# 3 WIN MOOT COURT HONORS

# CONTRA

## Evaluation of 'Get Tough' Policy in Antitrust Suits

### 'CAUTION'

*By JULIAN O. VON KALINOWSKI*

There has been a great deal of talk in recent months about the "new" and "tougher" attitude of the Kennedy administration toward violations of the federal antitrust laws. This "get tough" policy has manifested itself in both criminal and civil cases. In a speech before the Antitrust Section of the American Bar Association, given on April 7, 1961 by Assistant Attorney General Lee Loevinger, the administration's policy in criminal cases was stated as follows:

> "Conspiracy to violate the antitrust laws is economic racketeering which gains no respectability by virtue of the fact that the loot is secured by stealth rather than by force. Those who are apprehended in such acts are, and will be treated as, criminals and will personally be subjected to as severe a punishment as we can persuade the courts to impose."

On other occasions, Loevinger has made clear that the administration's concept of "severe punishment" means jail sentences for corporate officers found guilty of antitrust violations. He was quoted in the October issue of *Docket* as having declared in a speech given at UCLA Law

**(Continued on Page 6)**

### 'COMMENT'

*By ROBERT L. JORDAN*

I agree with much of Mr. von Kalinowski's statement and such disagreement as there is between us is largely a matter of degree and emphasis. However, there are a few points on which I would like to comment.

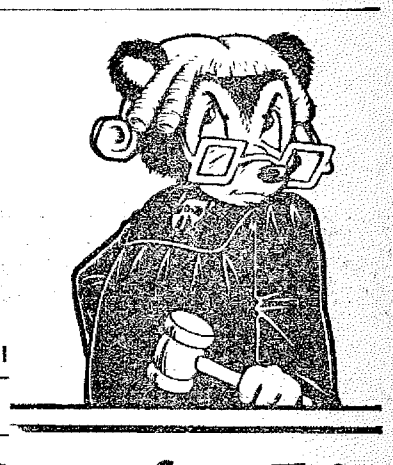
In discussing the question of whether criminal penalties, particularly jail sentences, should be imposed on individuals for violations of the antitrust laws, it does not seem helpful to describe such violations as "white collar" crimes. I don't know exactly what this term is supposed to mean, but too often it has been used to create the impression that because violations of the antitrust laws are generally made by otherwise respectable businessmen rather than by "criminals" they should be treated as something less than "real" crimes. Embezzlement and income tax fraud can also be called white collar crimes, yet we are not shocked if a perpetrator of one of these crimes is sent to jail, even if he is otherwise a respected member of the community. Nor is the degree of moral turpitude involved in some antitrust violations less than that of many other "white collar" crimes for which jail terms are normally prescribed.

**(Continued on Page 6)**

**JULIAN VON KALINOWSKI** is a member of the ABA Committee on State Anti-Trust Laws and the State Bar of California Committee on Legislative Proposals re monopolies and restraints of trade. He has written numerous articles on corporation and anti-trust law, appearing in such publications as the University of Virginia Law Review, the Pennsylvania Bar Quarterly, and the UCLA Law Review. He also co-authored a text on the "Legal Aspect of Doing Business Under the Anti-trust Laws" for a 1960 symposium of the Continuing Education of the Bar. Von Kalinowski was an honor graduate of the University of Virginia Law School in 1940. He taught Constitutional Law at Loyola Law School in New Orleans for one year before entering the Navy where he served during World War II. Immediately afterwards, he affiliated with the law firm of Gibson, Dunn and Crutcher, where he has been a partner since 1953.

**ROBERT L. JORDAN** is Acting Associate Professor of Law on the UCLA faculty, teaching courses in Business Associations and Antitrust. Jordan did his undergraduate work at Pennsylvania State and earned his LL.B. at Harvard Law School in 1951. After serving in the Air Force during the Korean conflict, he practiced corporate law in New York for several years before coming to UCLA in 1959.


# UCLA DOCKET



Vol. VI—No. 2 December 1961

UCLA Law Students' Association


# National Finals Next Stop for Trio

By JAY FOONBERG

On December 18, three third year UCLA law students will leave Los Angeles bound for New York City and three days of grueling competition in the final rounds of the 1961 National Moot Court Competition. For the three, Gary Goldman, Luke McKissack and Ronald Fidler, these three days are in effect the result of three years of preparation.

**As first year students they participated in the first year competition arguing before second year students who were their judges. They were among the 16 first year students chosen to go on to second year competition.**

As second year students they sat as judges in the first year trials, and argued three cases before judges of the District Court of Appeal and the Superior Court. As a result of being the top three in the second year competition, Goldman, McKissack and Fidler earned the right to represent UCLA in the National Competition.

Earlier this semester they defeated teams from USC and the perennial champion, Loyola University, to earn a place in the finals.

**In New York the team will compete with teams from 15 other law schools in four rounds of "sudden death" elimination trials. The first round judges will include justices from the New York Court of Appeals and from Federal District Courts. In the final round the judges will be from the United States Supreme Court and United States Circuit Courts of Appeal. Thus the teams will be subjected to the close scrutiny and examination of the leading jurists on the state and federal level.**

Goldman is 24 years old and received his B.S. degree here at UCLA in Accounting. As an undergraduate he was a member of Beta Gamma Sigma, the national business honorary. Gary's wife, Barbara is also a UCLA graduate.

Typical of the high caliber of Moot Court competitors, Gary stands in the upper 20 per cent of his law class. He is a member of Phi Alpha Delta Law Fraternity. Upon graduation he hopes to specialize in Tax and Corporate Law.

McKissack is also 24 years old and received his B.A. degree from the University of Florida in Political Science and Philosophy. Long interested in forensics, Luke began in high school where he was

**(Continued on Page 7)**

ON TO NATIONAL Moot Court finals in New York during Christmas vacation is this trio of UCLA students composed of (from left) Ron Fidler, Gary Goldman and Luke McKissack.

# Council Hits Interview Bias

On Nov. 28 the LSA Executive Council adopted the following resolution by a vote of 5-2. The resolution was introduced by Vern Davidson, president of the Council.

"LSA Council wishes to call to the attention of the administration the fact that certain law firms, while taking advantage of the facilities of this state law school, have flagrantly violated the public policy of this state as to fair employment practices.

"That public policy is expressed in section 1411 of the California Labor Code as follows:

**'It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the rights and opportunities of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religious creed, color, national origin or ancestry.'**

"Further for those firms which have five or more employes their actions have been in violation not only of public policy, but also state law. By the act of knowingly furnishing facilities and arranging interviews for such firms the Law School would appear to be in violation of section 1420(e) of the Labor Code which reads:

**'It shall be an unlawful employment practice. . .(e) For any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this section or to attempt to do so.'**

"The acts specifically forbidden and the violation of the law consisted of pre-employment inquiries into the job applicant's race, religion, color, national origin or ancestry.

"We feel that it is especially disturbing to find such violation taking place in a state

**(Continued on Page 7)**

## Niles, Summers, Kasindorf Win De Garmo Award

Three second year law students, Larry Kasindorf, Alban Niles and Anthony Summers, were this week announced as winners of the Henry and Emma De Garmo Scholarship for the academic year of 1961-62.

In 1948 G.C. De Garmo of Los Angeles contributed $20,000 to establish and support a scholarship as a memorial to his parents, Henry and Emma De Garmo, for students in the UCLA School of Law.

The scholarship is open to second and third year students on the basis of distinguished scholarship records and need.

# Law Students Thus Far Escaping Stepped-Up Military Activations

Recent reactivation of military reserve units and a stepped-up draft call have only marginally affected the Law School thus far.

To date, only two men have been called to active duty, but the possibility of further reactivation of reservists and drafting of non-deferred students has increased substantially. Advanced national military requirements have also marginally affected the size of the first year class and have caused concern on the part of students, according to James L. Malone, assistant dean of students.

**If a reservist's unit is called up, nothing can be done, Mrs. Lucille Porter, head of the Special Services Department, indicated. (Special Services is the University's liason with the military.) Most law students, however, will probably not be affected.**

Mrs. Porter advised that, normally, as long as a non-reservist was in Law School and doing satisfactory work, he would be allowed to continue for three years. There has been no substantial change in the Selective Service procedure in regard to students.

**Student deferments (2-S classification) are granted to beginning Law Students if they were in the upper half of their graduating undergraduate class and have followed a normal progress-contiguous education. As long as satisfactory work is continued, the deferment will probably hold, but the student deferment must be initially requested from the Draft Board.**

Men who are not eligible for student deferments, however, would not be drafted until the end of the academic year. If they are then in the upper half of their Law class, they would probably receive a student deferment.

