA Law School: the television cameras and newspaper reporters, the not-so-secret Secret Service and the SBA dressed up in coats and ties, the obligatory applause and the inevitable faux pas. They were all there.

The visits by Gerald Ford to the Law School February 14 and 16 were marked by the attention given to it by students who missed classes, by staff who left their desks, and by faculty who didn't cancel classes.

Although the scheduled topics for Ford's three lectures were Campaign Financing, The War Powers Resolution, and The Panama Canal Treaty, much of Ford's time at each lecture was spent answering questions on a wide range of topics. His comments included:

• 35-40 per cent of the money for his 1976 Presidential campaign was spent on broadcast media.

• The public has to express itself before Congress will respond. "Congress will do basically whatever the public insists upon."

• Will he run again? "It was an interesting, everyday challenge, and I thoroughly enjoyed it but I think it is premature to even answer that question."

• Speaking of his efforts to contact Congressional leaders during incidents where the War Powers Resolution might have been applicable, "One member of Congress had an unlisted telephone number which his aide would not give out, and another aide told the White House his Congressman did not need to be reached.

Gerald Ford

• On Bakke — "I feel very strongly against arbitrary numerical quotas. On the other hand, I feel a responsible affirmative action program can work and can make significant progress."

• "The fundamental problem in Congress today is the lack of strong leaders. I hope Tip [O'Neil] will be successful and Bob Byrd also."

• "The black caucus should not be disappointed with their total lack of successs." [It is believed Ford meant to say "their lack of total success."]

Ford's visit was part of the UC Regent's Distinguished Lecturer program. According to Law School Dean William Warren, UCLA began its quest for Ford shortly after his loss to Jimmy Carter almost eighteen months ago.

— Alec Nedelman

minority applicants...

(Continued from page 1)

LSAT is given more weight (60%-40%) because, according to Rappaport, it has proven to be a "slightly better indicator" of an applicant's qualifications than his/her grades.

About three-fifths of the 1978 first-year class will be admitted on the basis of their index numbers. Everyone who has a high enough number will be admitted, "unless, maybe, he's a convicted mother killer who hasn't repented yet. Even then," Rappaport smiled, "we may admit him."

Applicants whose index numbers fall closely on either side of the cut-off point are reviewed by the student-faculty Admissions Committee. The committee examines subjective factors, like letters of recommendation and work experience, to determine where to place such applicants on the waiting list.

Two large groups of applicants are reviewed without any reliance on index numbers at all. One group consists of LEOP applicants. Those who qualify for the program compete with each other for the 75 available seats. Again, the Admissions Committee reviews each of these applications on a subjective basis. In addition, most LEOP applicants are interviewed by someone from the Admissions staff before the committee makes its final decisions.

The second group, from which the committee selects the remaining 20 per cent of the first-year class, includes those applicants whose GPA's or LSAT scores, because of mitigating circumstances, are not accurate representations of their abilities.

The Admissions Committee subdivides this group into smaller categories. As examples, Rappaport mentioned those applicants who worked full-time while in college and thus did not receive as high grades as they could have, and also those who speak English as a second language and who as a result may have scored low on the LSAT.

Each of the applicants is comprehensively reviewed by the Admissions Committee. He noted that, in addition to seeking applicants who "have the numbers," the committee is always looking for diversity.

In talking about some of the characteristics of accepted students, Rappaport said that the proportion of women in the actual first-year class is generally greater than it is in the applicant pool. He also predicted that the average LSAT score and GPA of next year's entering class will be about the same as those of this year's group.

SBA...

(Continued from page 2)

for tenure decisions and otherwise carefully preserving faculty prerogative.

Other schools reported various informal and formal means of student participation. Most allowed students to at least meet with prospective appointees being considered and relay their impressions. Most also interviewed representatives of the student body to ascertain student opinion as to teaching ability. Some have student representatives on Appointments and/or Promotion and Tenure Committees.

One school, the University of Texas, has voting student representatives on both committees, with results the dean of the school described as beneficial.

Our request concerning the Faculty Senate has received no consideration of which I am aware by the Faculty-Student Relations Committee.

Those interested in the concept of student participation in administrative decision-making should be aware of the difficulty of its implementation. Only through concerted response to this zealous protection of the status quo is change likely to come about.

Student Loan Bill

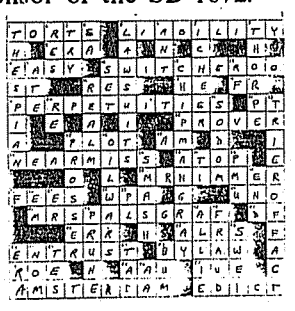
A multi-million dollar fund for college student loans in California may be available soon as a result of legislation pending in the California State Senate.

Committee hearings on the measure SB 1672, will be held April 26.

The new bill will require all banks which receive deposits of state funds to maintain a college student loan portfolio equal to at leat four percent of the amount of state money on deposit.

