Daylight Savings Ends This Weekend—Set Your Clock Back One Hour

THE DOCKET
UCLA SCHOOL OF LAW

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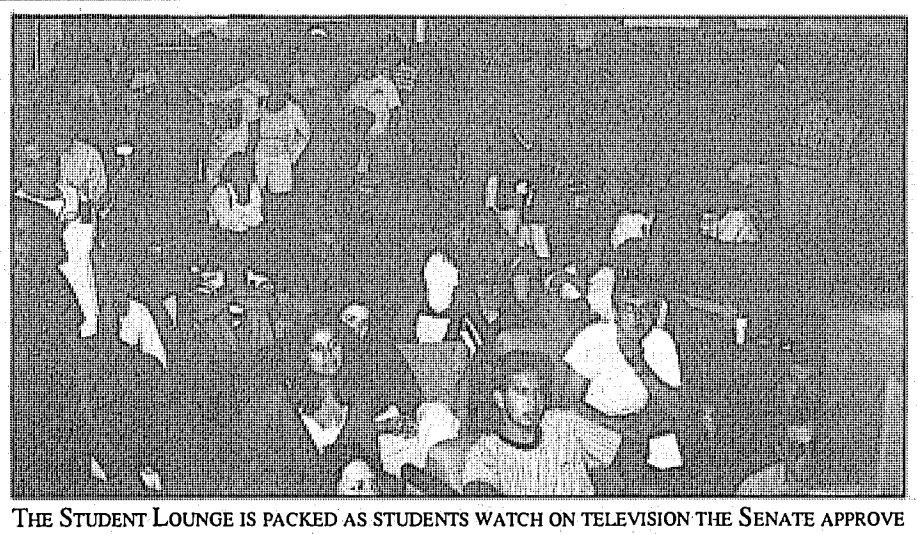
Admin Law Focus of 40th Anniversary Law Review Symposium

UCNewswire—Current issues in administrative adjudication will be examined during a major conference of judges, attorneys, scholars and students in the field on November 1st at the UCLA School of Law. The broad range of issues subject to administrative adjudication includes labor law and worker's compensation, environmental controls, professional licensing, immigration, and public utility rate increases.

The November 1st symposium on "Contemporary Issues in Administrative Adjudication" is scheduled from 8:45 a.m. to 5:30 p.m. Sponsored by the UCLA Law Review, the symposium will mark the 40th anniversary of the review's publication.

Presenters and commentators at the conference—leading legal scholars from throughout the nation—will address the future of the administrative law judge, the control of informal adjudication, the problems of administrative impartiality, and the means to reduce conflicts in judicial review of agency action.



THE STUDENT LOUNGE IS PACKED AS STUDENTS WATCH ON TELEVISION THE SENATE APPROVE THE NOMINATION OF CLARENCE THOMAS. FOR ANALYSIS OF THE ISSUES RAISED IN THE THOMAS/HILL HEARINGS, TURN TO PAGE 9.

"These matters are of intense interest to all who practice or teach administrative law, as well as to administrative law judges and those who serve within state and federal agencies," said Professor Michael Asimow of UCLA. A consultant to the Law Review Commission redrafting the California Administrative Procedure Act, Professor Asimow will serve as faculty chair of the symposium.

Deputy Dean Jerry L. Mashaw of Yale Law School will keynote the symposium. His topic is "Organizing Adjudication: Reflections on the Prospects for Artisans in the Age of Robots."

Presenters at the conference include Professor Paul R. Verkuil, president of the College of William and Mary; Professor Peter L. Strauss of Columbia University; Professor Asimow of UCLA; and Professor Harold H. Bruff of the University of Texas.

Commentators include Chief Judge William Robie, U.S. Immigration and Naturalization Service; Professor Lucie White, UCLA; Professor Daniel B. Rodriguez, University of California, Berkeley; and Judge Alex Kozinski, U.S. Court of Appeals for the 9th Circuit.

The conference papers will be published in a special issue of the UCLA Law Review.

A registration fee of $50 includes conference materials, breakfast, luncheon, and reception. Students may attend the talks for free and the luncheon for $15. For further information, phone (213) 825-4929.

PILF Concerned Over Loss of Public Interest Coordinator

by Jonna Hoffman, 1L

This is the second of a two-part series looking into the changes in the Career Planning Office. Part I was an interview with Bill McGeary explaining the changes and the effects on students looking for jobs in the public interest. Part II is reaction from PILF officers and faculty members interested in public interest work..

"Concerned." That is the word used by President of the Public Interest Law Foundation President, Jeff Galvin, to describe PILF's position on the recent elimination of the Public Interest Coordinator position in Career Services.

In the 1980's, PILF fought hard for the creation of a Public Interest Coordinator position in Career Services. They watched the position evolve from a ten hour a week law student job, to a full time administrative position. They were quite disappointed when they learned of the decision to eliminate the position late in August.

The members of PILF understand the necessity of working out a budget, but also feel that the position held practical and symbolic value, says Galvin. He explains that the student who has a generalized interest in the public service field may be hesitant to just walk in to some professor's office to ask about a career in public interest law. Having the Public Interest Coordinator in Career Services provided easy and visible access to information on public interest law careers. Visibility is very important in encouraging students to consider careers in public interest law. The public sector can hardly compete with the private sector in recruiting methods.

This symbolic value extends to the reputation of the UCLA School of Law in general. It is no secret that UCLA is one of the most innovative law schools in the country and the Law School prides itself on its reputation as such. The elimination of the Public Interest Coordinator position is not consistent with this progressive reputation.

