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VOLUME 35, #1

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CONTROVERSIAL JUSTICE DEPARTMENT ATTORNEY TO SPEAK AT UCLA

BY FRANK BENTON

Assistant Attorney General Charles Cooper, the author of a controversial AIDS opinion, will speak at UCLA Law School on September 11, at 4 p.m. in room 1345. The controversial opinion supports employment discrimination against AIDS victims and victims of other contagious diseases. An inside source at the Justice Department describes Cooper as "one of the most influential policy makers and intellects in the department."

The AIDS controversy began earlier this year when the Department of Health and Human Services (HHS) asked the Justice Department for guidance in handling a group of discrimination complaints filed by hospital and clinical workers afflicted with AIDS. Lawyers in the Justice Department's civil rights section had

SEE COOPER PAGE 2

CLASS OF 1989

IT'S ARE DIVERSE, 310 STRONG

Welcome to the Class of 1989. Some years ago, the school decided to publish a First Year Pictorial edition of the Docket, to help the faculty to get to know you better and to assist you in getting to know each other.

The Class of '89 is the 38th entering class of the UCLA School of Law. The first year class members were chosen from a pool of over 4000 applicants, up over 10% from last year's applications. This is against the national trend, where law school applications are down, attributable to a smaller national age group population due to the end of the baby boom in the early sixties. The abundance of attorneys in the nation also influences students in deciding the type of graduate school to attend; many are now turning to business school instead. However, UCLA's growing national prominence and low tuition combine to make it one of the best bargains in a law school education in the nation.

The Class of '89 has approximately 310 students (as of this writing, the number was in flux due to waitlist activity) from a pool of 900 applicants who were admitted. About 60% of the entering class is admitted largely on the basis of academic ability. For that group the average LSAT was approximately 39, with an approximate GPA of 3.6. The other 40% is admitted not only on academic ability, but on other factors as well, which the Admissions Committee believes will add a diverse and interesting element to the class. For this group, the approximate LSAT average was 34, and the approximate GPA was 3.25. About 30% of the class are minorities and about 42% are women.

As this year's class pictures reflect, the law school gathers students from around the nation. Applications were received from over 420 different universities throughout the nation. Although complete statistics are not available at this time, UCLA traditionally has had the most admittees, with Berkeley and Stanford following. Judging from this year's pictures, this trend was followed by the Class of '89.

The Docket extends a warm welcome to the Class of '89 along with a hearty congratulations in doing a fine job during college to get into UCLA.



PROFESSOR KARST

UCLA LAW PROFESSOR WORKS ON CONSTITUTIONAL ENCYCLOPEDIA

by Frank Benton

UCLA Law Professor Kenneth L. Karst is an associate editor working on *The Encyclopedia of the American Constitution*, to be published on September 17, commemorating the bicentennial of the Constitution. The encyclopedia contains over 2,200 articles covering

virtually all facets of the Constitution. The articles are political, historical and legal, and are written by over 262 distinguished contributors, including articles by several UCLA Law Professors.

Contributing UCLA professors include Benjamin Aaron, Norman Abrams, Reginald H. Alleyne Jr., Alison G. Anderson, Michael R. Asimow, Grace G. Blumberg, Carole Goldberg-Ambrose, Harold W. Horowitz, Leon Letwin, Daniel H. Lowenstien, Arthur I. Rosett, Gary T. Schwartz, Murray L. Schwartz, Steven H. Shiffren, Phillip R. Trimble, Jonathan D. Varat, and Stephen C. Yeazell, and the late Melville Nimmer.

Former UCLA professors, who at the time of writing the article were at UCLA include William Cohen (Stanford), Theodore Eisenberg (Cornell), James Krier (Michigan), Gerald Lopez (Stanford), Monroe Price (Dean of Yeshiva), Stanley Siegal (NYU), and Barbara Brudno (private practice).

Professor Karst, who also wrote 125,000 words, notes the remarkable fact that "no encyclopedia of the Constitution has heretofore existed." The bicentennial of the Constitution seemed the right time for this scholarly and patriotic enterprise.

There are articles on every reasonably conceivable facet of the Constitution, philosophers who influenced the ideas of the Constitution, every Supreme Court Justice and every key Supreme Court decision through the term which ended in July, 1985. Additionally, the articles cover all political viewpoints and the editors strived to present a balanced treatment

SEE KARST, PAGE 6

LAW AND ECONOMICS MOVEMENT IN FULL SWING

Judge Richard A. Posner has little use for words like fairness and justice, "Terms which have no content," he calls them. What America's lawyers and judges (and of course, law students) need, he says, is a healthy dose of economics.

As a judge in the U.S. Court of Appeals for the Seventh Circuit, Judge Posner uses economic analysis on issues such as religious expression and the right to privacy.

In a highly controversial 1983 dissent, he argued against the widespread practice of appointing free counsel to represent prisoners bringing civil rights suits. If the prisoner can't retain a lawyer on a contingency basis, he wrote, "the natural inference to draw is that he doesn't have a good case."

This type of opinion is part of what Judge Posner calls attempts to "raise the level of economic literacy" in the federal judiciary. They are the offshoot of an intellectual movement called "Law and Economics," of which Judge Posner is a leading proponent.

The influence of Law and Economics is quickly spreading. Fueled by the conservative principles of Milton Friedman and other Chicago School free-marketers, the movement urges courts to provide incentives for efficient competitive behavior. The movement has received a boost by President Reagan who has appointed several proponents to federal judgeships. These appointments have resulted in impressive victories for the Law and Economics movement.

Law and Economics has also become the premier topic of discussion in legal academic circles, and has changed teaching practices at major law schools. Here at UCLA, Professor Wesley Liebeler teaches a class called "Law and Economics." Already, over 260 federal judges have received economics training at the Center for Law and Economics at George Mason University in Virginia. Because of the demand, the

Justice Department has sponsored economics tutorials for over 100 judges.