A potential funding crisis exists for student loans in California as a result of a decision by several major banks to cut back on making student loans because of default problems on loans made in the past.

"Under legislation passed last year, the State of California is working to eliminate abuses in student loans and to curve the problem of the excessive defaults," said State Senator Alan Robbins (D-Van Nuys), cosponsor of the SB 1672.



Crossword Answer

Diamond...

(Continued from Page 3)

judges to reciprocate. Donald Wright was not ordinarily given to witticisms from the bench, but in *Perrine v Municipal Court*, ruling that one criminal conviction should not deprive a person of the right to operate a bookstore, the Chief Justice noted "Sex crimes are not ordinarily committed in bookstores . . ." Justice Robert Gardner's entire opinion in *People ex rel Hicks v Sarong Gals* (the first one, at 27 Cal Ap 3d 46), one of Diamond's many obscenity cases, is hilarious, if a little gamey, from beginning to end.

Diamond's affiliation with the People's Lobby had led to a number of his better-known cases. So have his numerous efforts on behalf of initiations, including the ill-fated Environmental Initiative of 1972 and the recent Political Reform Initiative (the latest is the anti-smoking initiative on the November ballot).

Diamond v Bland has the dubious distinction of taking nearly a full page to cite in full. It began when Diamond sought an injunction to allow petition-signing activity in a private San Bernardino shopping center. He arrived for a hearing and found

" . . . I was out everything. But it was a lot of fun, which is the main thing."

"the president of the San Bernardino Bar association, and some lawyer from Chicago who's a big shot with Homart and Sears."

"They'd decided to make this their landmark case — the issue of access to shopping centers. Apparently I had been hometowned, because as soon as the trial was over, the judge, who used to be a conservative state senator, gave his opinion from the bench: 'There has been a constant erosion of property rights over the last 50 years —' that sort of thing."

has been a constant erosion of property rights over the last 50 years —' that sort of thing."

Diamond took the case to the California Supreme Court. He was 25, and extremely confident of victory. In his oral argument, Diamond repeatedly urged the Court to decide the case within a reasonable time, to which Wright, apparently more amused than annoyed, rejoined, "May I say, it is always our practice to reach a decision within a reasonable length of time, counsel." The record discloses laughter.

"Do you know they decided the case six weeks later, which is very fast," recalls Diamond.

Homart, the owner of the shopping center, tried four times without avail to get the case before the U.S. Supreme Court. Two

"When in doubt, make up a motion."

years later, however, the U.S. Supreme Court came down with a ruling in a similar case, *Lloyd v Tanner*, holding that there was no right of access.

Diamond v. Bland then went through the California courts again. The California Supreme Court reversed its former position to follow the U.S. Court's holding — over one of those biting dissents from Justice Stanley Mosk, who agreed with Diamond that the California Constitution should control.

Diamond petitioned for rehearing. When it was denied, he made a motion to vacate the order denying petition for rehearing ("When in doubt, make up a motion," he shrugs. "They'd done something similar on their own motion"). Diamond then petitioned three times for certiorari in the U.S. Supreme Court — unsuccessfully each time.

A bill which would reinstate right of access passed in the amicus brief for a case now before the California Supreme Court which deals with the same issue. He expects to win this time.

Interestingly, former Chief Justice Wright said last week that they might have decided the second *Diamond v. Bland* case on

"If you say it with a twinkle in your eye, they don't get mad."

independent state grounds, would it not have been such an apparent slap in the face of the U.S. Supreme Court, coming so soon after *Lloyd v Tanner*.

The California Supreme Court has appointed Diamond to represent a number of petitioners, "which is always a thrill," he says. "You don't make any money at it but it's an honor to be appointed."

He stills owns a briefcase made for him in a Neveda prison by Frank Hayes, who violated probation in California by committing armed robbery in Nevada. Diamond successfully argued Hayes' right to serve his two sentences concurrently.

"I love appellate work," he bubbles, "because you're making the law, which is something I couldn't do as a twice-defeated candidate for statewide office.

"Of course, jury trials are fun, too, because you've got a captive audience. If you're a ham like I am . . ."

The secret of Diamond's unusual style may be his emphasis on fun.

"I don't come up there and boss them around or act like a snob. I think a lot of lawyers do that. They take themselves too seriously. I don't take myself seriously, which I think helps.

"A lot of people wouldn't have asked the Supreme Court for a speedy decision. That's a little presumptuous, maybe a little arrogant.

"If you say it with a twinkle in your eye, they don't get mad."

Sometimes that twinkle is a gleam. The Roger Diamond story is as much about power as anything else. And though many of his most important cases — and initiatives — have been defeats, he has still managed to parley imagination and drive into influence, to an extent that should hearten seekers of doors into government. He shows the way, as well as some of the detours. If Roger Diamond did not exist, it might be necessary to invent him.