THE DOCKET
UCLA SCHOOL OF LAW

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April 28, 1986

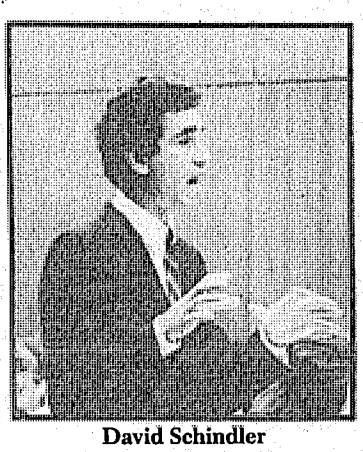
Frischling, Donahue Win Moot Court Honors

This year's Roscoe Pound Competition held on April 21, 1986, culminated the Moot Court Honor Program intramural competition for second year students. After a year long program involving over 100 participants, four finalists were chosen. David Schindler and Sandra Smith represented the petitioner, and Patti Donahue and Gary Frischling represented respondents in a complex problem addressing a city's rights to condition the grant of a cable television franchize. Patti Donahue and Gary Frischling were judged to be the top two advocates and will represent UCLA in the National Moot Court Competition.

Sandra Smith was named the school's best brief writer, and will write the brief for the national team. As a result of Sandra's participation in the national team, she will not be joining David Schindler in the Roger J. Traynor Moot Court Competition. Connie Kimball, who placed 5th overall, will be David's partner in the state competition. Jean-Baptiste Le Blanc will be the briefwriter for the Traynor competition.

Gary Frischling

Sandra Smith, Gary Frischling, Patti Donahue, David Schinder

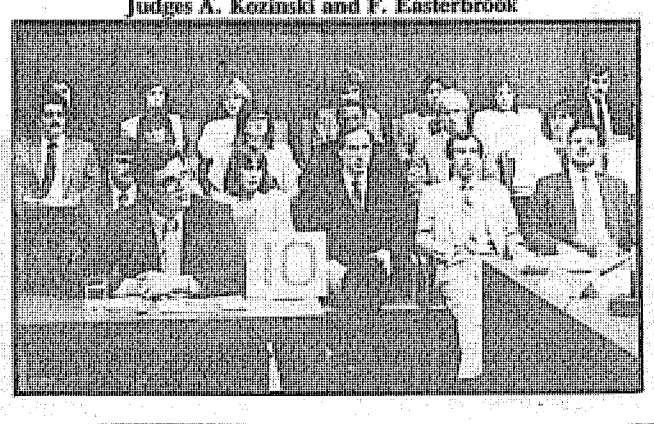


David Schindler

The Roscoe Pound Competition was judged by the three outstanding jurists this year. Recently appointed Ninth Circuit Court of Appeals Circuit Judge, Alex Kozinski and The honorable Frank Easterbrook, Circuit Judge for the Seventh Circuit Court of Appeals provided insightful and, at times humorous, interrogation of the competitors. The third member of the panel, The Honorable Otto Kaus, Retired Associate Justice of the Supreme Court of California, participated in his continuing support of UCLAW through the years.

An alumnus of UCLA for both undergrad and law school, Judge Kozinski was Managing Editor of the Law review and graduated first in his class in 1975. He went on to clerk for Anthony M. Kennedy of the Ninth Circuit in 1975, and Chief Justice Warren Burger of the Supreme Court of the United States for the 1976-77 term.

Judges A. Kozinski and F. Easterbrook



1986 DISTINGUISHED ADVOCATES

Alan Aronson
David Beckett
Adam Berns
Catherine Brame
Patti Donahue
Gary Frischling
Valerie Hink
Connie Kimball
Robyn Martin
Sandra Otaka
Lance Rosen
Archie Sanders
David Schindler
Sandra Smith
Michele Valdez
Steven Yonemura

MOST IMPROVED ADVOCATE

Chris Mercurio

BEST THIRD YEAR ADVOCATE

Anat Levy

UCLAW Grads Face Charges of Bar Exam Cheating

In a scenario most television mini-series producers might jump at, Los Angeles deputy attorney Kirk Newkirk has brought charges against UCLAW Class of '83 graduates Laura Beth (Salant) Lamb and Morgan Lamb for cheating on the California bar exam, based on information obtained from a confidential informant. Could pregnant Laura Salant have disguised herself to look like her husband in order to take the July 1985 bar exam for him? Could they circumvent the fingerprints and photo identification safeguards? Could those be her fingerprints on the typed exam? Stay tuned...