Law and Economics "is the most important thing that has happened in legal thought since the New Deal," says Professor Bruce A. Ackerman of Columbia University Law School.

Since the New Deal heralded greatly expanded governmental regulatory powers, economics has played a major role in American Law. However, until recently, lawyers and judges tended to ignore economic factors and analysis.

Anti-trust law is a perfect example of this. Even in the 1970's, economics played a small role in deciding these cases. Lawyers based their arguments largely on Supreme Court cases that automatically made certain transactions illegal. Law and Economics changed all of that. Judges such as Posner and Robert H. Bork, both former law professors, were appointed by President Reagan to the Federal Court of Appeals. These judges use an economic analysis to argue that most transactions, previously labeled illegal, actually benefits consumers.

The Supreme Court eventually started using the same type of approach to this area of law. By the late 1970's, corporate defendants were being exonerated based on Law and Economic findings. In the same vein, the Reagan Administration has relied on Law and Economics to justify cutting back federal anti-trust enforcement.

The movement continues to influence. Recently, President Reagan nominated Antonin Scalia to the Supreme Court. Judge Scalia, formerly of the Court of Appeals for the D.C. Circuit, spoke at UCLA last semester. Scalia mentioned that he applies economic analysis in his decisions. In fact, both Judge Posner and Bork are mentioned as likely nominees to the Supreme Court if any vacancies occur.

What judges think is strongly influenced by the nation's major law schools such as UCLA. Student-edited law reviews are cited frequently in court opinions, which are themselves usually drafted by recently graduated law clerks. The UCLA Law review will be

SEE POSNER PAGE 6

UCLA GRADUATE YOUNGEST PERSON THIS CENTURY TO SERVE ON U.S. COURT OF APPEALS

Last year, at the age of 35, Alex Kozinski became the youngest person in this century named to a federal appeals court (the Ninth Circuit Court of Appeals). He is mentioned as a candidate for the next Supreme Court vacancy. Kozinski is described as a conservative, although his views are more libertarian. He calls himself a "classical Republican," his political philosophy being "to oppose totalitarianism, because I grew up under communism and I think it is an evil system."

Kozinski was born in Bucharest, Rumania, in 1950. In 1961, because they were Jewish, his family was allowed to leave Rumania. They traveled first to Isreal but soon went to the United States.

The family arrived in Baltimore with \$5 in their pockets, but various Jewish organizations found them an apartment and a job for Kozinski's father. The parents soon scraped together enough money to buy a small grocery store. However his parents, both survivors of a Nazi concentration camp, found the Eastern winters hard, and the family moved to California.

They told their son his job was to learn, and Alex studied economics here at UCLA, which "stands for the University of Chicago at Los Angeles," he jokes. Here at UCLA Law School, he graduated first in the class in 1975.

After Law School, Kozinski clerked for a judge on the Ninth Circuit Court of Appeals. The following year, he clerked for Chief Justice Warren Burger. "I was fascinated with the process," he says. "Ever since then, it has been my ambition to be a judge." Kozinski more than fulfilled his ambitions; not only did he become a judge within 10 years of graduating from Law School, but he became the youngest person this century appointed to the Circuit Court of Appeals.

After some brief stints with a small Los Angeles law firm and a Washington D.C. firm, he devoted his spare time as a volunteer legal advisor to Ronald Reagan's Presidential campaign in 1979-80. "Ed Meese would call and need research on a legal issue, and there would go my weekend," recalls Kozinski, who says he has admired Reagan since his gubernatorial days in California.

After serving in

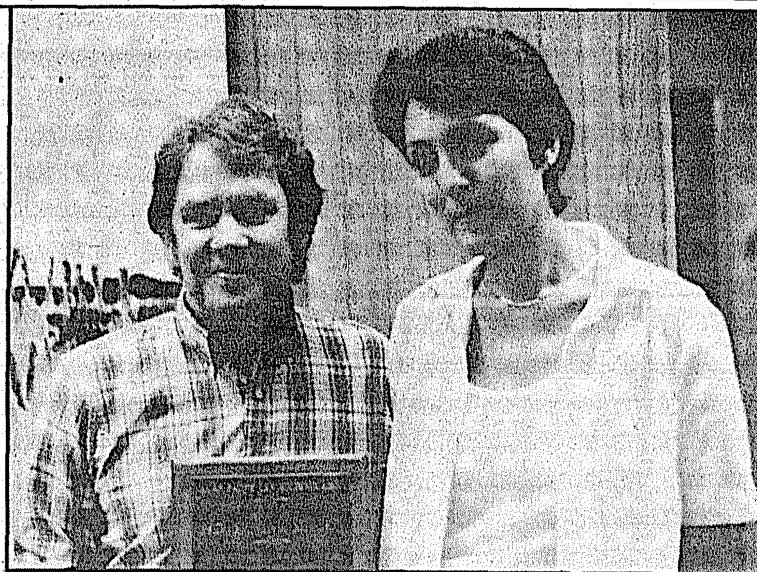
some governmental positions, Kozinski was named as Chief Justice of the U.S. Claims Court at the age of 32. Kozinski streamlined the whole operation to the point the Court handled a greater load with one-third less people. He was then nominated and was appointed to the Ninth Circuit Court of Appeals by President Reagan.

"I decide cases on the law and the facts, I try to do justice." What happens when the law is antithetical to justice? "I believe in applying the law. But when there's latitude, I believe in taking it. I agonize over my decisions as a judge. I try as best I can to understand what the law is, to understand what my function is, what discretion I have available to me; and I have frequently reached results which I thought were necessary under the law...but which I thought were wrong from some philosophical or human point of view."