In June, when student deferments run out and before grades and class rankings have been determined, Special Services advises Draft Boards that final reports will not be available until August. Most Draft Boards wait until the final grades are in before making any definite decisions, Mrs. Porter indicated.

**Mrs. Eleanor Smith, Special Services clerk, said that there has been an unusually high number of requests for deferments from Law students this year because of the increased military build-up. She advised men to register with Special Services in order that grades could be officially reported.**

After graduation, according to Dean Malone, many Draft Boards have allowed students sufficient time to take the Bar Exam before induction.

## ROGER ARNEBERGH

# City Attorney Explains 'Tropic' Prosecution

By LEE CAKE

"In the eight years that I have been City Attorney for Los Angeles my office has taken action against only one other book. Does this sound like oppressive censorship?"

**The speaker was Roger Arnebergh and the comment was elicited at a Fall Legal Forum series presentation at which the city's chief legal officer described the functioning of his 37-attorney law office and then in a question and answer session defended his action in prosecution of a Hollywood bookseller under the state's new anti-obscene matter law (Penal Code Sections 311-312).**

In his first 30 minutes at the podium Arnebergh described in detail his broad-guaged legal activities as counsel for the country's third largest city. Actual litigation involves members of his staff in cases prosecuted predominently at the municipal court level (all misdemeanor offenses, whether by city ordinance or state law) and cases in which the city is a party defendant, such as the dispute between California and Arizona over water rights to the Colorado river ("We have a $200 million investment to protect") which will be reviewed shortly in the Federal Supreme Court.

His office also acts as advisor to the city's many departments in the negotiation of contracts and purchases ("We are prosecuting an anti-trust suit arising out of the purchase of electrical equipment by the Department of Water and Power—and seeking treble damages which may total $25 million.)

**It quickly became apparent, when the speaker opened the meeting to questions from the audiance, that most of these assembled had come to hear Arnebergh discuss his office's pending prosecution arising out of the sale of a copy of Henry Miller's Tropic of Cancer (Grove Press, $7.50).**

In substance, his position was "I takes them as I find them." He pointed out that his office is not concerned with the wisdom of a particular law, but only the legal responsibility that devolves upon him to enforce the law as written. Thus, when a complaint is filed that obscene matter is being offered for sale the Police Department vice squad investigates the complaint and, if grounds exist for an arrest one is made. The city attorney's office must then prepare the prosection.

The basis for prosecution in this case is the new state Obscene Matter legislation which became effective Sept. 15, 1961. By its provisions, one may be arrested for "knowingly" offering for sale obscene matter (Penal Code 311 (e).)

**"The law is on the books, and if there is sufficient evidence to justify the filing of a criminal complaint my office will take action," Arnebergh summarized.**

He conceded that his office's prosecution of the Miller book is a matter of discretion, but pointed out that this same discretion to prosecute inheres in a great many laws.

The city attorney received his LL.B. from the University of Minnesota in 1935. He was elected to his present office in 1953 and was re-elected in 1957 and 1961 for four year terms.

## Addresses of Missing Alumni Sought

The law school administration reports that it has no information concerning the present addresses of nine graduates.

**The missing are: Clarence Richard B. Jones, '55; Victor E. Cook, Jr. '52; Charles Gor- G. Laslo, '57; Gerverdt J. Mulden, '56; James S. Irving, '57; ler, '54; Irving A. Neiman, '56; Dorothy W. Nelson '53 and Hunter Wilson, Jr., '58.**

The named persons should contract Law School at once.

# Alumni Notes

Keeping up with your classmates, or Where Are They Now?

**1954**

JOHN A. ARGUELLES has opened Law Offices in association with Pat Mullendore at 3105 W. Beverly Blvd., Montbello. The firm is known as Mullendore and Arguelles.

**1955**

LAURENCE T. WREN has been appointed judge of the Superior Court, Coconino County, Arizona. Judge Wren was formerly County Attorney. He lives in Flagstaff with wife Eetty and son Dana, 8.

**1956**

HOWARD N. LEHMAN is associated with the law firm of Rose, Klein and Marias, specializing in workmen's compensation litigation. He is the recent father of a baby girl, Erica Lynn.

MAURY SCHACHTER is with the Public Defender's office in Los Angeles.

**1957**

STANLEY E. COHEN is a partner in the firm of Gustafson and Cohen in Oxnard. He is married and has three boys — Randy, 6, Steven, 4, and Mitchell, 1½.

DONALD E. DEUSTER has been named Assistant to the Chairman of the Board of Kemper Insurance Company. He is living in Libertyville, Illinois and he and wife Kay have two daughters, Mary, 6, and Ruth, 3.

**1958**

ALTON I. LEIB and BERNARD PATRUSKY have formed a partnership for the general practice of law. Their offices are at 8833 Sunset Boulevard, Los Angeles.

DONALD P. LYDEN has opened offices in Encino for the general practice of law.

## Taylor Leads Moot Court Competition

After two rounds of competition in the second year phase of the Moot Court program, Gary Taylor leads 12 competitors, followed closely by Barry Marlin and Richard Alrich.

The 12 participants in the program are vying for a chance to represent UCLA next year in regional competition and, perhaps, national finals.

Final standings may vary considerably since its possible to switch as much as seven positions as was the case with Alan Golden, whose second round perforfance earned him the highest combined average for brief and oral argument in one round achieved in this year's competition.

# Mueller Off To Tokyo

★ ★ ★ ★ ★ ★ ★ ★ ★

## UCLA Prof. To Teach at Japanese College

By RON KATSKY

Professor Addison Mueller will be the first American Law professor to teach a law class under the Fulbright Program at Waseda University, Tokyo, one of Japan's oldest and largest private schools.

**Starting next semester, Mueller will cooperate with the University's president, Norbumoto Ohama, in conducting an advanced law course in "American Contract Remedies." He is also scheduled to head a staff level seminar on "Copyrights and Related Problems" for lawyers, law professors and judges.**

Mueller has already laid out what he will teach during his five-month stay in Japan and has sent the material ahead for translation. Although most of the law students will have some knowledge of English, all the reading materials will be translated into Japanese, and an interpreter will be used for lectures, he explained. Staff level seminar members will probably speak fluent English and be acquainted with Anglo-American "legalese."

ADDISON MUELLER

**"This experience will provide an excellent opportunity to gain insight into a field about which too little is known: Japanese legal thinking," Mueller observed. Compared with the United States, Japanese courts face only a small amount of litigation in the contracts field. This has been explained by pointing to differences in attitudes and ways of handling disputes. Mueller said he expects to be able to publish material on the subject when he returns to UCLA in September, 1962.**

The former Yale Law professor said he had not been in Japan for more than 25 years. "I was so impressed with my last visit, however, I welcomed the opportunity to return," he said. Some of the professor's former law students are now practicing in Tokyo.

Since he will also be serving as a "good will" ambassador, Professor Mueller will spend five days in orientation sessions with the State Department in Washington, D.C. He and Mrs. Mueller will live in an apartment on the university campus.

Mueller pointed out that this experience would provide an opportunity to observe the influences on Japanese commercial law of a greatly expanded export trade with the United States. He said: "I'm particularly interested in looking for instances in which the existing Japanese law has noticeably inhibited Japanese business practices in adjusting and responding to rapid expansion."

## Alumni Establish New Loan Fund

At a recent meeting of the Law Alumni Scholarship Foundation, it was decided that a scholarship and loan fund be set up for worthy law students. While the program is presently limited to a loan fund, future plans call for the administration of both a loan and scholarship program.

According to Assistant Dean Malone, administrator of the program, interest rates will be extremely low. Dean Malone stressed that the purpose of the program is to provide the Law student with a source toward which he might turn in an emergency.

# 25 Years and 3,000 Miles: The Saga of Max and Louis

By S. S. ROVNER

Louis Piacenza, Law School librarian, is giving his annual orientation talk to the incoming first year class. In the middle of the pitch about not smoking or eating in the library, a familiar refrain begins to play through the mind of one in the audience. There sits first year student, Maxwell J. Wihnyk, with his thoughts racing back some 25 years to the lower levels of the Law School Library at Columbia University, circa 1934-35.

It is the middle of the Great Depression, and the governmental attempt at financial succor takes the form of National Youth Administration for a youngster trying to work his way through a university. Max is working his weary way through stacks of library materials which have collected in the lower recesses of this building at Columbia.