PILF members believe that the Public Interest coordinator was a viable position and they had hoped it would continue to evolve into an even more comprehensive position, providing actual career counseling and networking in the Public Interest Law community.

See 'Public Interest Coordinator" on p. 2

Tenure For Matsuda Stuck in Committee

by Scott Brutocao, 1L

The long process in granting tenure at UCLA law school has put law professor Mari Matsuda in an awkward position.

Rather than being notified about her tenure on July 1, the beginning of the academic year, Matsuda's file is still being reviewed by university officials. And as the process dragged on past August, Matsuda realized that she would have to resign her tenure at the University of Hawaii before she got word from UCLA regarding her tenure here.

"I would have preferred to have a position [at UCLA] before I resigned my tenure at Hawaii," said Matsuda, who decided to resign at Hawaii because the deadline for her to return there was about to elapse.

If Matsuda accepts a permanent appointment at UCLA, she will be the first Asian tenured law professor on this campus. She focuses on race and gender issues, especially as they relate to Asian-American studies.

The tenure process at UCLA did not assuage Matsuda's ambivalence about resigning her tenure at Hawaii. Since Matsuda came to UCLA in 1990 as a visiting professor, the tenure process worked differently.

The standard process is for a professor to come to UCLA, teach for four or five years, and then either be recommended by the faculty for tenure or not. Both Lucie White and Kimberle Crenshaw recently received tenure this way. *See "Two Professors Granted Tenure" in this issue.*

But since Matsuda came on as a visiting professor from another University, the trial period was much shorter. She joined the faculty in the fall 1990, but did not teach until the spring of 1991. After review in the spring, the faculty recommended her for tenure. Now the process is out of the law school's hands.

"The law school has a pattern of usually deciding tenure cases in the spring, and that means that they do not get all the way through the university processes until December or January," said Dean Prager. "The reason for that is that the campus has a system where once the case leaves the departmental level it goes to a committee of academics from many different disciplines and they appoint an ad hoc committee...and that committee must get together and write a report to the larger committee."

This process of tenure cases being reviewed by an academic committee and an ad hoc committee usually takes several months. Matsuda's case, which is on a normal schedule, is currently before the ad hoc committee.

The only way Matsuda's case could have been rushed through the process would have been to assemble a summer ad hoc committee.

"There's not a serious attempt except in emergency circumstances to get an ad hoc committee together over the summer because we're on a different calendar than the rest of the place," said Dean Prager. "I don't think I've ever seen a case that was shorter than two months at the ad hoc committee level."

As a consequence of the tenure consideration process, Matsuda and the rest of the faculty await the university's final decision.

Matsuda, however, has been contacted by "a number of other schools" who are interested in adding her to their faculty.

"We are very enthusiastic about adding her to our faculty," said Dean Prager.

See "Matsuda" on p. 2

Two Professors Granted Tenure

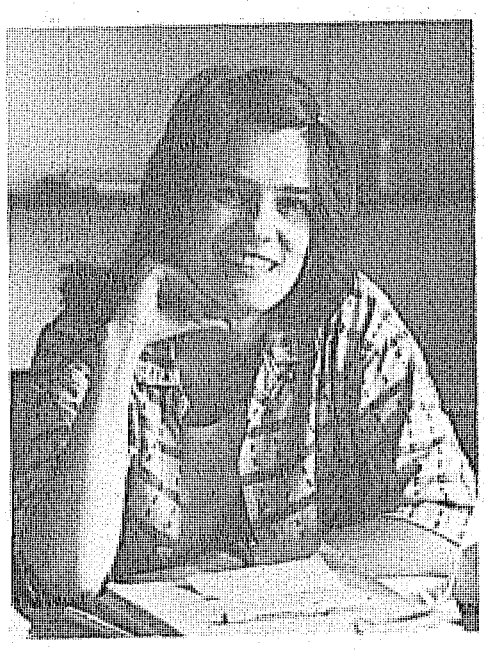
by Scott Brutocao, 1L

Kimberle W. Crenshaw and Lucie E. White have became permanent members of the faculty at UCLA School of Law.

Both received tenure effective July 1, 1991, the beginning the the university's academic year. Crenshaw came to UCLA in 1986 and White in 1987.

PROFESSOR KIMBERLE W. CRENSHAW

Crenshaw, who was named Professor of the Year at UCLA for the 1990-91 academic year, received her J.D. from Harvard Law School in 1984 and her LL.M. at the University of Wisconsin in 1985. At UCLA she has taught Criminal Law, Civil Rights, Voting Rights, Women & the Law, and Constitutional Law, and is now on sabbatical leave at the University of California at Irvine.



PROFESSOR LUCIE E. WHITE

White, who received her J.D. from Harvard Law School in 1981, worked at legal assistance clinics in North Carolina from 1982-86 and has done graduate work in comparative literature at Yale from 1972-75. At UCLA she has taught Civil Procedure, Housing Discrimination, Advocacy for the Homeless, and Pre-Trial Lawyering. From 1975-78, she involved herself in education and elder affairs in the New England area.

Public Interest Coordinator

(from p. 1)

While PILF members are not happy with the decision, they are committed to giving the new system a chance. They are working closely with Bill McGeary and the Career Services office to ensure that their prime objective, the promotion of public interest careers, continues.