Contrasting his position with that of academicians like Richard Epstein and Bernard who argue for judicial activism to counter decades of statist decisions, Kozinski says that as a judge he is strongly bound by precedent, and in a position to make only incremental improvements.

Bound as he may be by precedent, Kozinski at least alludes in his decisions to something of whose existence most judges (and law professors and students) seem unaware: the market. Whether his general sympathy for liberty in the abstract will translate into an advance for liberty in the concrete, only time will tell. In meanwhile, it will be worth our applying to Kozinski the strongest test judges themselves apply to laws: strict scrutiny.

THE DOCKET LOVES TO HERE FROM STUDENTS CHALLENGING THEIR PROFESSORS!!!!



PROFESSOR Shiffrin AND SANDY OTAKA

ASIAN GROUP RECOGNIZES UCLA PROFESSOR FOR ADMISSIONS EFFORTS

In the presence of many of the diversity candidates who were admitted by his admissions committees in the Spring, Professor/Steven Shiffrin, former Chairman of the Faculty Admissions Committee, was presented with an award by the Asian Pacific Law Students Associations (APLSA) in recognition of his sensitivity and responsiveness to the needs and concerns of the Asian Pacific American community. APLSA Co-chair, Walter Kim, noted that APLSA had put more than six-hundred hours of work into the admissions process last year and expressed the organization's gratitude for Professor Shiffrin's receptiveness to input from the organization on Asian Pacific admissions.

He has been a vigorous advocate of lowering the bar exam passage lines to promote a higher minority passage rate. He has been active in the Rose Bird retention election and participated in a debate on campus last year defending her.

Professor Shiffrin has been a faculty member at UCLA Law School since 1977, and has taught

SEE Shiffrin NEXT COLUMN

DOCKET TAKES ADVANTAGE OF THE LATEST TECHNOLOGY IN DESKTOP PUBLISHING

The Docket has a new look, courtesy of the Apple Laser writer and the latest software in desktop publishing. Capable of typesetting and printing typeset quality material, the Apple laserwriter combined with Aldus' Pagemaker was used to print and typeset this entire issue. The entire system is centered around the Apple Macintosh, which the Docket secured earlier this year. This system allows instant page lay-out, completely by-passing the typesetter. Traditionally, the old process could take up to two weeks before the paper could be viewed for proof-reading, and another week or so to paste up.

Any students interested in learning to use this technology are invited to help with the paper.

Shiffrin

CONT FROM LAST COLUMN

Constitutional Law, Criminal Procedure, and Remedies. He has co-authored a casebook on Constitutional Law with Yale Kamisar, Jesse Choper, and William Lockhart published this past spring. Professor Shiffrin will be on leave this year to teach at Harvard Law School.

COOPER

CONT FROM 1ST PAGE

determined that workers with AIDS should be designated handicapped under §504 of the Rehabilitation Act. However, after Cooper had finished redrafting the opinion, a very narrow reading of §504 was the result. Cooper's opinion excludes all HTLV-III carriers from §504 protection, determining that these carriers are not handicapped. "An immune carrier does not have a physical or mental impairment" limiting "any major life activity," Cooper wrote. Furthermore, the opinion states "the ability of victims to spread the disease to others is not a handicap." Therefore, while employers cannot discriminate against AIDS victims on the basis of their handicap (i.e. simply because they have AIDS), they can discriminate "based on concerns about contagiousness." The opinion by Cooper has drawn sharp criticism from bureaucrats at the HHS, the AMA, and even among career attorneys within the Justice Department itself.

Cooper was the Editor-in-Chief of the law review at the University of Alabama School of Law. Upon graduation he clerked for Judge Paul Roney of the Fifth Circuit Court of Appeals and later clerked for Chief Justice Designate William Renquist. Cooper is active in the Federalist Society and was a featured speaker at the Society's National Symposium last year. Cooper will be speaking at UCLAW on September 11, at 4 p.m in room 1345.

DUKEMINIER

CONT FROM PAGE 6

trust. When the person transferring the trust dies, the trust most likely will have been operating for months or years from the time it was established. By then, only the executor has standing to challenge it. Such a trust is described as "about as thick as the Chinese Wall" in terms of anyone's ability to set it aside.

Professor Duke-minier currently teaches a section on Property to first years and a section of Wills and Trusts. He has written casebooks on Property and Wills and Trusts, and is regarded as one of the nation's top legal scholars.

QUOTES FROM CLASS

PROF R. ABLE: "I LIKE YOUR PUZZLEMENT, BECAUSE I CAN'T FIGURE OUT WHAT HE'S SAYING, EITHER."

FREE RESUMES

For a limited time, the Docket will typeset your one-page resume for free! All you have to do is submit an article to the Docket about any subject of general interest to the UCLAW student body. (Of course, the article must be accepted for publication by the editors.) We have dozens of different fonts, some of which you see here. Our typesetting equipment produces professional quality resumes. Come on up and visit us in room 2467D.

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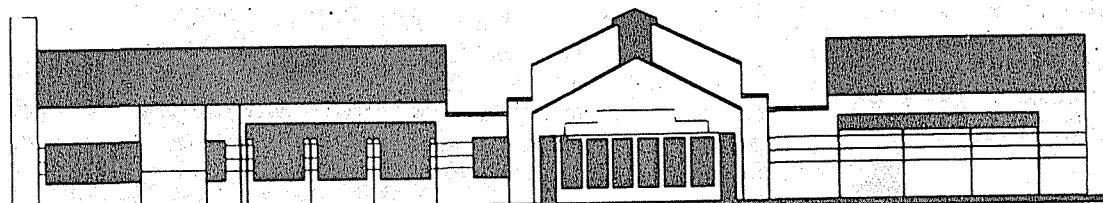
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WELCOME BACK LAW STUDENTS



Lu Valle Commons Students' Store
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APLSA ADDRESSES ASIAN CONCERNS

The Asian Pacific Law Student's Association (APLSA) was founded in 1969. The primary goal of APLSA is to address the particular legal and political needs of the Asian Pacific community. To further this goal, APLSA runs programs in: 1) recruitment and admissions, 2) student support, and 3) community outreach. As part of its commitment to encourage under represented minorities to enter the legal profession, APLSA recruits on university and junior college campuses throughout California, and will expand its efforts this year to cover high schools and community centers with large Asian Pacific populations. The recruitment drives focus primarily on the Philippino, Southeast Asian, Korean, and Pacific Islander groups, which are the most under represented branches of our Asian Pacific community.