The monthly stipend of $35 is achieved at the completion of the maximum working limit of 100 hours. Max was a senior with major work in journalism and assigned tasks in the NYA program which seem to be collateral with his studies. Duties involved probing these literary catacombs for materials to process, inventory, accomplish typing, stencil cutting, and recording.

Supervising a large group of similarly employed students was Louis Piacenza. He had a variety of youngsters under his acute vision including some of Coach Lou Little's sixty-minute men.

Then, there was Max! He would have preferred being sixty-minute man in the napping department. But Louis was the first assistant librarian and he could not allow such dereliction at an Ivy League school. Louis was gentle but firm. The hours were spent profitably and many items were incorporated into the law resources of the university. Meanwhile, the boys who did the work dreamed of the ground level where they were sure the sun was shining on the WPA workers. Within a few years they did reach the upper level and shortly found themselves on the way to war.

Later, Max migrated to Banning, California where he established his own material-collecting activity in the form of a newspaper which he still publishes. His wife now supervises in place of Louis.

Eager for more academic worlds to conquer, Max applied and was accepted at UCLA's Law School and is now sitting among the first year students listening to his former leader and library tutor. Three years from now, tune in again and see whether Max has worked his scholastic way through Louis' collection of books and out into the sunlight to the practice of law.

## Out of the Ivory Tower

### News from Faculty Row

**Dean Richard C. Maxwell**

will address alumni residenced in San Diego, who are forming an alumni association in that area. Also on his Christmas vacation agenda is a trip to Chicago.

Dean Maxwell's article on "The Collateral Source Rule in the American Law of Damages" has been submitted for publication in the Minnesota Law Review. The Dean is collaborating with

**Professor Addison Mueller**

in revising and up-dating McCormack's classic work on Damages.

In February Dean Maxwell will journey to Dallas, Texas to meet with the editorial board of the Oil and Gas Reporter associated with the Southwestern Legal Foundation Oil and Gas Institute.

**Professor Arvo Van Alstyne**

is one of the five American law professors invited to lecture on Constitutional Law and Civil Procedure at the Salzburg Legal Institute Summer Seminar next year. Professor James H. Chadbourn participated in the Harvard-sponsored event last year. Professor Benjamin Aaron has also been a participant in recent years.

Professor Van Alstyne has been meeting regularly as consultant to the California Law Revision Commission re the problem of governmental tort liability raised by the **Muskopf v. Corning** decision in January this year. He is also a member of the Special Study Commission on Judicial Procedure appointed by the Los Angeles Board of Supervisors to study the problem of congestion in the courts. The Commission expects to make its first progress report to the Board in January, 1962.

The Law School Building Committee, of which Professor Van Alstyne is chairman, envisages a one and one-half million dollar construction program to double the present size of the Law School. Work could begin in 1964.

**Professor James D. Sumner, Jr.**

is preparing an article on Wills in which he will suggest an adoption of the independent executor procedure in California. He is also working on a Conflict of Laws casebook.

**Professor John A. Bauman**

has written a book review of "Equity and Law: a Comparative Study," by Ralph A. Neuman to be published in the Indiana Law Journal. His article, "Multiple Liability, Multiple Remedies and the Federal Rules of Civil Procedure," will be published in the next issue of the Minnesota Law Review.

**Professor Ralph S. Rice**

has started work again on his Business Tax Planning manuscript. The original was lost in the recent Bel Air fire which completely destroyed his home. He is also proceeding with his Family Tax Planning manuscript, part of which was lost in the fire.

**Professor William D. Warren**

authored an article on Land Sales Contracts for a coming issue of the UCLA Law Review. He is also preparing an article on "Mexican Retail Installment Sales Law, A Comparative Study," the result of his summer trip to Mexico. Professor Warren interviewed Mexican finance company executives and retailers as well as lawyers in order to find out how retail installment sales purchases are protected in the Civil Law system.

**Professor N. J. Coulson**

visiting from London University, will present a public lecture 8 p.m. Thursday, January 4, 1962 in Business Administration and Education Building, Room 147 (BAE 147). The talk is entitled "Marriage Laws in Islam." Professor Coulson says he chose this subject because the position of the Muslim wife is traditionally regarded as completely under the dominance of the husband and this has always been a vital legal and social problem in modern times. Professor Coulson will assess the true position of the woman under the law.

## JUDGE RALPH NUTTER

# Arraignment Procedure Like Assembly Line

**(Editors Note: Docket wishes to express its congratulations to Judge Ralph Nutter on his recent appointment to the Los Angeles Superior Court by Gov. Brown.)**

Arraignment procedures in the Los Angeles Municipal Courts amount to "assembly line justice" for the great majority of citizens who come before the arraignment courts.

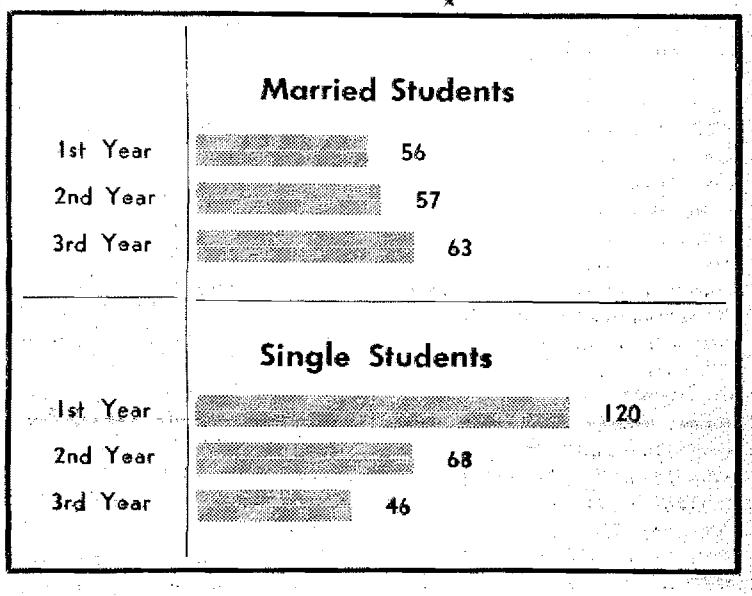
**This is the opinion of a veteran jurist, Judge Ralph A. Nutter, expressed at a UCLA Legal Forum presentation. Judge Nutter has spent two years presiding at arraignment proceedings in several Los Angeles Municipal courts.**

Jurisdiction of the arraignments in municipal courts extends to all non-felonious crime—everything from traffic citations to anti-trust prosecutions.

"For the most part the arraignment proceeding is a court of last resort for these defendants," Judge Nutter pointed out. More than 80 per cent of those accused plead guilty and are fined or sentenced at this judicial level. A plea of "not guilty," Judge Nutter pointed out, means that bail must be set and the case fixed for trial. By municipal ordinance misdemeanor violations must be brought to trial within 28 days after arraignment. If the defendant is unable to post bail he faces

(Continued on Page 8)

## RES IPSA LOQUITUR?




ANALYSIS of the 410 male students in attendance—Fall 1961. This graph does not show the REASONS why the number of married students remains fairly constant and the number of single men decreases, but it does show that fact. The reader is free to draw his own conclusions. Nine of the 15 women students are married. Source of this statistical data is Lois Foonberg, law wife.

## STUDENTS HERE POSSESS "VITALITY"

# Japanese Judge Visits; Compares Training

By RON KATSKY

A scant 6,700 lawyers represent 90 million people in Japan today, District Judge Kohji Tanabe of Tokyo stated during a recent visit to the UCLA Law School.

**The leading Japanese jurist, touring United States law schools after a conference on contemporary Japanese Law at Harvard Law School, explained the small number in the legal profession was evidence of the Japanese not being "right conscious." Judge Tanabe pointed out that Japan historically has not put primary emphasis on Democratic rights and privileges.**

World War II was the turning point, however, and recent modernization and industrialization have made the Japanese more aware of legal remedies. "Although legal facilities cannot keep up with the demand, the power of the court has increased dramatically in recent years," Judge Tanabe indicated.

Based on a Civil Law system, Japanese Law is "coming of age," the Judge noted. As the prestige of the courts continues, the number of civil cases has expanded and the profession itself has enlarged, he said.

Japanese legal training consists of two years general undergraduate training, two years of specialized undergraduate legal study, passing a national law examination and two years of internship under the Japanese Supreme Court.