Salant, 29, and Lamb, 33, were arrested on April 11, and face 16 counts each, including conspiring to obstruct justice and forgery. Mr. Lamb is represented by Donald M. Re, known for his co-defense with Howard Weitzman of John DeLorean. Ms. Salant, who also faces 2 counts of false impersonation, is represented by Robert Shapiro, who defended Johnny Carson in drunken-driving cases.

Ms. Salant was admitted to the California bar in December, 1983. The couple moved to Houston after graduating from UCLA in 1983 an both passed the Texas bar exam. He worked for Houston's prestigious Baker & Botts and she worked for the Securities Exchange Commission. They reportedly moved back to California in early 1985 and Ms. Salant transfered to the Los Angeles office of the SEC. But Mr. Lamb failed the February California bar exam.

He was hired by the Los Angeles firm Jones, Day, Reavis & Poque in April, 1985. Burtt Fohrman, his supervising partner, told the Docket that Lamb was out of the office most of that time because his wife was hospitalized for complication of her pregnancy and diabetes. Lamb's employment with Jones Day ended in June, and he is currently employed by the Century City firm Purcher, Nichols & Meeks.

Whoever took the July 1985 bar exam in Mr. Lambs' name did very well. In fact, Mr. Lamb's scores for July are thirty percent higher than his February scores. The district attorney's office spokesman Al Albergate said, "ordinarily, there's only a 3 or 4 percent change. His was way above average." The July score was a passing score, but the bar examiners did not include Lamb on the list of those who passed.

Sources have revealed that Lamb claims the allegations are false, that he took the exam, and additionally, that his wife was in the hospital at the time of the exams due to complications related to her pregnancy.

The couple will be arraigned May 2, 1986. If convicted, they face five to ten years in prison, and disciplinary action the California and Texas state bars.

Special Counsel Rees Speaks at UCLAW

By Frank Benton

In response to increasing interest among UCLAW students about the judicial selection process under Reagan Administration, the UCLA Federalist Society invited Special Counsel for Judicial Selection Grover Rees III to speak here on March 3. Addressing an audience of over 100, Special Counsel Rees tried to shed light on the current judicial selection process.

Mr. Rees is in the enviable position of interviewing candidates for appointment to the federal bench. He narrows the field presented to Attorney General Meese and President Reagan, but does not actually participate in the selection process itself.

Answering critics of the Reagan Justice Department, the Special Counsel noted that any process of selection is almost by definition subjective. The Administration is frequently criticized for subjecting judicial candidates to lengthy interviews and for administering the so-called "litmus test." Mr. Rees noted that federal judges are appointed for life on good behavior; an interview lasting several hours is the last chance before appointment that a President may have to examine the candidate. As to the litmus test, Mr. Rees told students that many candidates come to his office eagerly seeking their litmus test. However, the Special Counsel observed that just saying *Roe v. Wade* was wrongly decided (an opinion he believes is held by liberals and conservatives alike) was not enough; the legal theory supporting such a claim was what he was concerned with.

Mr. Rees hypothesized a "purely objective" test for judicial selection. Such a test would be a point system for various degrees and professional expertise. The good news, said Mr. Rees, is that the test is perfectly objective. However, he said, the

Continued on Page 7

EDITORIAL

MILITARY INTERVIEWING IN PERSPECTIVE

Rick Aldrich

By law the military is precluded from filling its ranks with homosexuals and disabled persons. For following the law, the UCLA Law School has prohibited the military from interviewing on campus. Why? Unfortunately, most UCLA law students have only been exposed to one view of this controversy. This article presents another.