In an effort to prepare APLSA members to meet the needs of the community, APLSA provides various support services including: 1) a big buddy program to help first years cope with the stresses of law school, 2) a tutorial program teaching outlining techniques and teacher-course specific exam-taking seminars, 3) an attorney-student mentor program in conjunction with the various Asian Bar associations, and 4) seasonal presentations on writing resumes, interviewing, and dealing with the law school stress.

Finally, to expose APLSA members to the concerns and problems in the Asian Pacific community, and in response to these concerns, APLSA participates in various community outreach programs. Although our primary commitment is to the Asian Pacific American Legal Center, which was founded by APLSA and is situated in downtown L.A., our members are also encouraged to participate in other community service organizations such as the Labor Defense Network with its offices in Little Tokyo and Koreatown.

APLSA is open to anyone who shares our organization's goals and concerns. We meet on Mondays in room 1337.

QUOTES FROM CLASS

PROF: "SO HE SEES THE BALES OF MARIJUANA. WHAT SHOULD THE PRUDENT POLICE OFFICER DO?"

1ST YEAR: "SMOKE IT"

ALL QUOTES FROM THE CLASS COURTESY OF §1, '88 and MEL

ENVIROMENTAL LAW JOURNAL EXPECTS BANNER YEAR

Already one of the top young enviromental law journals in the country, the *UCLA Journal of Enviromental Law and Policy* expects 1986-87 to be its biggest year to date. In addition to having the largest editorial board in its seven year history, the *Journal of Enviromental Law and Policy* plans to increase its readership by launching its first subscription drive since its inception.

The Journal covers a wide range of topics within the framework of enviromental law and policy. Of course, the Journal has published articles by professors and practitioners on traditional enviromental and land issues. Such issues as coastal development, nuclear regulatory proceedings, and zoning have been treated by the Journal more than once.

But also, the *Journal of Enviromental Law and Policy* has put itself on the forefront of other issues. In 1981, before the topic of hazardous waste dumping had received substantial media attention, the Journal published articles from a symposium entitled, "Hazardous Substances--Legal Attempts to Control an Elusive Problem." In the foreward to that issue, William Peters, then Editor-in-Chief, wrote that it was the editors' hope that by publishing these articles, the Journal would help "stimulate more effort and progress toward decreasing the risks that hazardous substances pose to society."

The Journal also offers a unique opportunity for students to publish their own articles. Fully two-thirds of the Journal's articles are written by students. Students have written full articles ranging from legal analysis to policy matters. Topics have included legislative developments in solar law, and a proposal for a political coalition between enviromentalists and low income housing advocates. Furthermore, the Journal encourages students who do not have the time to write full articles to publish shorter articles discussing recent developments in enviromental law, such as a recently decided Supreme Court case.

This year, the Journal looks forward to a year of further expansion. Already the Journal has over 300 subscribers. Law schools, state libraries, practitioners, and courts from around the country make up the current subscription list. But, as the Journal continues to grow, the current editorial board

believes that its readership should continue as well.

Also, this year's editorial board will be the largest ever working for the Journal. The board centers around a core of eight senior editors who are third year students that have worked on the Journal since their first year in law school. In addition, there will be nine students, both second and third year students, who will be joining the editorial board for the first time.

With an editorial board of seventeen, the Journal plans for a year of smooth operations and can guarantee that there will again be a well-trained core of editors to run the Journal next year.

Of course, the backbone of any Journal is its staff members. The *Journal of Enviromental Law and Policy* especially encourages first year students to join the Journal as staff members. Staff members work with the editors and help edit footnotes in addition to proofreading the articles before they are finally published. By working on the staff, students are trained to later assume editorial positions. Interested students should contact the Journal by leaving a note in the Journal's mailbox at the Law School information window.

SBA (Student Bar Association)

The Student Bar Association, the State-bar-affiliated body serving and representing UCLAW students, is gearing up for another active year in 1986-87. As always, among the first items on the agenda are elections for first-year representatives, including one representative for each section, and the president of the first year class. These elections are coming up within the first few weeks of the semester and all interested first-year students are urged to contact Lynne Dent, 3L.

The SBA administers a variety of ongoing programs, including sponsoring presentations by topical speakers, overseeing activities of various student groups on campus, promoting the interests of UCLAW students within the graduate student community as well as the UCLA community as a whole, and handling matters of special concern to UCLAW students.

All students who would like to get involved in SBA activities, or who have suggestions or complaints about life as a UCLAW student, are invited to contribute their thoughts and efforts. Please contact any SBA member.



MILTON FREIDMAN AND JAMES SWANSON
1986 ANNUAL FEDERALIST SYMPOSIUM

**Federalist Society
1986 National Symposium**

by Frank Benton

On March 7-9, 1986, the Federalist Society for the Study of Law and Public Policy held its fifth annual national symposium at Stanford University on "The First Amendment." Over 500 members attended and were addressed by a diverse group of judges, government officials, academicians, and practicing attorneys representing philosophies ranging from libertarian to conservative to modern liberal.