**More than 10,000 students apply for the national law examination, but only 400 students are admitted to intern with the Supreme Court, the Judge added. Most of the others go to work for industry or the Government.**

The formal law training during the last two undergraduate years follows a normal university lecture method. But recently seminars and the studying of cases has been gaining in popularity.

The Japanese law student does not work as hard as his American counterpart on a day-by-day basis, but during final examination time there is little difference, the Judge observed.

**In comparing UCLA Law School with others he has visited in the U.S., Judge Tanabe commented that both students and faculty here possessed remarkably more "vitality" than elsewhere.**

Distinguishing between the practice of law in the two countries, he pointed out that there were very few personal liability cases litigated in Japan. Most Japanese cases are in the tennant-landlord or the promisory note fields.

# Docket Dicta

## Reflections In A Jaundiced Eye

First year is a sort of exciting time (with murders, replevins, and wild assaults, and learning a language that no one else knows). And you have to admit it, you're scared stiff, and you really don't know what is coming off. So through it all there is a type of battlefield cameraderie. Little groups jell, and you vow to pull each other through. You can't understand why they have to make it so tough, but someone explained it very nicely: You're being initiated into a fraternity, and they're putting you through three years of hazing.

Of course, you can't deny the value of the education you are getting. You haven't learned so much so fast since you were a child. But it takes a lot out of you too. And like all hazings, it undermines your dignity a bit. You feel it. You're not a human being any more. You're a process. And the way some of the professors talk about it, you begin to think that when the illumination comes, when you start "thinking like a lawyer," when you have finally assimilated the method, there will be some radical metamorphasis. You almost expect a blare of trumpets, a convulsion that rents the firmament asunder, and that you and your classmates (those who survive the transformation) will all march together through the hallowed gates.

It doesn't quite work that way.

And if you have already started talking to upper classmen, they told you that the work gets drier, the problems harder, the hours longer. You still can't understand why they have to make it so tough, but what is probably worse, a lot of the cameraderie disappears. You may work together in your little groups. But you are not so keen on sharing your insights and outlines with other groups. The first year you don't have class standing, and you are not worried about it. You just want to get through. And if you pray, it is to pass, not to be in the top ten. Second year you have a number by your name, and you guard it jealously. Legend has it if you are not in the top quarter at least, you will never get a job. You will have to sell insurance or serve subpoenas.

Not only is the competition tougher, but the spirit of competition reaches almost cut-throat proportions. And some smirkers won't even let you look at the way they annotate their notes. Maybe it's the ultimate resolution of the 'adversary' system.

I hope all this is exaggerated, but I'm not sure that it is. And many people hope that it isn't, because they consider it healthy.

I don't know what can be done about this system which imposes such overwhelming work loads, which engenders such fierce competitiveness and which seems to measure the value of a man almost exclusively by the numeral appearing after his name.

What bothers me is that men whose pride and goal is their ability to analyze, distinguish and discriminate should assimilate and perpetuate such a system seemingly without question.

*MEL ALBAUM, Editor*

**UCLA DOCKET**

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# KNOW YOUR JUDICIARY

## HON. EDWIN L. JEFFERSON

### Justice, Second District Court of Appeal

Three justices have been appointed by Governor Brown to implement the work of newly created Division Four of the Second District Court of Appeals. Louis H. Burke was named Presiding Justice with two Associate Justices, Frank S. Balthis and Edwin L. Jefferson. The first two named jurists were featured in previous issues of the Docket. Now we complete presentation of this judicial triumvirate with the introduction of Judge Edwin L. Jefferson, who has served with honor in the legal field for more than 30 years.

HON. EDWIN L. JEFFERSON

Justice Jefferson was born in Mississippi. Then his family moved to Colorado, and while he was still in his youth, to Los Angeles. Judge Jefferson received his secondary-school education at Manual Arts High.

**From Manual Arts High School, the scholastic bridge was made to higher education at the University of Southern California. Here, as a college student, Edwin Jefferson majored in political science and under the usual academic practice of the period, moved into the Law School at USC after completing his Junior year. In those days, if you successfully negotiated the grueling first year, the University awarded an A.B. degree, and then the two remaining years were completed for the prized LL.B. The new Appellate Justice received his A.B. in 1929, and LLB in 1931. He recalls that Dean Justin Miller, who later became a circuit judge, was guiding the USC Law School at the time.**

Justice Jefferson has participated in many activities. One he prizes very highly concerns Moot Court at his alma mater. During the period 1942-46, he conducted Moot Trial Court at USC giving realistic, valuable practice to student-attorneys. Judge Jefferson conscientiously administered his Moot Court and required participation of the students as though they were graduate-attorneys. Trial briefs were developed to the finest degree and brought to the Judge's downtown chambers for examination and correction before presentation at the court sessions on the campus. Many of his former students have thanked him for the excellent training given in this crucial phase of an their legal development. The complete and formal trial procedure, properly learned, proved important to their later success.

**There was one incident where a pair of student-counselors purloined the opposing counsel's exhibit. Judge Jefferson, performing seriously as usual, declared a mistrial and held both culprit-counselors in contempt. Further, he explained that should any such antics occur in his regular courtroom, he had the authority to place the performers in jail for five days. Moot Court sessions proceeded in a more sober and dedicated mood thereafter.**

The Judge is serious about Moot Court training because he believes that most lawyers would not otherwise receive valuable trial experience. This is true today. It appears that some attorneys have not been suitably inculcated with the proper attitude in court generally, and when addressing the jury or the Bench, in particular. The poor manner and procedural techniques of some attorneys are deleterious to their own legal cause, even if prepared, for a poor impression to the jury may negate their otherwise favorable or strong position.

Similar to many judges, Justice Jefferson enjoys working with and helping young lawyers develop proper courtroom procedure, especially in trial methods. He has devoted much time and effort to the improvement of young prosecutors and public defenders, helping them to acquire the appropriate courtroom manner. Many times in a trial, all other factors being equal, conduct of self and presentation of a case in a professionally dignified and competent style may be the difference between gaining or losing the verdict.

**Edwin Jefferson began the general practice of law after graduation and passing the California Bar in 1931. He continued his varied, general practice throughout the southern California area until 1941, when former Governor Culbert Olsen appointed lawyer Jefferson to his first judicial post as a Municipal Court judge. Six years later he was elected to his own term. Less than two years afterward, in December 1948, he was given an elevating appointment and the following January was sworn in as a Superior Court judge. That appointment was made by the present Chief Justice of The United States Supreme Court, Earl Warren, who was then Governor of California.**

In 1950, Judge Jefferson was elected to his own six-year Superior Court term, and when it expired he was re-elected. Then, when the California Legislative Session created Division Four of the Second Appellate District in early 1961, new judicial appointments were in order. This was the first judicial division established within the state in 20 years. Fittingly, Governor Brown chose this man of long service to fill one of the three vital posts created.

His movement to the Appellate level does not deprive Superior Court justice the service of a Jefferson. Edwin L. leaves the Jefferson touch in the capable judicial hands of his brother, Bernard. We of UCLA count him among the University's alumni. Bernard S. Jefferson earned his A.B. at UCLA in 1931 when there was no Law School here, and took the classic trip to Harvard where he obtained his law degree in 1934.

**Judge Edwin Jefferson has many interests. During the Second World War period, he worked in advisory capacity with Army and Navy Intelligence, concurrently performing his judicial responsibilities. At present the activities of the American Bar Association are of immense import to him; he contributes his time and energies to the fullest.**

The Judge's pride and joy is his attractive, 15-year old daughter Susan Diane, who, the Judge says is "an awe-struck tenth-grader at Los Angeles High School." The most important member of the judge's family is his wife and Susan's mother, Mattie Pearl Hawkins Jefferson. Mrs. Jefferson arrived in Los Angeles from Lousiana about the time her futuer husband did; that was some 40 years ago. They are practically a native western family and like to spend their vacation traveling the West on house-trailer trips.

# Honor Code and Professional Duty

**By Richard C. Maxwell**
**Dean of the Law School**

The adoption by the student body of the standards of the legal profession to govern examination procedures and other educational activities in the School of Law is an extremely important step in the development of our institution. I am delighted to accept these standards as a part of the administrative policy of the School. If law students do not begin to think of themselves as a part of a profession at the earliest possible stage of their adoption of law as a career it will certainly not be easier to accept professional standards as a part of their life after they are actually admitted to practice.