Speaking of promoting public interest careers, I met with two of our newest faculty members, Professors Carson Taylor and Gary Blasi, who are here at UCLA to do just that. The two had much to say about many exciting plans for the future of Public Interest Law programs at UCLA.

The two are employed as Professors, but Taylor, who is funded by Public Counsel, is officially here to do more than just teach law. His job description also states that he is at UCLA to develop a pro bono program for students. Professor Blasi, whose extensive background in Public Interest Law includes many years of service with the Legal Aid Foundation of Los Angeles (LAFLA), will also be an excellent source for students interested in pursuing careers in the public sector.

Discussing the future pro bono program, Professor Blasi explains that getting students into agencies is not just a matter of directing students toward agencies and assuming the agencies will greet them with open arms. It is important, Blasi says, to educate the agencies on the value of utilizing student volunteers. Often times an agency will be hesitant to take on a student volunteer, as it takes some effort to train and supervise students. Agencies need to be informed, perhaps from agencies who have used students in the past, on ways in which students can best be utilized in the office. So, part of the pro bono plan will involve a system of "educating" agencies in this area.

The second component of the plan will include a resource system for students. Sets of binders containing all the agencies in need of volunteers will be set up in the lounge or library. After students select a field of law and determine their time availability, they can pick out agencies from the binders.

The two professors have just returned from Stanford where they met with several schools to discuss the development of public interest programs in several California schools. We at UCLA should be proud to know that the arrangement with Professor Taylor and Public Counsel is viewed as one of the most innovative legal education and pro bono efforts in the state and possibly the country. Public Counsel is one of the largest public interest law organizations in the state and we have a direct consultant right here on campus. The possibilities are abundant, so please do not hesitate to take advantage of them. Professors Blasi and Carson tell me they would be thrilled to have a line of students at their doors. Professor Blasi's office is 2494 and his office hours are Monday/Wednesday, 2 p.m.-3 p.m. Professor Taylor's office is 1470 (Clinical Wing) and his office hours are Tuesday/Thursday, 2 p.m.-3 p.m.

Matsuda

(from p. 1)

"But Professor Matsuda does have some other options. So when this is all finally said and done, we very much hope she would accept an appointment here, but that's by no means a sure thing."

Matsuda did not reveal her intentions if and when she receives a permanent appointment. But she has said she finds UCLA an inviting environment.

"The faculty and students at UCLA are outstanding," said Matsuda. "I don't think you can beat them anywhere in the country."

Matsuda graduated first in her class from the University of Hawaii School of Law in 1980, and received her LL.M. at Harvard in 1983. She joined the University of Hawaii as a Professor of Law in 1983. From 1989-90 she was a Visiting Professor of Law at Stanford Law School, and taught Feminist Legal Theory, Progressive Law Practice, and Subordination: Traditions of Thought and Experience.

SBA Announces Committee Appointments, Prepares for Funding Requests

by James L. Orcutt, Editor-in-Chief

SBA held two meetings over the last month. At their September 23rd meeting, SBA President Leslie Fraser welcomed the first-year representatives to the board and announced the student appointments to the faculty/student committees. SBA also established a regular time to meet—every other Wednesday at 6:15 p.m.—and discussed happy hour expenses.

The October 9th meeting was a long and chaotic discussion that focussed primarily on the process of and criteria for distributing Graduate Student Association funds to law school student groups. Second-Year President Jay Miller and Treasurer Sandra Barrientos announced the final results on the t-shirt/sweatshirt sales. Also at this meeting, Barpassers Bar Review Course announced that it would sponsor a continental breakfast once a week for law students.

Committee Appointments

Faculty/student committees are an important part of the governance of the law school. Each committee examines issues in its field of specialty and makes recommendations that are voted on by the law school faculty.

This year, thirty-five students applied for appointment to these committees. Fraser noted that all thirty-five were given an appointment. Some were appointed as alternates to ensure that there will be student representation at these meetings. The committee appointments are as follows:

Academic Support
Jay Miller, 2L
Jennifer Rose, 1L
Lisa Salas, 3L
Shawn Williams, 2L
Admissions
Doris Ng, 2L
Lisa Salas, 3L
Dan Shephard, 2L
Anthony White, 2L
Appointments
Jeff Freedman, 2L
Rita Holman, 3L
Kimberly Williams, 2L
Alt: Cassiano Hacker-Cordon, 2L
Computer
Mani Adeli, 1L
Marty Barrash, 3L
Chris Jones, 1L
Curriculum
Karin Co, 1L
Victoria Levin, 2L
Paul Luehr, 3L
Alt: Stuart Patterson, 3L
Externship
Joe Salazar, Jr., 2L
Claire Turcotte, 3L
Alt: Josh Lichtman, 1L
Library
Boaz Brickman, 3L
Nick Miculicich, 2L
James Ryan, 2L
Placement
Brenda Sutton, 3L
Hao-Nhien Q Vu, 1L
Alt: Allison Hubbard, 3L
Public Interest
Patty Amador, 1L
Jollee Faber, 3L
Julie Van Wert, 2L
Alt: Chris Friedt, 1L
Standards
Ruth Bermudez, 3L
Dater Smenian, 2L
Alt: Steve Lotwin, 1L

Fraser explained that she requires each student committee member to submit a report after each meeting. She also encourages students to bring their concerns to committee members.