Nobel Laureate Milton Friedman delivered the symposium's keynote address, posing the question, "Do free men make free markets, or do free markets make free men?", emphasizing the importance of free speech and press to a free society. Professor Friedman argued that state interference in markets constitutes an interference with free speech, which renders the costs of free speech unnecessarily high; these costs are reflected both in transaction costs as well as the fear of efficiency-creating "whistle blowers" who fear to speak out because of potential withdrawal of government largesse. However, he concluded that he favored free speech on moral grounds as being central to the concept of a free democratic society, and not primarily on economic theory.

The symposium consisted of panel discussions on the First Amendment's impact on the political process (Judge Robert Bork, Professor Lillian Bevier, Assistant Attorney General Charles Cooper, Professor Geoffry Stone), the religious clauses and government neutrality (Judge John Noonan, Professor Micheal McConnell, Henry Holzer, Robert Cord, Authur Spitzer), permissible and impermissible content-based restrictions, (Justice-nominee Antonin Scalia, Counselor to the Vice-president Boyden

Gray, Professor Richard Epstein, Floyd Abrams, Professor Lino Graglia), deregulation of broadcast and telecommunications (John Maxwell, Bruce Fein, Henry Geller, Professor Paul Bator), and the freedom of association and the right to exclude (Counselor to the Attorney General Kenneth Cribb, Judge Frank Easterbrook, Judge Morris Arnold, Grover Rees III, and Professor Randy Barnett).

The Federalist Society at UCLA sent a contingent of eight members, including James Swanson, Class of '86, who is currently Assistant to the Chairman, U.S. International Trade Commission, in Washington, D.C. UCLA Federalists have been active in the Society's national goals, and have a seat on its national board of directors. Students had ample opportunity to meet informally with the speakers and assembled guests at several dinners and receptions, including the Annual Dinner at the Stanford Faculty Club. Special Counsel Grover Rees III, who spoke at UCLA last fall, entertained the symposium attendees over after-dinner drinks by singing several original compositions, accompanying himself on the Guitar. Not to be outdone, Judge Morris Arnold performed his own parody, "Mommas Don't Let Your Babies Grow Up to be Lawyers."

This years symposium is scheduled to be at the University of Chicago in the Spring. UCLA is rumored to be the site of the 1988 national symposium.

CHARLES COOPER

ASSISTANT ATTORNEY GENERAL

SEPTEMBER 11, 4 P.M.
LAW SCHOOL ROOM
1345



BEING FRANK

EDITORIAL

By Frank Benton

An independent judiciary is a hallmark of American politics. In the Federal Courts the judges serve life terms barring some extraordinary misbehavior or incompetence. However, in California, the people have chosen to reserve a right to review the performance of its Supreme Court Justices every twelve years.

Rose Bird supporters argue that the "right to review the performance" of the Chief Justice should be limited to reviewing her judicial competence, and not subject the court to a political litmus test. After reading Article VI, section 16 of the California Constitution, I found nothing to indicate this position at all. In fact, the Constitution says nothing on the standard of review to be used by the electorate. Aha, my liberal friends reply, the original intent of the drafters of the California Constitution provided the voters with a veto only in cases of incompetence. (These, of course are the same liberal friends who ridicule Attorney General Meese for his espousal of "original intent.")

The merits of this argument really don't make sense. How in the world can the average voter know whether or not a justice is incompetent or not? In fact, even if a voter were crazy enough to read all of her decisions, it would lead to nowhere. I'm quite sure, given the Chief Justice's case load, she does not write most of her opinions, but rather, has some law clerks writing them for her. Aside from this major concern, obviously incompetent justices would have been (hopefully) removed from the bench before any election with other means.

If not the "competence" standard of review, what is to be used? The only thing left is whether or not one agrees with the Justice's ideas of the law.

I, like most other Californians, are fed up with an active judiciary that makes the law. This is the crux of the entire "No on Bird" movement. Of course, all courts make law up to some degree, that is not the question. The real issue is to what degree we should permit our courts to engage in this type of behavior. Californians have a unique opportunity to apply, what Gideon Kanner calls, a "democratic corrective" to judicial activism that is so excessive and so out of line with the mainstream ideas of right and wrong.

The Bird Court has been creating laws in the tort field which have contributed to insurance companies abandoning risky markets, the Court has ventured into social engineering via the *Wellenkamp* (*Wellenkamp v. BofA*, 21 Cal.3d 943) decision, which brought economic havoc into the home financing market, hardly an area for the Judiciary. Another area the Bird Court has managed to stretch the law concerns the Unruh Civil Rights Act. I wonder if the Unruh Act would have been supported if it was known it would apply to such matters as forcing a boy's club to admit girls, or stamping out that ugly discriminatory practice known as "ladies night" at the local bar or carwash. And of course, the biggest example of the Bird Court ignoring the law involves the death penalty.

To summarize, the people of California have only one criteria in deciding to retain Rose Bird or not, whether or not they agree with the Chief Justice's opinions of the law. Far from politicizing the Court, this process allows the voters the opportunity to put the brakes on a Court intent with making law, and not simply interpreting it.

I believe Rose Bird has crossed the line of permissible judicial activism. And like most Californians, I intend to exercise a "democratic corrective" to a Chief Justice playing the role of congresswoman.

(Note, this view does not represent that of the Docket. The Docket welcomes all views and encourages responses)

JD/MBAs START VITA PROGRAM AT UCLAW

The UCLA JD/MBA Association has started a Volunteer Income Tax Assistance (VITA) program at UCLA in association with the Internal Revenue Service and the Franchise Tax Board. The purpose of VITA is to provide free income tax preparation advice to low income persons.