**Although some lawyers speak of their activity as the "law business," it would be unthinkable to most members of the bar not to speak of themselves as members of a profession. Although the answer may seem obvious to some, it is instructive to ask what the term profession means. Lawyers tend to like to find answers in case law. There is some case law on this question.**

For example, in **People ex. rel. Tower v. State Tax Comm.**, 282 N.Y. 407, 26 N.E.2d 955 (1940), the question arose whether a custom house broker was a member of a profession so as to be exempt from an occupational tax. The court found nothing in the work of a customhouse broker which required "knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study." The court regarded such a requirement as essential to the classification of an occupation as a profession. Is this the whole story, however? In **Geiffert v. Mealey**, 293 N.Y. 583, 59 N.E.2d 414 (1944), the same tax law was involved but the activity under discussion was the work of a landscape architect.

**The court noted that a number of universities gave a course of study leading to degrees in landscape architecture including a Masters' degree in that field and proceeded to classify landscape architecture as a profession and thus not subject to the tax. The court had found a convenient metho dof classification for the administration of a special tax but had they established a meaningful distinction between professional activity and other human pursuits?**

The Georgia court in **Georgia State Board of Examiners in Optometry v. Friedmans' Jewelers, Inc.**, 183 Ga. 669, 189 S.E. 238 (1936), certainly found more content in the word profession than the mere extent and depth of the training of its practitioners. The question before the court was the propriety of the employment of a qualified optometrist to perform services for the customers of a corporation. The court decided that such employment was proper. They distinguished the type of activity before them from the practice of law which "because of its high standards and the peculiar relationship existing between attorney and client is not subject to commercialization. If it were, its high purpose and functions would be degraded, and the public would suffer immeasureable injury therefrom." There are many other cases bearing on this matter. These examples are taken from Pirsig, **Cases and Materials on Judicial Administration** (1946).

Is the concept of the preeminence of service to people who need help without the primary motivation of economic gain naively idealistic? In a sense, of course, law must be commercial—if it is to survive as an activity in which well qualified men can engage a livelihood must be available from its practice. The difference perhaps between law and some aspects of business is the ideal that the lawyers does not respond primarily to economic stimuli. Professional service in the best sense is service which considers only the welfare of the client in the broad sense. One should not have to approach a lawyer with the feeling that he should tread carefully and be ready to protect his own interests if necessary.

**Another aspect of the word, profession, in the best sense, is the felt responsibility for improvement of both the services rendered by lawyers and the system which lawyers administer. This is not an easy burden for most individual members of the profession to bear. It may conflict occasionally with the obligation to particular clients. It may involve the necessity of helping to safeguard the profession and the public from the unprofessional conduct of fellow lawyers. In spite of these problems, some progress is made—much of it probably through the influence of organizations of lawyers. Yet, it is the individuals in these organizations which must in the end carry the burden. A real professional must be able to sufficiently divorce himself from the interests of individual clients and from his own interests to bear his share of safeguarding the larger welfare of the system.**

This professional activity has not primarily taken the form of fighting unauthorized practice, important as this function is. Many tremendous reforms have been accomplished through the influence of associations of lawyers and individual lawyers. Not all of these reforms have been in the short run interests of members of the bar. Some of the changes have, for example, required older members of the profession to learn many new things.

The Law Students Association of this school is your first experience with a professional legal organization. While in your student status you will learn your first lessons in the meaning of professional status and activity. You may become a successful lawyer without achieving a deep concept of the public character and responsibility of your profession. I doubt, however, that in the long run you will find full satisfation simply in being a technician and a money maker. You are working toward a status and a responsibility that goes beyond that given to those whose activities, however important and financially rewarding they may be, do not share with you the trust that is given the real professional. Your acceptance as a member of the Law Students Association, and as an individual, of professional standards in your work as a law student is worthy of this goal.

***PROF. JONES COMMENTS***

# State Bar Refuses To Ban Lawyers from T.V.

**By MEL ALBAUM**

The question of whether or not a rule of professional conduct barring all lawyer appearances on television courtroom programs would be adopted by the Board of Governors of the State Bar of California has been answered in the negative.

The Los Angeles Bar Association Board of Trustees had asked for the rule barring TV courtroom appearances by members of the bar.

**Instead, the action of the Board affirmed the educational value of those courtroom programs which spread understanding of the administration of justice and reinforce public acceptance of the rule of law.**

Professor Edgar A. Jones, Jr., of the UCLA School of Law faculty, whose ABC-TV program "Day in Court" has been seen in some twenty million homes each week during the past three years, expressed his pleasure at the Board of Governors' ruling, even though he personally would not have been affected by a contra ruling since he is not a practicing attorney in California.

**The issue as Professor Jones sees it is one of education. "The legal profession has been lamentably inactive with respect to the education of the general public concerning law and the processes of justice," he said.**

Professor Jones sees television as an effective medium for the accomplishment of these educational goals, "when the administration of justice, the function of lawyers and judges, and the fundamental elements of our law are sought to be portrayed with authenticity." TV program ratings, as accepted by the advertisers, indicate quite clearly that the people watch this combination of dramatics and teaching about the administration of justice.

**The controversy arose when the Board of Trustees of the Los Angeles Bar Association announced its intention last year to seek a rule of professional conduct barring appearances by attorneys, in the simulated role of attorneys, in all television and other mass entertainment and education media.**

In the words of the widely quoted statement from the committee's report, this was because lawyers portraying the role of lawyers have appeared as "woodenly inept" or as "bombastic or blundering asses," that the statements of law were unsound, and that all television courtroom programs demeaned the courtroom.

It may be noted that not one single instance has been cited proving even one of the express charges with respect to any one of the several hundred courtroom programs over which Professor Jones has presided as "Judge," despite his public challenge to the committee and his assertion that it could not be done.

**After the Board of Governors appointed its special committee to investigate these charges and act upon the request for a ruling, meetings were held with representatives of the major television networks. Professor Jones served as draftsman for the Statement of Principles which evolved from the discussions. Both CBS and NBC (the latter of which produces no TV courtroom programs) have refused to sign the Statement of Principles in its final form. Professor Jones assures that ABC has always been and is ready and willing to sign the Statement in the event that the other two networks can be persuaded to do so by the State Bar.**

"The willingness of ABC to sign, I am sure, is due in large part to the fact that the Statement of Principles is descriptive of the manner in which the ABC courtroom programs have been produced from their inception. That is because educational content and authenticity have been stressed from the outset," Jones stated.

He feels that had the Board of Trustees of the L.A. Bar prevailed, the effect would have been to remove from lawyers any possibility of achieving public legal education on the vast scale possible

(Continued on Page 7)

# International Studies Plan Prompts Proehl to UCLA

The opportunity to initiate an international studies program in a large metropolitan area with a seaport and large industrial interests that are involved in an ever-increasing volume of international trade prompted Professor Paul O. Proehl to accept a permanent assignment as the latest addition to the UCLA Law School faculty.

**After a term as a visiting professor in the Fall of 1960, Professor Proehl concluded that Los Angeles was a good place to teach and to observe his specialty of International Law and Commercial Transactions.**

Proehl, formerly an Associate Professor of Law at the University of Illinois, has been Faculty Editor of the University Law Forum and editor of the Legal Problems of Internation Trade. He served with the U.S. Army Air Force during the war and the U.S. Foreign Service as Consul and Secretary in the Diplomatic Service. These assignments included time spent in Oslo, Norway; Dusseldorf and Bonn, Germany. Additionally, Proehl has worked with the Bureau of European Affairs in Washington.

PAUL O. PROEHL

**The field of international transactions, in which Proehl specializes, has experienced an explosion in regard to the demand for new personnel. The Professor believes this has come about mainly from the recent increase in foreign trade and more complex rules surrounding the graduating and obtaining of foreign licenses and patents. Previously the practice of this law specialty had been limited to New York City.**

International Transactions differs from other courses in the International Law field in that it deals with not only the law, but also policy and economic considerations of a foreign country.


**REMEDIES**

# CAUTION—Von Kalinowski

(Continued from Page 1)

School that his department "seeks vigorous enforcement of the law, including jail terms as provided for in the legislation which regulates corporate activities 'no matter how high up the individual may be.'"

No one can question the desirability of a vigorous enforcement of the antitrust laws as a means of insuring a free and competitive economy. We question, however, the wisdom, necessity and even the morality of any mass program of jail sentences for those convicted of engaging in these so-called "white collar" crimes.