Happy Hour Expenses

Bar-Bri Bar Review pays the costs for Thursdays' Happy Hours. At the September 23rd meeting, a representative from Bar-Bri expressed concern that the costs per happy hour had risen to well over $200. Bar-Bri wanted to bring costs down and said it would be willing to pay for two kegs of beer per week. Third-Year President Chris Gonzales explained that he arranged a special deal with King's Liquor Store to keep costs low. At press time, it appears that Bar-Bri is still paying costs for happy hours—food and drink.

Money

The t-shirt/sweatshirt sale netted approximately $1,400. This money is discretionary money—SBA may spend it any way it sees fit.

SBA has also received $5,700 from GSA. This money is part of the registration fees extorted from us each semester. SBA must distribute this money to student groups in the law school.

Much of the October 9th SBA meeting was spent arguing over how to distribute this money. Criteria for distributing money will be finalized at the October 30th SBA meeting. Money will also be distributed at this meeting.

The Public Interest Law Foundation made a special request for $300 to send two delegates to a national public interest convention in Washington, D.C. SBA denied the request, but did vote to advance $100 to PILF. This advance will be taken out of the money to be distributed to PILF at the October 30th meeting.

Similarly, the law school's yearbook was advanced $100 to cover start-up expenses.

Breakfast

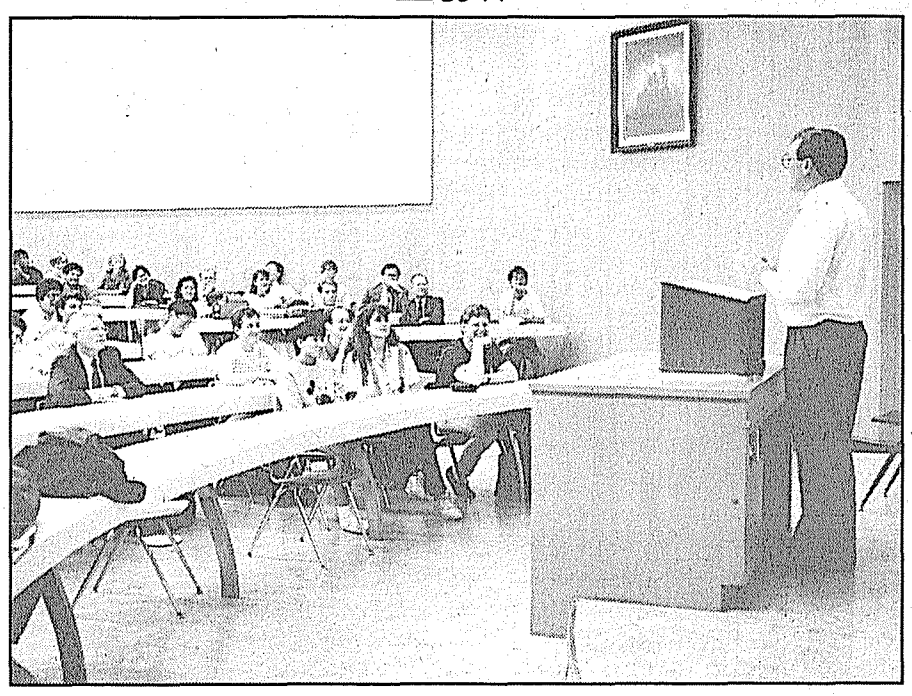
Barpassers will pay for a weekly continental breakfast sponsored by SBA. Breakfasts will be on Tuesday starting at 8:30 a.m.

Next Meeting

SBA's next meeting will be on October 30th. At this meeting, SBA will distribute to student groups funds granted by GSA.

Also at this meeting, SBA will attempt to amend its by-laws to exclude from office students that will during their tenure in office be on externship or not enrolled in classes in the law school because of their participation in a joint degree program. This amendment failed last meeting because not enough SBA representatives attended to pass the measure.

Kozinski Speech Critiques Tort Law



JUDGE ALEX KOZINSKI SPEAKS TO A PACKED HOUSE

by Will Slate, 2L

On Tuesday, September 24, Judge Alex Kozinski (UCLAW Class of 1975) of the United States Court of Appeals for the Ninth Circuit, returned to give a speech entitled "The Toyota Principle." The topic of the speech, sponsored by the Federalist Society, had been kept secret by the judge until the event itself. Nevertheless, over 150 UCLAW students and faculty turned out to hear the mystery speech.

The speech proved to be a comedic critique of the modern tort system's departure from long held standards of individual responsibility. Kozinski expressed his desire to return to an emphasis on individual responsibility within the tort system as "The Toyota Principle: You Asked for It, You Got It."

Kozinski reviewed a number of recent cases to illustrate his point. When Ronald Henderson broke into an abandoned missile base to steal cables strung on utility poles, he got the shock of a lifetime. After grabbing an electrified cable, Henderson fell to the ground, suffering serious injury. Henderson sued the government on a theory of attractive nuisance. "In a sane world, Henderson would have been sent packing and given a bill for the defendant's attorneys fees," according to Kozinski, "but this was the Southern District of California, so what Henderson got was a trial." Henderson lost in the district court, but as "chutzpah knows no bounds when a deep pocket is in sight, Henderson appealed to the Ninth Circuit."

Kozinski described the Ninth Circuit's initial reversal as holding that "thieves are people too, and they're entitled to a safe work environment just like everyone else." Although Henderson lost his case, the court's opinion is still cited for the proposition that landowners have a duty to protect thieves from hazards on their property.

Kozinski discussed a number of cases dealing with people who were run over by trains as involving especially irresponsible behavior. "You can't always tell when a train will arrive at the station, but you can tell with a fair degree of certainty what path [the train] will follow...[and] a good way to avoid getting run over by trains is to stay off the tracks. It works just about every time."