Although the JD-MBA Association is sponsoring the program at UCLA, any law student may participate, according to Chris Castle, outgoing JD/MBA president. "VITA really gets underway in January and ends, not surprisingly, on April 15," says Castle. "The IRS and the FTB will come to the law school to train students in filling out the simpler tax forms. Anyone who has had Tax I or some previous tax background would be ideal, but we can use anyone with an interest. The deal that I struck with the IRS envisions law students acting in a supervisory role, so some tax classwork would be helpful."

The time commitment will be relatively small, only two hours per week. UCLA undergraduate students provide the bulk of the volunteers, with number around 150, and the law students will participate for the first time in 1987.

Other student organizations have expressed an interest in VITA. "Several Federalist Society members will participate, and I am trying to strike a deal between the Screen Actor's Guild and the IRS for members of the Entertainment Law Society to be trained in the new tax provisions for low income actors," Castle said. In addition to people with tax experience, VITA especially needs people who are multilingual.

Isn't volunteer work unusual for JD/MBAs? Castle rejects that proposition. "Your question implies that JD/MBAs are only out for themselves, sort of the ultimate yuppie philistines. I think that is a misconception. Most JD-MBAs that I know are rather thoughtful people, with a broad view of the world. The VITA program is a good way for us to take advantage of our legal and business training to help low income people deal with their tax obligations. It may not score points with the Westside Progressive Singles wine and cheese set, but it sure does help people who are otherwise poorly prepared to deal with the Internal Revenue Code."

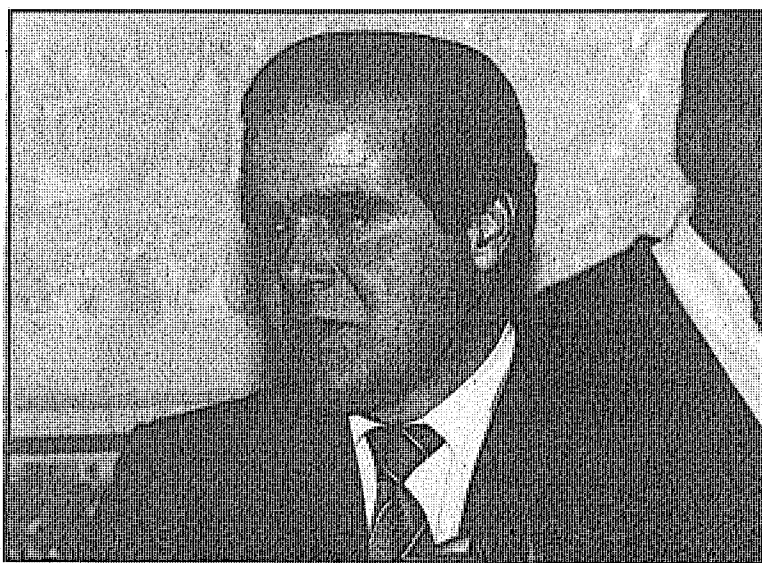
FEDERALIST SOCIETY ENJOYS STRONG YEAR

Consistent with the rising interest in traditional values among students in the Western Democracies, the UCLA Federalists made large strides toward organizational success during the 1985-86 academic year. Membership in the Society increased substantially, with over half of paid members coming from the class of 1988. Many Federalists distinguished themselves in Moot Court and the *UCLA Law Review*, in addition to editing a portion of the Society's annual symposium to be published in the *Harvard Journal of Law and Public Policy*.

Professor Steven Shiffrin of UCLA on the Rose Bird Retention election.

Two other Lawyer's Division members, Judge Frank Easterbrook of the Seventh Circuit Court of Appeals, and Judge Alex Kozinski of the Ninth Circuit Court of Appeals (and UCLA alumnus), judged the finals of the Roscoe Pound Moot Court Competition.

"It was an outstanding year," said Swanson in a recent telephone interview from Washington. "Many students remarked to me how delighted they were to have an opportunity to hear Society speakers address point of view that perhaps had been unknown to them. We hope that the law school community benefited from our contribution, and, in-



Justice Designate Antonin Scalia speaks at UCLA

James Swanson, a chapter founder and past president, won first prize in the Meiljohn Institute's national first amendment writing competition, despite the fact that the Institute's public policy agenda differs widely from that of the Society's.

In addition to academic success, Society members contributed to the intellectual quality of UCLA by bringing speakers to address "conservative" points of view in the law. Most prominent among these were Justice-designate Antonin Scalia, formerly of the District of Columbia's Circuit Court of Appeals and a professor at the University of Chicago law school. Scalia was the first Federalist Society chapter at Chicago, and is active in the Society's Lawyer's Division. Other outstanding speakers included our own Professor Wesley Liebler speaking on the history and theory of the Law and Economics movement, Special Counsel for Judicial Selection Grover Rees III who spoke on his role in selecting federal judges for consideration by the Reagan Administration, former FCC General Counsel Bruce Fien who addressed cable television issues, and Boalt Hall Professor Philip E. Johnson, who debated

deed, many students attended our presentations." The Federalist Society embraces members with widely varied views, and we invite speakers who we hope will stimulate thought and discussion in a spirit of good fellowship and academic excellence.

This year, the Society expects another strong year. This year's tentative speaker list includes, Richard Posner, Alex Kozinski, Charles Cooper, Richard Epstein, and others.

The Society welcomes all students who believe the proper role of the Judiciary is to adjudicate, and who believe in free market principles.