**At the outset, we should all face the fact that the imposition of jail sentences for antitrust violations, at least in so far as nolo pleas are concerned, is a very recent innovation. The first such jail sentences on record were only as recent as 1959, when a number of individuals were jailed in an Ohio case for a peiod of 90 days each. One of the defendants was apparently so despondent over being thus treated as a common criminal that he committed suicide. In addition to the Ohio case, the celebrated electrical conspiracy cases in Philadelphia in February of this year represent the only other instances in the history of the antitrust laws in which the dividual defendants were actually sent to jail after having been permitted to plead nolo contendere.**

Thus, it is not enough to say that "conspiracy to violate the antitrust laws is economic racketeering" when it comes to jailing the offenders. Throwing a man into a jail cell together with narcotics offenders, murderers and bank robbers is a drastic step, and should be reserved for those who have consciously engaged in conduct with the knowledge that, if caught, such would be their reward.

A second point which leads naturally from the first is that the line to be drawn between that business conduct which constitutes a violation of the antitrust laws and that which does not is an extremely difficult one to draw, and one which must be drawn through an area which is filled with grays and is almost devoid of clear blacks and whites. A further complicating factor in this regard is that judicial interpretations, which in actuality constitute the only true body of law under the Sherman Act, have become increasingly more severe toward business.

**Thus, even though an aggressive businessman makes an honest attempt to stay on the right side of the dividing line, and even though he seeks and receives advice of competent antitrust counsel, he must always face the fact that a new landmark in the interpreative decisions may subsequently declare, for the first time, that the activity in question constitutes a criminal violation which subjects that man to the threat of a jail sentence.**

Take, for instance, the **International Boxing Club** case. [348 U.S. 236] As pointed out by Mr. Justice Harlan, in his dissenting opinion when the cae went to the Supreme Court for the second time on the question of relief,

"Not until January 31, 1955, when this Court handed down its opinion in United States v. International Boxing Club, 348 U.S. 236, did it become known that professional boxing was even subject to the antitrust laws. In view of this Court's earlier decisions in the baseball cases [citing], I think it reasonable to say that in 1949 when this alleged conspiracy began most well-informed lawyers believed that professional boxing, like professional baseball, was beyond antitrust stricture. Hence the appellants had every reason to believe their actions were innocent when taken." 348 U.S. 236.

**Of course, the International Boxing Club case was a civil case and did not raise the specter of jail sentences. However, it is typical of many Supreme Court decisions in the antitrust field, in that it was not until after the decision was rendered, and consequently after the conduct took place, that one could with certainty determine that the conduct in question was unlawful.**

This phenomenon arises out of the very nature of the antitrust laws. The Sherman Act, enacted in 1890, is couched in broad sweeping language, Congress apparently being of the view that the specifics of the law should be shaped by the courts through case law. However, admirable this may be from a legislative standpoint, it means that conduct will be measured against the specifics only after the conduct occurs. This makes business an extremely hazardous undertaking when a jail sentence is the means of punishing a bad guess.

To illustrate, the Supreme Court in 1911 handed down its decisions in the **Standard Oil** and **American Tobacco** cases, in which it was held that only "unreasonable" restraints were illegal under the Sherman Act — thus giving birth to the so-called "Rule of Reason." Subsequently, however, over a period of years and in a number of cases, it was held that each of several types of conduct is "illegal **per se**," and that a defendant may not defend the action by showing that the conduct was reasonable under the circumstances. Price-fixing is the most notable example, but to this have also been added agreements to control production or to divide markets or customers. Most recently, group boycotts have been added to the **per se** list.

**In each of these instances it is entirely conceivable that the parties were advised by competent counsel, relying on Standard Oil, that if the circumstances would show that the conduct were reasonable it would not constitute a violation of the antitrust laws. Yet, in each case, that advice turned out to be wrong, but only proved to be so after the fact.**

The enormity of this problem places an intolerable burden upon counsel giving advice in the antitrust field. When your client's going to jail is the price to be paid for an inaccurate prediction by counsel, only the most foolhardy of antitrust attorneys would place much reliance on stare decisis in this everchanging field.

None of this is to say that there are no circumstances under which the courts should impose jail sentences for antitrust violations. But it should be clear that a go-slow attitude is called for, and both the seeking and the imposition of jail sentences should be reserved for truly hard-core cases where the evidence is both direct and overwhelmingly convincing to the effect that the defendant, with true knowledge of the consequences he faced, purposefully and wilfully set about to violate the law in a manner which, at the time of the conduct in question, had already been clearly interpreted by the Supreme Court to have been illegal.

An equally controversial problem presented by the administration's hard line arises out of its oft stated decision to carry civil cases through to a judgment, rather than to enter into a consent decree. This policy is obviously designed to encourage private treble-damage actions, in which a judgment obtained by the Government constitutes prima facie evidence of a violation. Originally designed to provide an additional deterrent to antitrust violations in the form of an economic sanction, i.e., treble damages, potentially many times greater than the maximum fine available in criminal actions under the Sherman Act, the actual impact of such actions more and more tends to have exactly the opposite effect from that intended under the antitrust laws.

**The anittrust laws, in general, seek to preserve competition as a basis of our economy, and to do so in part by preventing the creation or maintenance of monopoly power which will squeeze out the smaller competitors. In the major industries particularly, however, it is neither necessary, desirable nor even possible to avoid an industry structure characterized by industrial giants at the top of the heap.**

In many instances, when a group of competitors is convicted of an antitrust conspiracy, the charge is made that the smaller competitors went along because the economic power of the major competitors left them no choice. Having gone along, however, they are just as guilty as are the major competitors, and are just as subject to treble damage actions brought by injured third parties.

It is this dilemma that results in a topsy-turvy effect arising out of treble damage actions. The small competitors feel they are swept along into a conspiracy because they lack the economic power to stay out. Then, eventually, follows the series of treble damage actions which the smaller competitors are least able to defend. The sheer magnitude of a typical antitrust case makes it immensely expensive to litigate, even aside from the assessment of joint and several treble damages. Thus the dichotomous effect of this particular set of teeth in the laws is to destroy the very competitors which the antitrust laws were designed to protect.

We can only conclude with a word of caution that the administration should take a long hard look at its own position in the antitrust field. Its aims are indeed admirable, but one cannot inject vigor into a competitive economy either by turning aggressiveness into timidity or by destroying those competitors who most need the protecting of the law.

# COMMENT—Jordan

(Continued from Page 1)

For example, in the recent electrical equipment price fixing cases a number of corporate executives were given jail sentences. The defendants were charged with a conspiracy pursuant to which the companies bidding for Government contracts under a competitive bidding system agreed among themselves which company was to get certain contracts and at what price. By thus denying to the Government the benefits of competitive bidding, the parties to the conspiracy were able to receive artificially inflated profits. It seems equally reprehensible to cheat the Government by filing collusive bids on a contract, as to cheat the Government by filing fradulent income tax returns.

**Criminal penalties serve a useful deterrent function in antitrust. In the past criminal prosecutions of individuals have been few and the imposition of jail sentences upon conviction have been rare. This apparently led to the belief among some businessmen that though the law provided for jail terms they were somehow immune from criminal liability. In some cases a business executive might be willing to deliberately violate the law if it meant greater profits for his company. If caught the company might have to pay a fine ($50,000 is the limit for each offense under the Sherman Act) or might face a civil suit for damages by an injured party, but this is a risk of doing business which many companies might be willing to take if the rewards of violation are sufficiently large.**

Moreover, encouragement might be found in the fact that many violations of the antitrust laws are difficult to detect and prove. But an executive who faces the possibility of personal criminal liability and perhaps a jail term will, no doubt, be much more hesitant about violating the law. In my opinion the issue should not be whether violations of the antitrust laws should be punished by jail sentences, but rather what kind of violations should carry such punishments. The antitrust statutes are for the most part phrased in extremely general and ambiguous language. Most of the content of the antitrust laws is found the antitrust laws is found not in the statutes but in judicial opinions that have given more specific meaning to the statutes. But the judicial gloss on these statutes is ever changing and evolving. It is true, therefore, that in many areas a businessman cannot be certain whether a course of conduct that he wants to follow is or is not lawful under the antitrust laws. It is frequently the case that judges will reasonably disagree not only on the question of whether particular conduct does or does not violate the antitrust laws, but also on the question of whether such conduct is affirmatively desirable or beneficial to competition. But it is also true that in many areas any lawyer can categorically state that certain conduct is unlawful. For example, there can be little doubt that the defendants convicted in the electrical equipment price fixing cases knew that they were engaging in unlawful conduct. Unfortunately the Sherman Act does not distinguish between those violations that are clear and those that are in the shadowland. It is possible under the law for a defendant to be found guilty of a crime for engaging in conduct that he could not have known to be unlawful at the time.