Some years ago UCLA as well as several other law schools, promulgated a policy which required prospective interviewers to sign a statement attesting to their nondiscrimination in several areas, among them sexual preference and disability. Because federal law requires such discrimination on the part of the military, the military was effectively barred from participation. Responding to the situation, Major General Clausen, the Army's Judge Advocate General, sent letters to the deans of each of the law schools having such a policy. He asserted the justification for the military's position and threatened to cut off federal funding for any schools which continued to close the door to the armed forces.

In response to this letter, President Gardner, president of the entire University of California system, clarified the policy of the U.C. as barring from campus interviewing only those who *illegally* discriminated, thus posing no bar to the military, whose discrimination is directed by law and sanctioned by the courts. After this statement was issued, approximately a year ago, a Marine Corps recruiter was allowed to interview at UCLA's Law School. His request to interview again this year was recently denied by UCLA.

The UCLA Law School administration is seeking reconsideration of Gardner's policy and is barring military interviewers pending a response from Gardner.

CHANGING THE LAW

While reasonable minds may differ as to the appropriateness of the military's exclusion of homosexuals and the disabled, the fact is it is the law. Persons who disagree with these laws should lobby Congress to change them, not deny the military of quality lawyers by prohibiting them from on-campus interviewing. The law school's administration claims it wishes to push the issue to the Supreme Court. Yet if change is really desired this seems the wrong way to go.

The military has always operated under different rules regarding the individual freedoms enjoyed by most Americans. The Supreme Court characterizes the military as a "society apart," and has perenially been deferential both to Congress's rulemaking authority over the military and to the military's own expertise in dealing with its affairs. Specifically, the Court has rendered decisions upholding curtailments of such rights as the right to trial by a jury of peers, the right to freedom from unreasonable search and seizure, the right to peaceable assembly, the right to counsel, the right to petition, and the right to freedom of speech.

Some claim the military has an inside track in influencing the laws pertaining to the military, and thus that putting pressure on the military can lead to changes in those laws. Such reliance seems ill-founded in light of the case of *Rostker v. Goldberg*, 453 U.S. 57 (1981). There the Court upheld discrimination between men and women in registering for the draft despite noting that "military opinion, backed by extensive study is that the availability of women registrants would materially increase flexibility, not hamper it."

HOMOSEXUALITY

Regarding homosexuality, 32 C.F.R. 41 App. A Section H(1) (a) is quite clear: "Homosexuality is incompatible with military service." Department of Defense Directives 1332.14 and 1332.30 are to the same effect. Article 125 of the Uniform Code of Military Justice—Congressionally passed federal law— makes homosexual acts a court-martialable offense. *Hathaway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir. 1981) *cert. denied* 454 U.S. 864, upheld the validity of this criminal statute. Very directly on point is the case of *United States v. City of Philadelphia*, 85-1422 (E.D. Pa. 1985). In that case Philadelphia had a municipal ordinance which prohibited discrimination based on sexual preference.

Continued on Page 7

The views of the author do not necessarily reflect those of the Air University, the United States Air Force, or the Department of Defense.

THE DOCKET

Raquelle de la Rocha
EDITOR-IN-CHIEF

Frank Benton MANAGING EDITOR
Sean Hargaden BUSINESS MANAGER

Staff Writers: Chris Castle, Esteban Corral, Chris Cervenak, Lori Hochman, Emily Moskowitz, Robert Roden

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EDITORIAL

EVENTUAL NON-DIVERSITY AT UCLAW

Esteban Jesse Corral
Gilbert Quinones

In 1978, UCLA-School of Law changed its admissions policies, as did many other law schools in the U.S., to make them *Bakke* safe. Minority Admissions programs were replaced with ones that sought to "diversify" student bodies. However, law school administrations across the nation promised to uphold and promote many of their prior policies, such as encouraging enrollment of disadvantaged minority students. This school also made that promise. "The Karst Report," which was voted into policy in December, 1978, stated, "In seeking a diverse student body ... (we) will select a considerable number of applicants who come from disadvantaged backgrounds."