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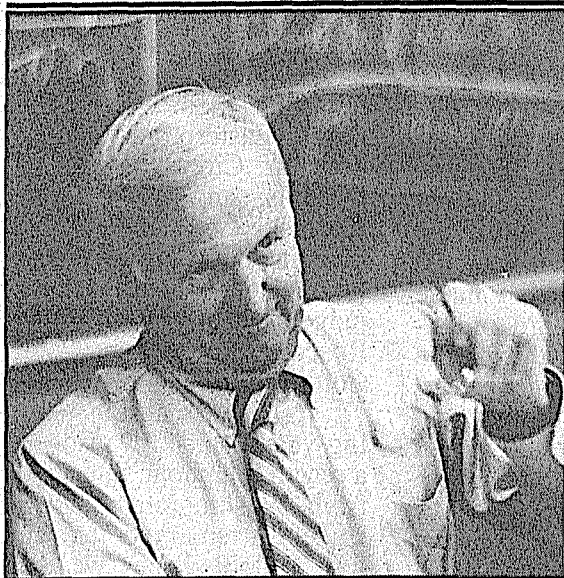
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UCLA LAW'S JESSE DUKEMINIER

THE CONTESTED WILL: UCLA'S PROFESSOR DUKEMINIER SUGGESTS IT'S TIME TO ABOLISH THE CONCEPT OF UNDUE INFLUENCE

Robert Kauffman, a millionaire by inheritance and a talented artist, willed nearly his entire estate to his friend, Walter Weiss. With Robert's will was a letter to his relatives, explaining that Walter had given him "a healthy, balanced sex life" during the ten years they had lived together. The family sued on the grounds of undue influence. After a long legal contest, two juries sided with the family. Ultimately, the New York Court of Appeals ruled in favor of the family.

The will of Fanny Taylor Moses, a Mississippi widow, left most of her fortune to Clarence Holland, her lover for many years. He happened to be much younger than Mrs. Moses. Relatives succeeded in overturning the will, despite the fact the Mrs. Moses had known clearly what she was doing. The state's highest court viewed her sexual relationship with a younger man as compelling evidence of undue influence.

These two cases illustrate some important estate planning problems for persons who are sexual minorities, says Professor Jesse Dukeminier.

"Modern law has not shaken off the prejudices of the Victorian era, when sex outside marriage was regarded as immoral, and modern cases show that juries regard unmarried lovers with a cold eye," he observes.

When mental capacity is the issue in will contests, jury decisions are often reversed on appeal to higher courts. The reason is that mental capacity is easily defined and courts can control juries in applying the definition.

By contrast, appellate courts seldom reverse a jury finding on undue influence. The

reason, Professor Dukeminier has found, is that undue influence in very vague. "The fundamental problem with undue influence," he observes, "is that it permits a majoritarian view of appropriate behavior to limit free-will testation. It permits discrimination against persons who have unusual relationships. Remember, juries are composed primarily of middle-aged, middle-class persons; they may think undue all kinds of behavior perfectly acceptable to persons who do not share their narrow perspective. What they think undue may give the testator much comfort and pleasure."

The law currently has a concept of undue influence which is very broad, which permits juries to roam at large among human behavior and upset wills which, in Professor Dukeminier's judgment, are quite justifiable. "If you have a sustained sexual relationship with any person, that person is a natural object of your bounty. A sustained relationship should rebut any inference of undue influence which might arise from using sex to get a bequest or legacy."

When he spoke earlier this year to a national conference of law professors on this issue, Professor Dukeminier suggested that "we ought to think about abolishing undue influence entirely," or at least keep it only as a safeguard against lawyers who draft wills by which they profit and persons who furnish medical care to the testator.

"We ought to challenge vigorously the concept of undue influence," he said. "Until we eliminate or narrow the concept, it is a major stumbling block for lesbian and gay couples in estate planning."

Professor Dukeminier suggests a strategy to avoid will contests over undue influence. Such contests can be avoided by disposing of assets through revocable inter vivos trusts, a trust created between living persons.

There are practically no successful challenges to such a trust. While the person disposing of property through the trust is still alive, others such as family members are only heirs apparent; they have no standing to challenge the

POSNER
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publishing an article by Professor Liebler, an example of the growing influence of Law and Economics.

Most major Law Schools now offer survey courses on Law and Economics for first years. Although UCLA is behind in this regard, UCLA does offer an elective course on Law and Economics.

Many legal scholars are predicting that the movement will contribute to shaping a different kind of lawyer, one who is more respectful of private arrangements and who doesn't assume that they need to be regulated.

Judge Posner has written the bible of the movement, "Economic Analysis of Law," which will be reviewed by the Docket in an upcoming issue. When people describe as unjust the convicting of a defendant without trial or taking of property without just compensation, Posner argues that they simply mean "the conduct in question wastes resources."

In another controversial opinion, Judge Posner analyzed the costs and benefits of permitting Jewish high-school basketball players to wear yarmulkes attached with bobby pins during games; the school league had banned "headgear" because it might fall off during play. He resolved the issue by putting the burden on the students to devise a way of following religious law while staying within league rules. As a result, the Jewish ballplayers and league officials agreed on a more secure type of hair pin that would permit them to cover their heads while playing.

Judge Posner scoffs at criticism of his technique. "Many of my opinions would be more likely to use a word like 'cost' than other judge's opinions," he says, "but to the extent that it's simple commonsensical balancing approach, it's nothing new."

Judge Posner also welcomes controversy. "People don't bother to be hostile to things unless they fear them," he says. Much resistance to Law and Economics, he adds, comes from lawyers and judges who don't understand it and may feel threatened with "intellectual obsolescence."

Law and Economics is well entrenched and expanding within legal circles. UCLA Law School may be doing its students a disservice by not offering a survey course in Law and Economics during the first year. Particularly in light of the Reagan administration expectation of having appointed more than half of

the Federal Judiciary. Professor Liebler will be teaching his course in Law and Economics next semester, open to all second and third year students.

KARST
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of any one subject.