**As a practical matter, criminal actions, particularly against individuals, are usually restricted to clear violations of the law. But there have been exceptions. And it seems unreasonable to require businessmen to face the possibility of criminal liability with respect to activities the illegality of which has not been clearly established by settled law. It would seem preferable to amend the antitrust laws to specifically and clearly spell out those violations which are subject to criminal penalties, and these should be limited to such practices as price fixing and other cartel arrangements, and conduct of a predatory nature. Even with such amenment gray areas will continue to exist and this perhaps is unavoidable. In the absence of clarifying amendment of the antitrust laws, we must rely on the prosecuting authority as well as the trier of fact to limit criminal sanctions to those cases in which such punishment is clearly indicated.**

The Department of Justice has given clear warning that it means to use the criminal provisions of the Sherman Act fully. I don't believe that it intends to institute a reign of terror under which jail sentences shall be the punishment for bad guesses made in good faith by businessmen or their lawyers as to the meaning of the antitrust laws. Such a policy would be poiatless and unfair. Lee Loevinger's statement concerning punishment of antitrust offenders, which is quoted by von Kalinowski, was made just after a reference to the

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## Comment – Jordan . . .

(Continued from Page 5)

electrical equipment price fixing cases and to "deliberate and conscious" violations of the antitrust laws. It is fair to assume that Loevinger's words were limited to offenses of that kind. The criminal provisions as applied to individuals are a very potent weapon. They should be used to prevent restraints on competition, not to hobble businessmen's attempts to vigorously compete. I agree with von Kalinowski that they should be limited to those cases of deliberate violations of the law involving conduct that clearly is illegal.

Von Kalinowski also takes issue with what he indicates is the policy of the Department of Justice to carry civil cases through to judgment rather than to enter into consent decrees. Under Section 5 of the Clayton Act, in an action brought by the United States under the antitrust laws, a judgment to the effect that the defendant has violated such laws is prima facie evidence against that defendant in any action brought by a private plaintiff for damages resulting from the violation. This provision of the law is very beneficial to victims of antitrust violations. Many antitrust violations involve extremely complicated questions of fact and extended economic inquiries. Many private plantiffs, who might have a meritorious claim, simply do not have the economic resources to enage in the prolonged and expensive litigation that is so typical of antitrust cases. By allowing such plaintiffs to use the judgment in a prior Government action as evidence, their task is greatly eased. This statutory pattern seems sound. It gives the defendant full opportunity to litigate the question of its violation of the law in its suit with the Government.

**There seems to be no compelling reason why a private plaintiff should have to prove again the fact of violation in a subsequent action, especially when placing this burden on the plaintiff in practice will mean that many plaintiffs with meritorious claims may be denied a remedy. Some difficulty is raised, however, by another provision of the antitrust laws, Section 4 of the Clayton Act, which provides that any private plaintiff who is injured in his business or property by a violation of the antitrust laws is entitled to treble damages plus attorney's fees. I can see only two rational bases for the treble damages provision.**

First, it can be justified as an enforcement provision. By making it attractive for plaintiffs to bring actions, more violations of the law supposedly will be uncovered than would be the case if enforcement of the law depended solely on Government action. On this theory treble damages are not justified where the Government has already brought an action and determined liability.

The second basis for the provision is that the threat of treble damages acts as a deterrent to violations of the law. This perhaps makes some sense if we are dealing with deliberate violations of the law, but in other cases great injustices can result. Novel interpretations of the antitrust laws have frequently resulted in declaring unlawful conduct which the business community reasonably thought was lawful. In such situations the imposition of treble damages as a deterrent is not meaningful. Deterrents are perhaps best left to the criminal provisions of the law. But if treble damages are to be used as deterrents they should be limited to those areas involving behavior to which criminal sanctions should be applied.

Since Section 5 of the Clayton Act does not apply to consent judgments, many defendants in suits brought by the Government, in order to avoid treble damage actions, have agreed to consent decrees whereby they agree to the relief sought by the Government without litigating the question of their violation of law. Although these provisions make it easier for the Government to enforce the law by consent decree, to the extent that they encourage the use of the consent decree they make it more difficult for private plaintiffs to obtain relief. In my opinion the principal fault lies in the treble damage provision. If it did not apply to actions based on judgments obtained by the Government, a policy by the Department of Justice against consent decrees would seem to me to be unobjectionable. However, considering the law as it now exists, it would seem advisable for the Department of Justice to consider the nature of the offense, the good faith of the defendant and the possible crippling effect of treble damages, in determining whether in any given case it should agree to the entry of a consent decree. As a practical matter the heavy case load of the Department and limitations on funds for litigation will assure that consent decrees will continue to be a prominent feature of antitrust litigation.

## Lawyers on TV . .

(Continued from Page 1)

with television. It would have worsened the public image of the administration of justice, rather than enhanced it, because "the pressures for the dramatic at the expense of the authentic would then have proceeded unchecked."

**Significantly, the "standard producer's direction and control' clause in TV contracts has been modified in Jones' case. The clause as modified reads in full as follows: "Performer will render his services to the best of his ability and will be subject to Producer's direction and control, exept as limited by the contents of that certain Statement of Principles approved by the Board of Governors of the State Bar of California relative to the conduct of lawyers portraying the role of a lawyer or judge on television."**

That clause protects the lawyers who appear on the ABC programs, and it preserves their influence on the character of the programs. "So long as the legal profession has the kind of influence on television courtroom programming implied by that clause, it has the reality of active, not merely precatory, influence," Jones stated. "By their actions, the American Bar Association and the California Board of Governors have assured the legal profession of the continuance and expansion of that kind of influence on television courtroom programming.

"Their action constitutes an intelligent response both to the opportunity and to the caution implicit in television courtroom programming. The opportunity is to engage in constructive education of the American public in the functioning of their lawyers and ourts. ing of their lawyers and courts. The caution is that this be done with authenticity, mindful of the profound impact upon millions of network fiewers in the shaping of their attitudes toward the administration of justice in a free society," he concluded.

## Moot Court Winners . . .

(Continued from Page 1)

chosen the top orator in the Southeastern U.S.A. As a freshman at Florida he was a member of that school's 1956 National Champion Collegiate Debating Team. Luke received a trophy from the National Academy of Trial Lawyers for being the outstanding individual participant in the State of California in this year's National Moot Court Competition. A member of Phi Alpha Delta Law Fraternity, Luke enjoys writing in the field of philosophy as a pastime. Upon graduation he hopes to specialize in Criminal Law.

Ronald Fidler, the "Elder Statesman" of the team is 29 years old. Ron received his B.A. degree from Central College of Missouri, Fayette, Mo. Upon graduation he served for three years as a First Lieutenant in the Marine Corps, where, as a pilot, he flew carrier-based attack bombers. On leaving the service, Ron returned to do graduate work in geological engineering at the University of Oklahoma. At Oklahoma he was elected to membership in Tau Beta Pi and Sigma Tau, national enginering honoraries. His wife Maureen is a veritable Irish colleen, having been in the U.S.A. for only three years. She was a stewardess for TWA. They have a daughter 15 months old. Ron hopes to specialize in Oil and Gas Law on graduation.

**All three agree, that regardless of their individual abilities, they owe their success to the increased effectiveness achieved by working together as a team.**

The case being argued in final competition involves an alien's property rights subsequent to nationalization without adequate compensation. The case, as are all moot court cases, is being argued on appeal. Neither team knows until just before the trial, whether they will represent the appellant or the respondent.

**In the national grading, the brief represents one-third of the grade and the balance of the grade is based on oral presentation and response to questioning. In theory, only two of the three will argue on orals, however it is common for the bench to direct questions to the third participant whose primary duty is to assist in preparation and be prepared to step in if one of the others is unable to participate.**

As a practical matter all three are equally prepared. The UCLA brief represents over 1000 hours of research, writing and consultation. No help is given to the students by the faculty as this is prohibited by the rules of competition. Interestingly enough, prior to this case, none of the three had ever worked together.

## LSA Resolution . . .

(Continued from Page 1)

supported institution and therefore urge the administration to inform all prospective employers that during interviews at the UCLA School of Law they will be expected to follow the public policy of California, as expressed in our Labor Code as to fair employment practices."