Unfortunately, in the past eight years the school has reneged on this promise. We have experienced a decline in disadvantaged minority admittees, an increasingly differing definition of "diversity" between the Minority Associations and the Admissions Committee, and a decline in the importance "diversity" plays in the admissions process.

"Superstar" Candidates

In the past 3 years the Admissions Committee has been admitting less and less of La Raza Students Association (LRLSA) "superstar" candidates. These candidates are considered role "diversity" students.

In 1983 approximately 15 "superstar" candidates were admitted and *12* enrolled.

In 1984, 11 "superstar" candidates were admitted and 8 enrolled.

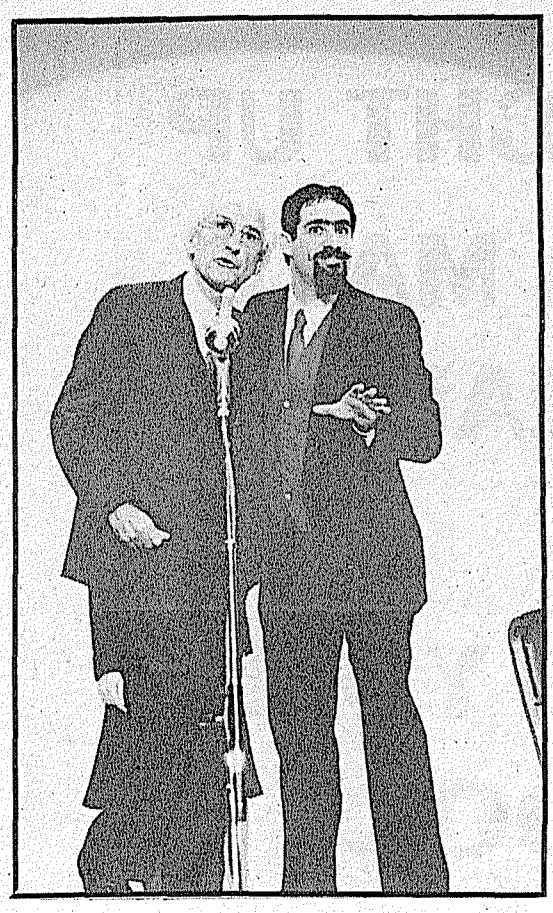
In 1985, 7 "superstar" candidates were admitted and 4 were enrolled.

Folllowing this trend, one could easily conclude that in 1986, approximately *4* "superstars" will be admitted and *0* will enroll. This downwardly sloping trend eventually means that the exclusion of minorities' "role diversity students" is inevitable.

We believe the primary reason for the school's reduction in role diversity student admissions is the school's delining bar passage rate. The claim is that minority students are contributing to this decline. Thus, their reasoning goes, if we admit fewer of them, or only admit those who have higher scores — regardless of "diversity," then the bar passage rate will go up. Therefore, more than at anytime in the past, minority student GPA and LSAT scores are painstakingly scrutinized. Thus, disadvantaged applicants whose scores have not been as high as "majority" students because of historial institutional barriers are now being closed out! The result has been that, to an increasing extent, admittees who are "Hispanic" in name only, but who do not identify with their ethnic group, are making up a larger portion of each entering class.

In our opinion, the reason or logic behind the current "close the door" trend of diversity admissions is unjustified and wrong. The institution should not single out minority applicants and reject them because the institution itself cannot properly prepare students to pass the bar exam. The declining bar passage is a general trend among *all* groups and minority students should not be singled out as scape goats in order for the institution to avoid its duty to better prepare its minority students. Moreover, other institutions with strong diversity commitments, such as U.C. Berkeley-Boalt Hall, U.C. Davis and U.C. Hastings continue to enjoy higher bar passage rates and their minority students contribute to this. It is, therefore, clear that a policy of "close the door - non-diversity" is not the answer to the "bar monster."