When Charles Evans Hughes was Governor of New York early in this century, he observed that "the Constitution is what the judges say it is." That remark was an understatement, notes Professor Karst in a preface to the new encyclopedia. "If the Constitution sometimes seems to be chiefly the product of judicial decisions, it is also what Presidents say it is, and legislators, and police officers, and ordinary citizens, too. In the final analysis, today's Constitution is the product of the whole political system, and the whole history of the many peoples who have become a nation." Professor Karst adds.

"For some readers, an encyclopedia article will be a stopping point, but the articles are intended to be doorways leading to ideas and to additional reading, and perhaps to the reader's development of independent judgment about the Constitution. After all, when the American Constitution's tricentennial is celebrated in 2087, what the Constitution has become will depend less on the views of specialists than on the beliefs and behavior of the nation's citizens."

Professor Karst became involved in this project when the Editor, Leonard W. Levy, contacted him in 1978 with the idea. Professor Levy is a historian and needed a legal scholar to help with the editing. After drawing up a list of twenty-five of the nation's top legal scholars, both professors began contacting them about the idea. The list was expanded and virtually all those contacted agreed to contribute. One regret that Professor Karst has is that the list was drawn up in 1978, unfortunately leaving off some emerging young scholars whose works were published after the list was made.

When Professor Karst was asked about the responsibility of editing some of the nation's top scholars, he replied that there was no correlation between the difficulty of degree and a particular scholar's reputation. One problem he experienced was editing technical legal terms into a form readable by the general public without the article losing its conciseness.

The *Encyclopedia of the American Constitution* is scheduled to be released

this September 17th and is published by MacMillan Publishing Company under a grant from the National Endowment for the Humanities.

AMNESTY INTERNATIONAL

Amnesty International is represented on campus by an independent association of law students ("the group") who meet on a regular basis to contribute their efforts toward carrying out the organization's mandate. The parent organization is a worldwide movement which is independent of any government, political faction, ideology, economic interest, or religious creed. The organization focuses on working for the release of men and women detained anywhere for their beliefs, color, sex, ethnic origin, language, or religion, provided they have neither used nor advocated violence. Amnesty International refers to such detainees as "Prisoners of Conscience."

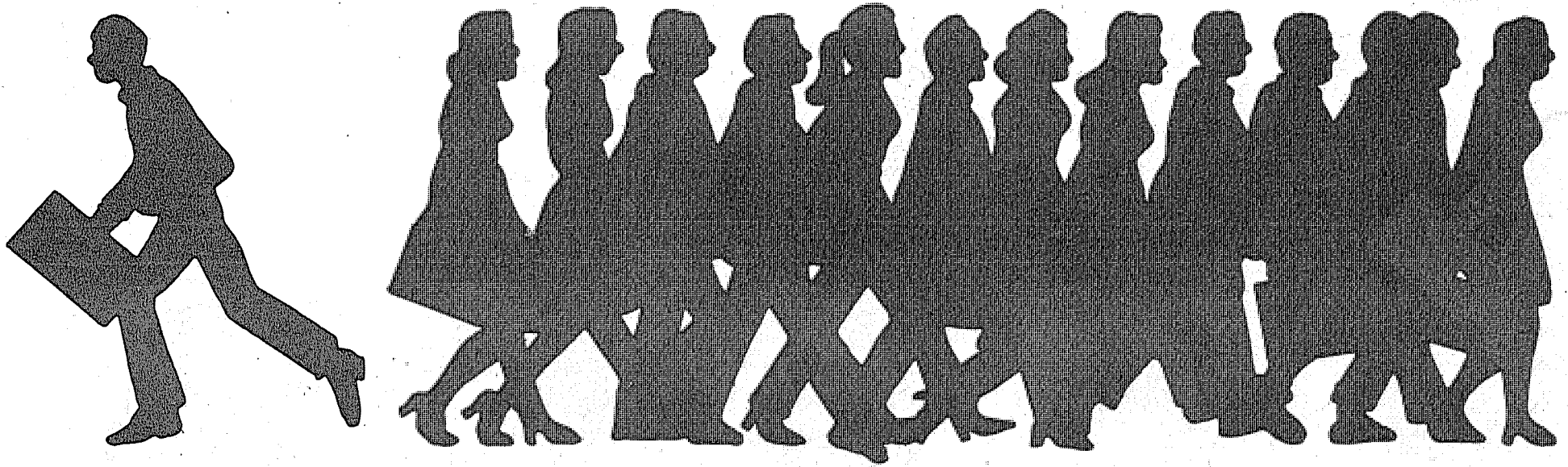
ACTIVITIES:

At the UCLA School of Law, students wishing to support the efforts of Amnesty International may participate in a wide range of activities. For example, the group periodically sponsors literature tables which publicize letter-writing campaigns and gather petitions on behalf of prisoners of conscience. On a more personal level, several of the group members worked on research projects dealing with legal issues of interest to Amnesty International. In conjunction with the school's International Law Society, the group sponsored several panel discussions and lectures on human rights and related issues. In one case, the two student organizations sponsored a discussion with Professor An-Na'im on human rights problems in his homeland, Sudan. They have also arranged a panel discussion on terrorism and a debate on the status of international human rights law. If you would like to be a part of this worthwhile organization, please contact Connie Kimball (third year) for more information.

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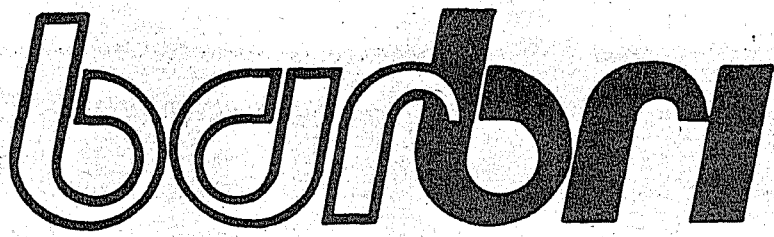
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