On Nov. 29 Davidson received the following letter from the administration in response to the passage of the foregoing resolution:

"Dean Maxwell has requested that I reply to your letter of Nov. 28 calling to our attention the interview problem which arose recently.

"I would like to assure you and the LSA that the Law School's policy is entirely in accord with the California Labor Code, and it will be made clear to interviewers that this is our policy. In the past no specific instructions have been given to a law firm prior to interviewing students as we felt that it would be interpreted as undue direction.

"I feel that the instance that occurred was an aberration largely due to the inexperience of the interviewer. I do not expect the situation to arise in the future and, as stated, I have taken steps to see that it does not."

**Sincerely yours,**
**James L. Malone**
**Assistant Dean**

# Law Wives Next Event Is Fashion Show

By JUDY ALBAUM

Monday, Dec. 4, more than 30 law wives met in the Law Lounge to see Mrs. Lila Crain of Kaz Hobbyland in Inglewood give a demonstration of how-to-make Christmas decorations. Styrofoam sticks, fluffs of chenille, baubles, bangles and assorted beads took shape in her hands, creating charming figures, door pieces, corsages and centerpieces.

In a matter of minutes she wrought a bouffant pink and silver centerpiece which she presented to the group. It was then auctioned off at 25c a chance, thus raising money to buy Christmas toys for the Legal Aid nursery school.

**The interest groups are actively working on their projects. Beginning Bridge meets on Mondays. The general Bridge group, according to chairman Suzy Bardet, now numbers in the twenties.**

Jackie Carter of the Arts and Crafts group reports its next meeting is Dec. 19—project: Christmas decorations.

The big event to look for is the Fashion Show, to be held in the student union in February. Guests of honor will be Mr. Sande, of Marissa, who will drape the model, and Gustave Tassell, winner of the 1961 Coty Fashion Award. Numerous designers will be showing clothes, including Marissa suits, a Tassell ball gown, Jane Andre casuals, Roth-Le Cover suits, Gean of California cocktail dresses, Sbicca shoes, Gibi Italian knits, and many more. This is a new format for the show and is creating much excitement among the members. Additional note (according to chairman Barbara Mouron): one of the door prizes will be a John Robert Powers' modeling course.

Final note: please pay $2 worth of dues to Margie Barbour before Dec. 31.

## Judge Nutter ...

(Continued from Page 3)

the prospect of doing 28 days "dead time" while awaiting trial.

**Since many of the accused are indigent or unable to post adequate security they are unable to raise the bail. The plea of guilty means immediate fine or sentence —often for a lighter penalty than 28 days.**

The volume of cases which must be heard each day in Municipal arraignment courts precludes adequate consideration for the rights of the accused in Judge Nutter's estimation. Twenty-five thousand arraignments are processed each month in the Los Angeles municipal district. The bulk of these arraignments are handled by only four arraignment courts.

These are Divisions 50 and 51, which handle only traffic and vehicle code violations; Division 58 in Lincoln Heights which hears only intoxication prosecutions and Division 59 which handles all other misdemeanor offenses.

**Because of the volume of cases prosecuted by the City an average time of 51 seconds is alloted to each defendant at his arraignment hearing. During this 51 seconds the charge against the accused is read and his plea is entered. Judge Nutter noted that frequently the accused is unaware of the exact nature of the offense he is charged with having committed, but nevertheless elects to plead guilty to "get it over with."**

These practices Judge Nutter deplored as "inconsistent with our sense of justice and fair play" and intimated that the members of the Bar as wells as his fellow jurists should begin now to seek corrective measures.

Judge Nutter is a Harvard Law School graduate who served as a Lieutenant Colonel in the Air Force and was formerly an attorney for the National Labor Relations Board. His talk at UCLA School of Law was under the auspices of the Legal Forum committee, E. Belmont Herring, Chairman.

# FRATERNAL FRANCHISE

## PHI ALPHA DELTA

By HARVEY REICHARD

Climaxing a highly successful rushing season, the brothers of Phi Alpha Delta in a brief pledging ceremony at Das Gasthaus welcomed 60 pledges to their midst. This concluded a series of rushing events at Rosey's Red Banjo and 23 Skidoo, a luncheon at the Carolina Pines featuring not one, but two, guest speakers (William Strong and Dr. Robert Osterman) and a party at the home of Charles Fields in Brentwood.

A large share of the credit, both for the fine events and the high caliber of men pledged, must go to Al Golden, rushing chairman, who did an outstanding job.

**Now that rushing is over, attention has once again focused on the books. PADs scholarship program, led by Don Mike Anthony along with Ron Kabrins, Dean Stern, and Larry Kasindorf, staged a practice exam in procedure, and all were agreed that it was highly beneficial to the first year men. Future exams are scheduled for alternate weeks.**

The luncheon program got off to a bang with the affair at the Carolina Pines. Strong and Dr. Osterman discussed such points as the LoCigno trial, the Jeff Chandler case, and an amazing case involving artificial insemination.

Luncheon co-chairmen Hal Klein and Manley Fried promise additional luncheons featuring other outstanding speakers in the near future.

**It was lucky for the fraternity that no one from the fire department appeared at the party at Charlie Fields' pad. They must be the only people in town that weren't there. I don't mean to imply that it was crowded, but it was an all-night job to get from the living room where the dancing was going on, to the dining room where the refreshments were. The next social affair was an informal party held at a local fraternity house on Thanksgiving Eve. Although a last minute idea, it worked out remarkably well.**

Brothers Luke McKissick and Gary Goldman distinguished themselves in the moot court program by helping defeat SC and Loyola and will be leaving shortly for the National Moot Court Finals Competition in New York. The brothers in McKenna chapter wish both them and their partner the best of luck in the competition ahead.

## NU BETA EPSILON

By SHELDON BARKAN

It should be apparent that there exists a new spirit in Nu Beta Epsilon. This spirit is one of activity and determination to provide for a more effective future.

Activity has taken place in the first year class which is now in the program of lectures, seminars and examinations as promised by the fraternity. It is felt by the actives that this program will aid in the achievement of a higher scholastic rating than the pledges would otherwise obtain. Future lectures are planned on the topics of note-taking, moot-court brief writing, examination writing, collateral reading and others.

The pledge class has also had its first get-together in the form of an afternoon at Rosie's. Soon there will be planned other events of a sosial nature. This, of course, will come after the between semester lull.

The actives have been meeting and have decided to strengthen ties with national. On the basis of recommendations made at a special meeting, action along these lines has been taken. Another meeting will soon be called for the actives so a master calendar can be drawn up as well as a roster and both will be distributed to the fraternity.

This brief report should suffice for the news of the fraternity as such and is merely indicative of what has been happening. But there is some news of a personal nature to be conveyed. Hal Greene and his wife Phyllis are proud to announce an addition to their domestic scene, their first child Susan.

Not to be out-done Myra and Sheldon Barkan are looking forward to an arrival early in June. After all, it is only fitting that the Greenes' baby should have a playmate.

A few quotes are indicative of the stage of development of sample members of the fraternity; i.e. Fred Marx, "What is this all about;" Tony Sommers, "I have to give up Bridge and Chess and study," and Ed Ulman, "The liberals shall rise again."

## PHI DELTA PHI

By JACK VINCENT

This fall the members of Phi Delta Phi managed to slip away twice from the crowded class schedule for luncheons.

Don Bringgold, a UCLA Phi Delta Phi, who is well known for his defense work in the trial of Carol Tregoff, spoke to the members about some of the practical problems of being a criminal attorney.

**Luncheon chairman, Dick Aldrich, brought the brothers out again with memory expert ——— Bornstein. (Can't remember his name.) Bornstein and his wife Marge amazed everyone with their memory methods, and proved that they could recall numbers faster than Jack Bardet could write them on a blackboard.**

On Nov. 22, 1961, 53 new pledges were initiated and informally welcomed at the Thanksgiving Party. Ken Maddy and Tim Strader went all out in providing headaches for all, and we are looking forward to their next production which will be the Christmas party immediately following a dinner at the Santa Ynez Inn.

This week Joel McIntyre will begin the scholastic program with a practice exam in contracts for all the first year pledges. After the Christmas Party recovery, we wish them well on their final push to midterms.





### Special Notice

The following persons have requested that they be mentioned in **Docket:**

**Joel F. McIntyre**
**Bernard Katzman**

The following persons have been nominated by the editors as also worthy of mention:

**Alan Michael Genelin**
**Jack S. Margolis**
**Harvey Aaron Epstein**


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