In conclusion, we call on the admissions committee to re-establish the school's commitment to diversity and demonstrate this commitment when considering diversity applicants. We must emphasize diversity as one that seeks to include, if not encourage disadvantaged minority enrollment. We must stop the current "close the door' trend and promote a broader diverse student body that UCLA School of Law once enjoyed. We think of those individuals who sacrificed their academic performance and lives in order to "open the doors" of these legal educational institutions. These individuals sought, in an affirmative way, to correct a wrong so that people like ourselves could receive a quality legal education. It is a tragedy that those individuals gave up so much of their lives only to have individuals of similar backgrounds now precluded from attending this institution. This dilemma must be turned around in a way that is positive and will benefit the school, the students, and in the long run, our society.



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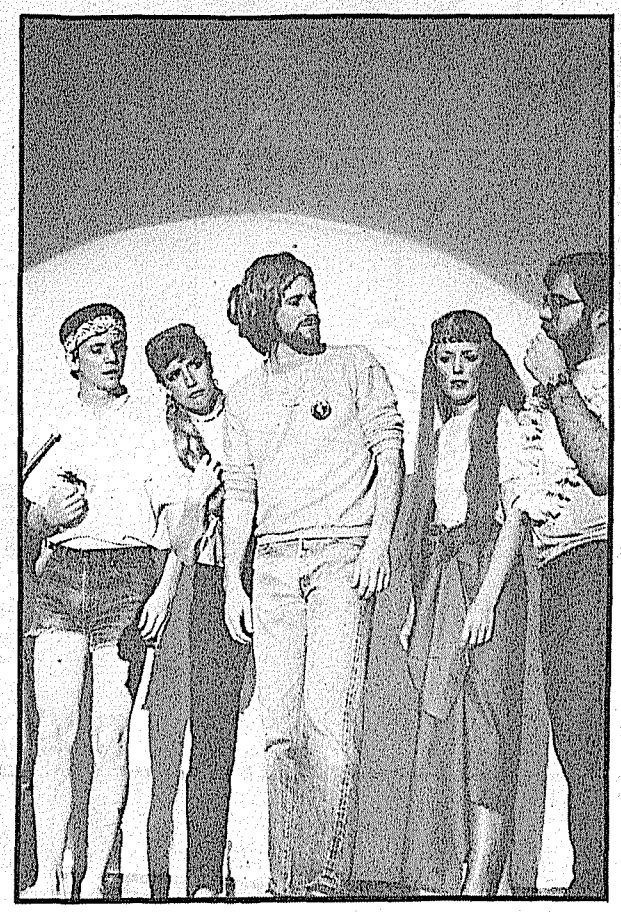