In one example, a plaintiff threw himself in front of a train in a failed suicide attempt. He lost both his legs, and gained a $650,000 settlement. "It's not just assumption of risk, it's assumption of certainty. It's not contributory negligence, it's contributory lunacy. You'd think he wouldn't have a leg to stand on in court." But, according to Kozinski, under theories of pure comparative negligence, where judges are willing to speculate as to ways in which the defendant might have prevented the damage, liability is found.

Kozinski related the more recent case of anti-military protester Brian Wilson who was run over by a Navy munitions train. After surviving the incident, Wilson said he "was sure the train was going to stop."

"When people start thinking that they can win a game of chicken with a train," said Kozinski, "it's time to reevaluate our system of compensation."

Kozinski also criticized attempts by smokers to recover from tobacco companies and by parents who sue rock groups for allegedly leading their children to commit suicide as situations where the plaintiffs look to blame others for their own failures.

Kozinski believes these cases to be indicative of a system that subsidizes irresponsible behavior and encourages people to believe "that taking care of yourself is not your responsibility after all, but somebody else's." Kozinski's philosophy is that "when you suffer harm as the result of an activity that any nine-year-old would know will surely result in serious injury, you're stuck with the consequences of your conduct."

You asked for it, you got it, Kozinski!

Spring OCIP to Change

by James L. Orcutt, Editor-in-Chief

At the September 30th meeting of the Placement Committee, Director of Admissions and Career Planning, Bill McGeary, announced that the Career Planning and Placement Office will not invite first-year law students to participate in the spring on-campus interview program.

According to McGeary, last year only eighteen firms participating in OCIP had openings for 1Ls. Heightened anticipation by first-years was followed by heavy let-downs because there just were not that many OCIP jobs available. Because of the destructive nature of these feelings, 1Ls will not participate in spring OCIP this year. 1Ls will be given other guidance including the opportunity to attend job-search workshops.

Of course, OCIP is still available for second- and third-year law students.

COGLI Circulates Anti-JAG Petition

by Tim Sullivan, 1L

Over 450 students, faculty, and staff of the law school community have signed a petition opposing discrimination by employers who recruit on campus.

The petition, which was sponsored by the law school's Committee on Gay and Lesbian Issues (COGLI), has been circulating since the second week of October, coinciding with National Coming Out Day on October 11th.

Among the petition's main aims is to stop military recruitment at the law school. Judge Advocate General Corps of all military branches discriminate in hiring on the basis of age, physical disability, and sexual orientation.

"The petition is still circulating," says COGLI Chair Patrick Marette, who circulated a similar petition last year. Last year's petition gathered about the same number of signatures.

The protest is two pronged, according to Marette. First, it protests against the military policy of not looking at an individual's merit when hiring. The military eliminates people by categories from consideration for employment.

Second, the petition protests against the law school not being able to pursue the path of its choice. At one time the law school did not allow military recruiting on campus until the faculty were overridden by the President of the University of California.

In 1979, the law school added sexual orientation to the list of factors on which an employer cannot discriminate. At that time, military recruiting was not allowed at UCLA.

In 1986, the President reversed the discrimination policy with regard to the military, based on the fact that discrimination by the military is not illegal. The President's decision forced the law school to once again allow the JAG Offices to recruit on campus.

Many other law schools, including Stanford, USC, Harvard, and Yale, have policies against employers discriminating by sexual orientation, physical disability, and age.

COGLI, though initiating the petition, is not alone in the protest. "We are very appreciative of the Dean and faculty and are thrilled with the response of other students," Marette says.