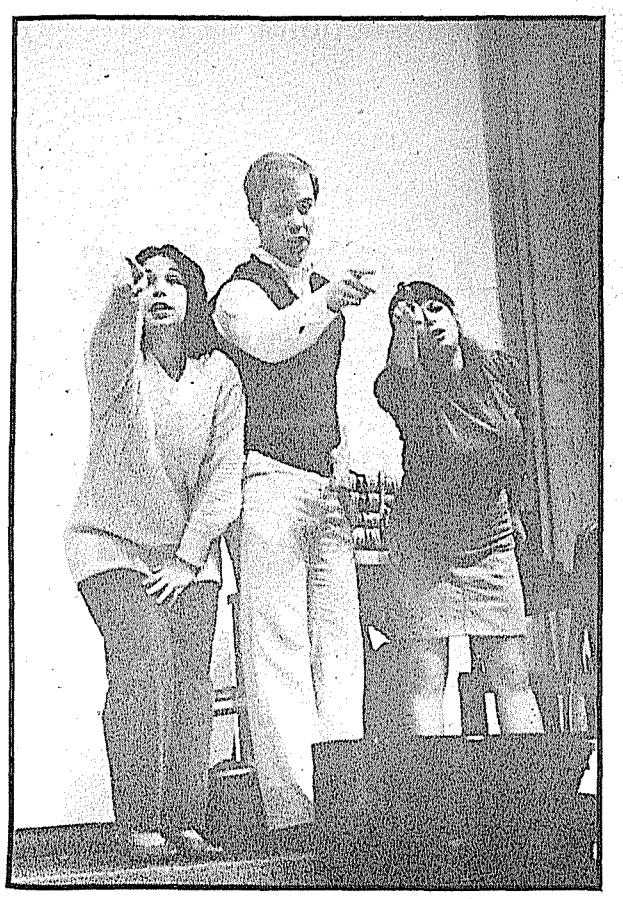

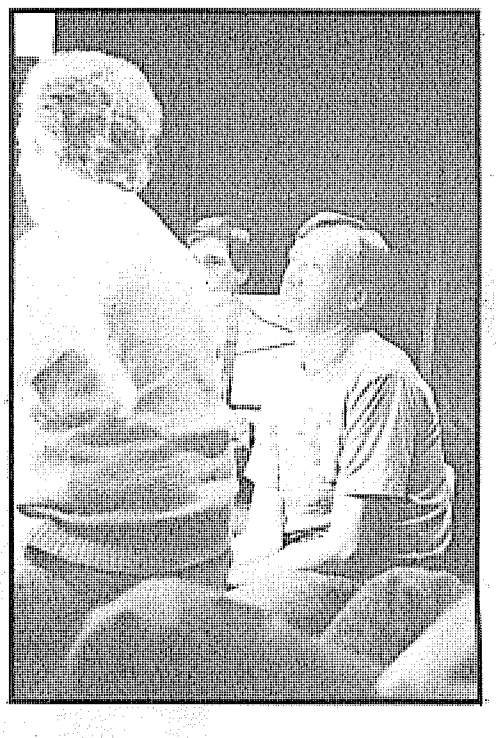

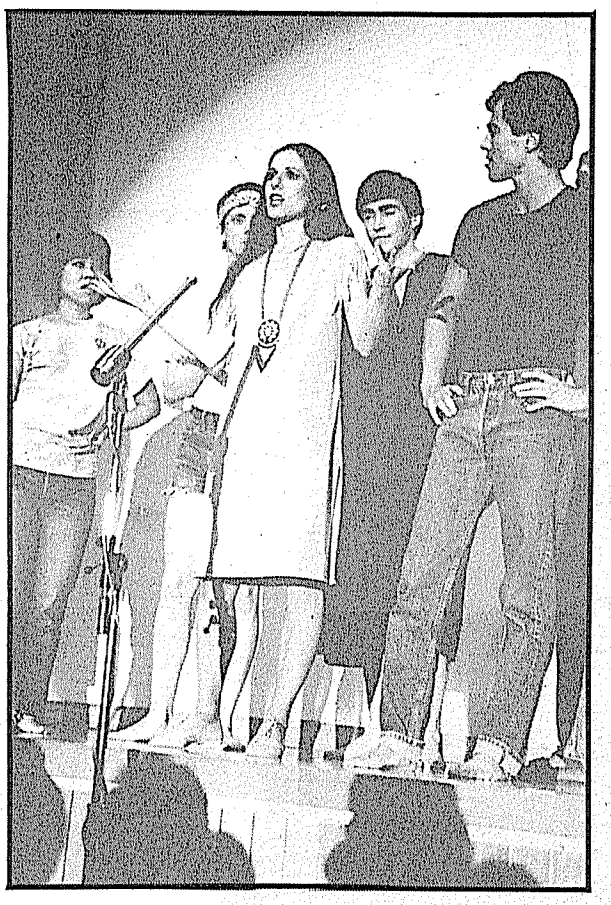

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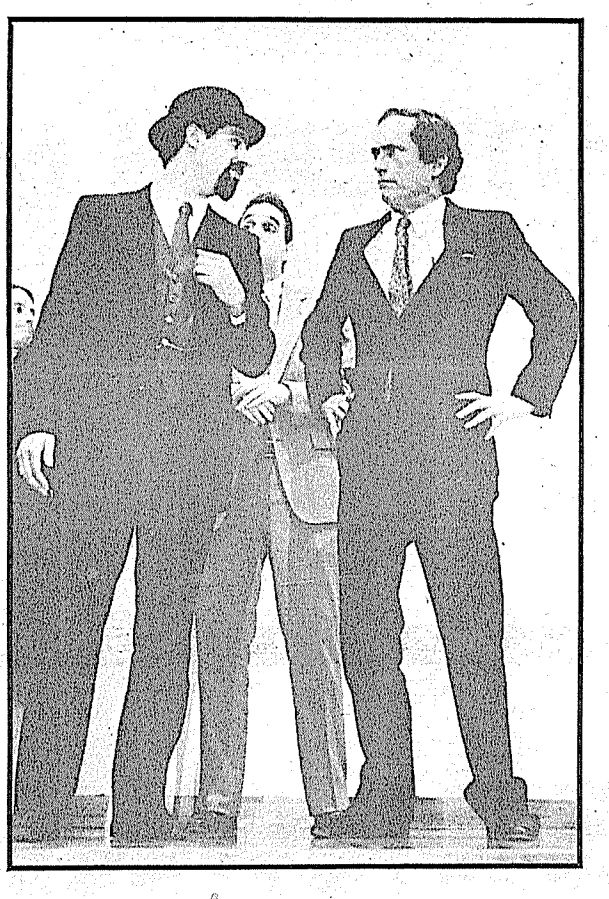

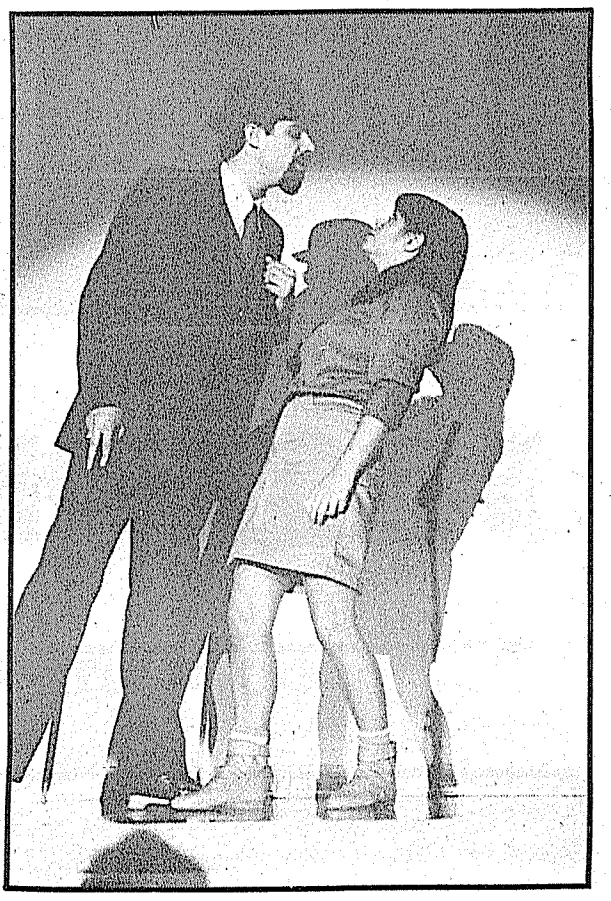

BRENNAN TURNS 80, GIVES RARE INTERVIEW

Wiliam J. Brennan, Jr. was an obscure New Jersey Appelate Judge in 1956 when President Eisenhower appointed him to the Court. Thirty years later he is the oldest and most liberal Justice. Justice Brennan celebrated his 80th birthday last week, a milestone which Justices Marshall, Blackmun, Powell, and Chief Justice Burger will all reach by the end of President Reagan's term.

Bending the unwritten rule requiring Justices to avoid reporter interviews, Justice Brennan spoke with CBS Law correspondent Fred Graham in a brief interview which aired on the CBS Morning News last week.

Graham: Do you think the Justices have been too cloistered? Does your role keep you too separate from most people?

Brennan: I don't think too cloistered, no. I think it is quite appropriate not to be too outgoing.

Graham: You've said that you favored cameras in the Court — Why?

Brennan: After all, as I've said before, our function is a public function. I don't see at all why we should limit the access of the public to those few who can get into the courtroom. I don't think we seat more than 200.

Graham: But do you think there is a danger, though, of losing some of the mystique of the Court?

Brennan: I don't think do. I would think it would increase an understanding of the Court's role.

Graham: Justice O'Connor — Has it made any difference at all having a woman on the Court?

Brennan: She's been a delight, but she's a Justice just like the rest of us. And she's very, very hard working, well prepared, well informed.

Graham: Would it make any difference if a woman were Chief Justice? Would that work?

Brennan: Why not? Certainly.

Graham: You don't think the "old boy tradition" would be shattered by that?

Brennan: I don't know of any old boy tradition.

Graham: Do you see yourself staying on until your death? How will you know when it is time to quit?

Brennan: My health is particularly good. I hope that I will recognize it myself if I have any failings that indicate that I can't carry it any longer. I would suppose that family and friends would tell me so if I didn't recognize it myself. But otherwise, I expect I will be here until the Good Lord says "that's it."

BAR TALK

An Interview with Brian N. Siegel

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

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

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

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

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

How did your students do on the February exam?

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

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

Why did your students do so well?

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

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

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

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

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

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

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

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

Military Recruiting
continued from page 2

Temple University Law School, within Philadelphia, nevertheless allowed military recruiters to interview on campus. Two gay law students filed a complaint with the Philadelphia Human Relations Commission, claiming Temple violated the city's ordinance by allowing the recruiters to interview on campus, and won. The United States appealed to the District Court. Judge Giles held the local law was unconstitutional as applied to the military because it interfered with "the constitutional powers of the United States in raising and supporting an army." He also based his decision on the Supremacy Clause. Temple had also argued a First Amendment violation which Judge Giles found "very persuasive" though he rested his decision on the other grounds. (The case is currently on appeal to the Third Circuit.)

DISABILITY

Regarding disability, 10 U.S.C. ch. 61 sets out the statutory authority for retiring or discharging enlisted military members who are disabled. The authority for precluding disabled persons from entering the military is found at 50 U.S.C. App. Section 454, and has been affirmed by the case law. The military is specifically exempted from the federal handicap laws in order to meet combat readiness requirements. meeting these requirements often means even wounded war heroes must be retired or discharged early because of their physical disability.

THE FIRST AMENDMENT

Still another argument in favor of allowing military interviewers at UCLA's Law School is the First Amendment. Should the UCLA Law School administration be permitted to restrict the free speech rights of military interviewers merely because they disagree with their views? Should UCLA law students be denied the right to hear the military for the same reason? I believe the answer in both cases should be "no." Whether one agrees with the laws and regulations under which the military operates or not, military interviewers should be given the same access as other interviewers, and the law students should be given the right to decide for themselves whom they want to hear.

Rees-Continued

bad news is that the test selected Alger Hiss.

Student questions focused on the fact that Reagan judicial appointments have been overwhelmingly white males, the implication being that this somehow indicates that the Administration is racist and sexist. Mr. Rees admitted that the appointments to date have been largely white males, with the notable exception of U.S. Supreme Court Justice Sandra Day O'Connor. He indicated that the fact of the race and sex of appointees has no meaning for him, and that he is looking for good judges, regardless of race, sex, or other special interest group attributes, in contrast to previous administrations.

The UCLA Federalist Society hosted a reception and dinner in the Special Counsel's honor following his talk. He later spoke at the Society's national symposium at Stanford Law School on March 8. At the symposium banquet, Mr. Rees entertained the some 900 Federalists present by singing original compositions while accompanying himself on the guitar.