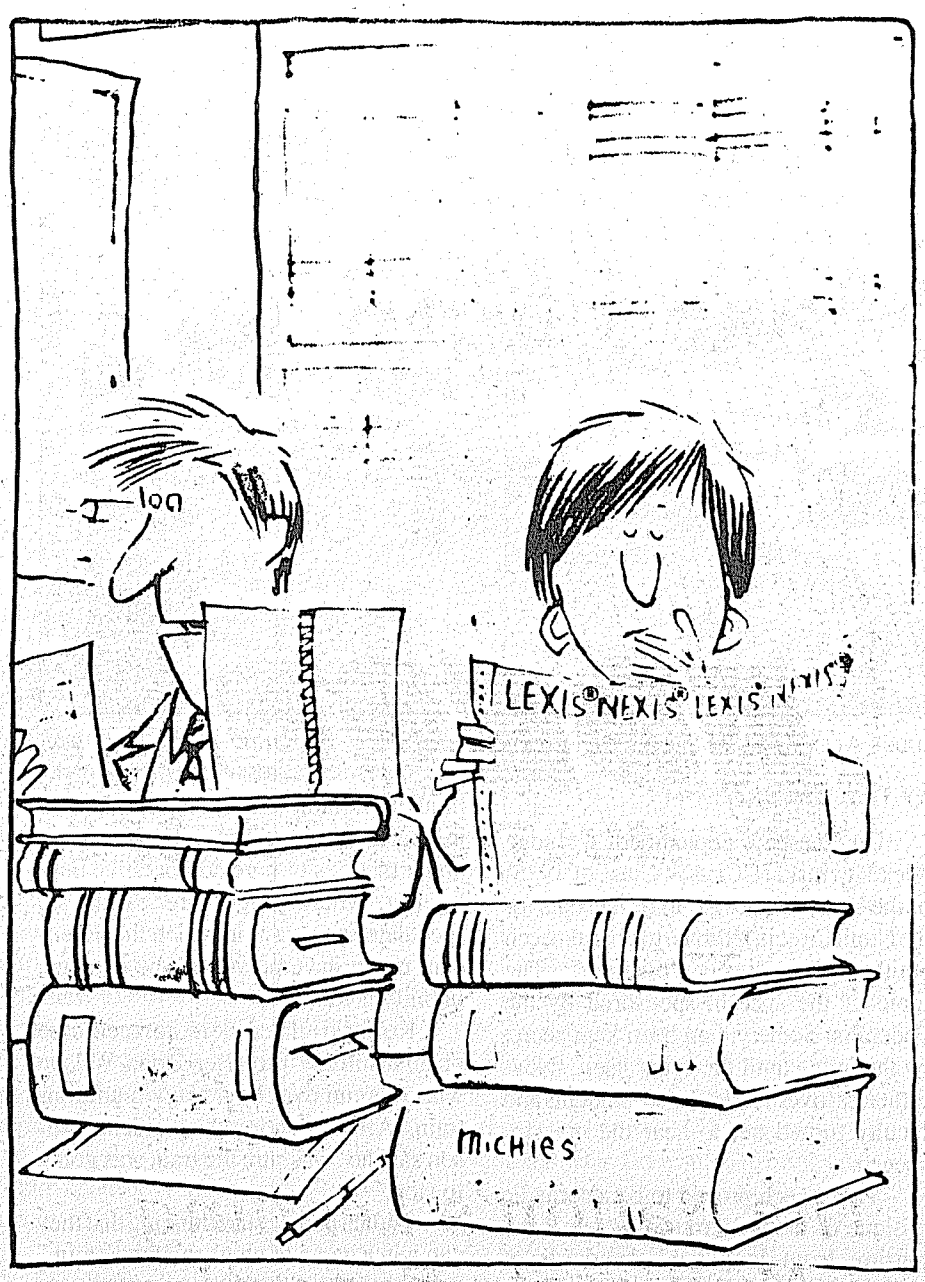
A prominent feature of this protest is that it is supported by a broad base of society, not just those most directly affected, he says. "On this campus, the discrimination itself is viewed as intolerable."

Unlike before, there has been no counter petition this year.

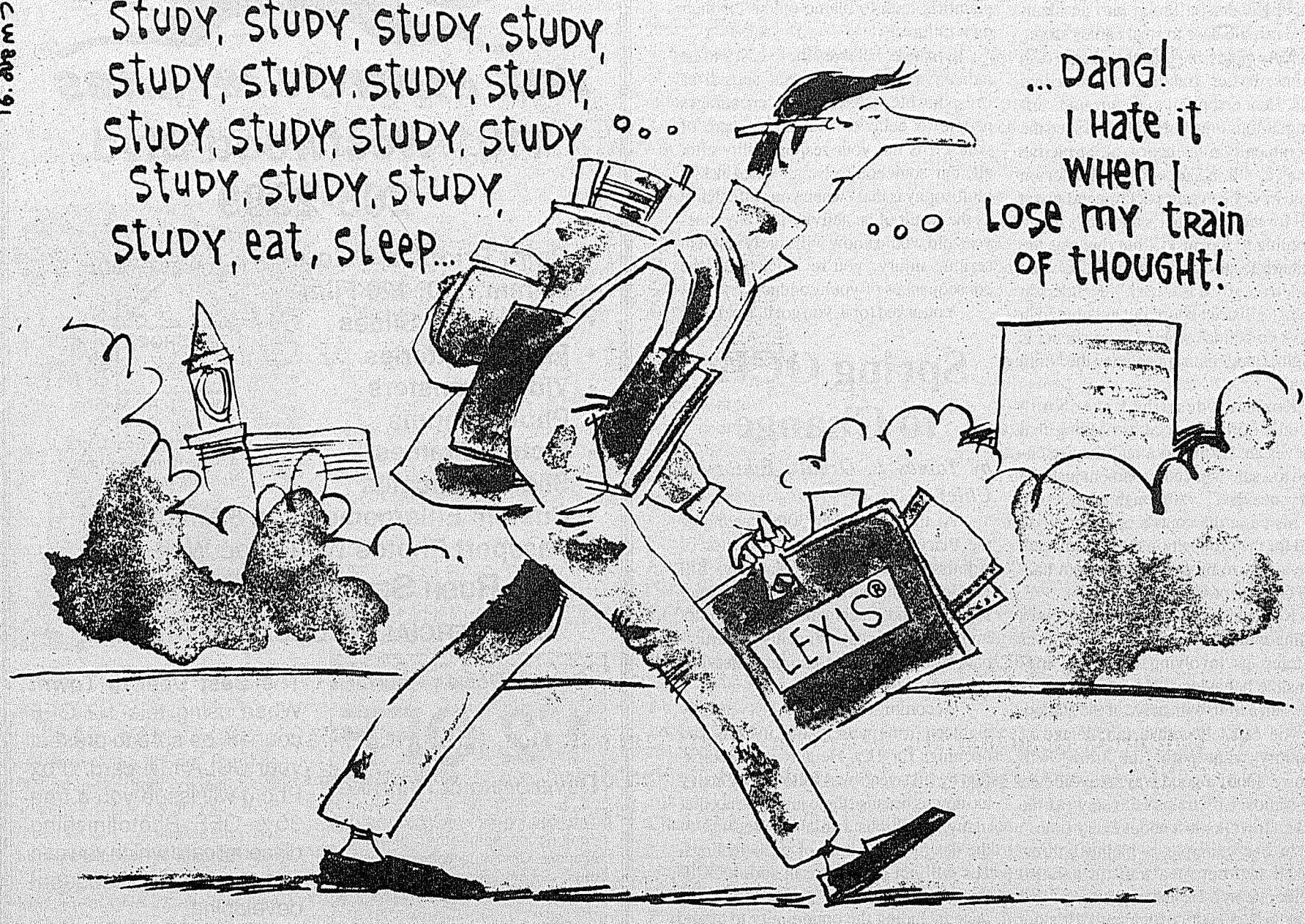
A sparsely supported counter petition was circulated last year in response to the anti-discrimination petition. There are, however, some students who believe that the law school should maximize the number of employers interviewing and law students should be able to decide for themselves which policies are right.

Copies of the petition will be sent to a variety of University and elected officials. Included on the list are members of the U.S. House Armed Forces Committee, Secretary of Defense Dick Cheney, President Bush, and the President of the University.

First Year Law Student Studying.



First Year Law Student on a Date.



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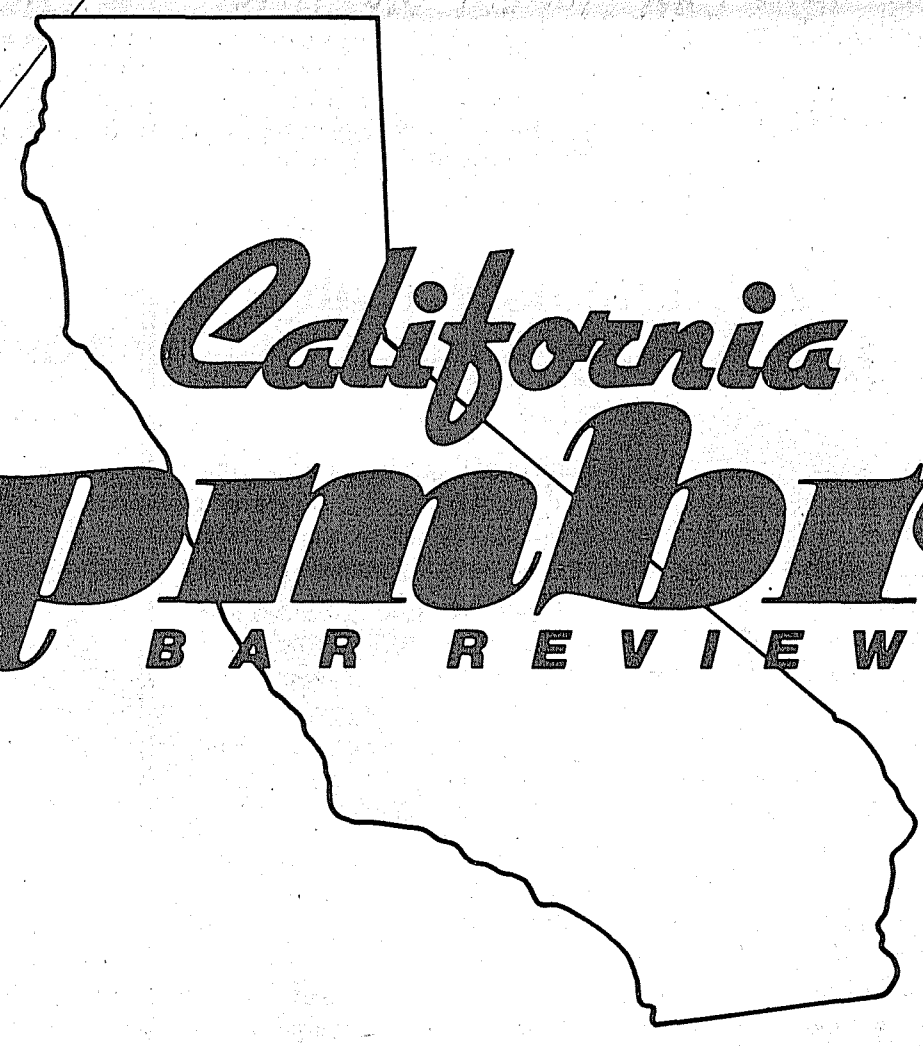

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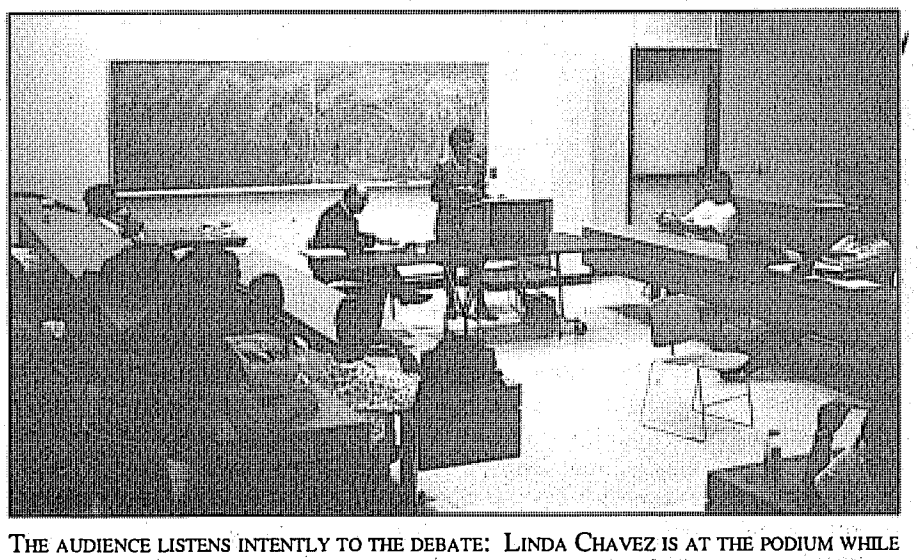
Look for us at the UCLA Bar Review Days,
Oct. 28th through Nov. 1st in the Law Student Lounge

Chavez, Forbath Square Off in Affirmative Action Debate



THE AUDIENCE LISTENS INTENTLY TO THE DEBATE: LINDA CHAVEZ IS AT THE PODIUM WHILE PROFESSOR FORBATH TAKES NOTES.

by Ben Pavone, 2L

To a packed room on Tuesday the fifteenth, the Federalist Society presented Linda Chavez, author of "Out of the Barrio: Towards a New Politics of Hispanic Assimilation," to engage a friendly debate on affirmative action with UCLA's Professor Forbath. Although one might expect a debate between these individuals to be a white male v. minority female class bashing, it was quite the contrary: Professor Forbath argued for affirmative action, and Ms. Chavez supported its abolition.

Professor Forbath's primary contention is that "color blind meritocracy," basing law school admissions without regard to race and instead purely on merit, is a "shabby, impoverished" way to produce good lawyers. Professor Forbath submits that academic merit, measured by numbers, does not predict who has good judgment, strong motivation or other important characteristics of a good lawyer. He does support the number system to determine those who have minimally sufficient academic skills to survive law school and its demands. Thus he proposes using LSAT scores only as a "floor" requirement, which under UCLA's policy, opens the door to many minorities. Professor Forbath proposes to differentiate the remaining pool (those who exceed the floor requirement) by individual considerations. Nevertheless, he could not offer a practical system to figure out how to measure such individualistic considerations.

Ms. Chavez's argument was not the expected rebuttal: the old it is unfair to Chaz-Volvo-Polo who performs well above the floor yet is denied admission to those with lower numbers. Ms. Chavez argued that having any system which favors one race over another stigmatizes the favored race as inferior. Ms. Chavez called such a scheme "benign racism"; it promotes, by example, author Steven Carter's view that he was never the "best" but the "best black."

Whereas Professor Forbath's goal is to promote diversity directly, Ms. Chavez feels that affirmative promotion of diversity in itself is not necessary. A more important goal for her would be to equalize opportunity, and that instead of promoting under-qualified individuals, we should train individuals not to be under-qualified. In such a world, diversity would occur naturally.

The two scholars agreed that a better system might be affirmative action based on socioeconomic background, but Professor Forbath was not willing to sacrifice cultural diversity for a closer relationship between underprivilege and slackened admission criteria.

In all, the two speakers remained emotionally detached and eloquently defended their intellectual positions. This was in contrast to a few students, who, based on the comments of the speakers, appeared to want to throw some punches.

Perhaps the most compelling argument of the day would be Professor Forbath's observation that without looser requirements for some minorities, there would have been scarcely a black or Hispanic face in the room.

Ronald Dworkin to Deliver Sixth Annual Nimmer Lecture

UCNewswire—Professor Ronald Dworkin of New York University will present the sixth annual Melville B. Nimmer Memorial Lecture on November 18th at 7 p.m. in Schoenberg Hall. Dworkin's topic is "Abortion, Euthanasia and the Sanctity of Life." The lecture is open to the public free of charge.

The lecture honors the memory of Professor Nimmer, a member of the UCLA School of Law faculty from 1962 through 1985. Nimmer was an authority on copyright law, entertainment law, and freedom of speech issues.

Dworkin is professor of law at New York University and professor of jurisprudence and fellow of University College of Oxford. His major works explore the foundations of political theory, especially as they relate to liberty and equality. A frequent contributor to the New York Review of Books, Dworkin has authored "Law's Empire" (1986), "A Matter of Principle" (1985), and "Taking Rights Seriously" (1977).

Previously, Dworkin clerked for Judge Learned Hand, was an associate at Sullivan and Cromwell, and was Hohfeld Professor of Jurisprudence at Yale Law School.

UCLAW Students, Faculty Join in AIDS Walk

by Roger Janeway, 1L

On Sunday morning, September 22nd, more than 16,000 people joined an annual ritual by walking ten kilometers through the streets in support of AIDS Project Los Angeles. With thousands of pledges from friends, family, and colleagues, the walkers raised $2,589,000.

The event was marked by a record level of participation by the UCLAW community. Law students, faculty, and staff donated a total of $1,332 to three different organizations: AIDS Project Los Angeles (APLA), Minority AIDS Project, and Milagros AIDS Project. All three organizations provide basic education and health support services to the Los Angeles community. APLA, the oldest and largest of these organizations, works throughout Los Angeles, the Minority AIDS Project targets the African-American and Latino communities, and the Milagros AIDS Project primarily serves the East Los Angeles Latino community.

These organizations provide a number of essential services without charge. Each has a case-management program for people with AIDS, to help them navigate the overwhelming bureaucracies of health care providers, insurance companies, and state and local governments. They also provide legal advice and perform some basic legal services, such as wills and powers of attorney.

Minority AIDS Project and APLA administer programs that deliver food to home-bound individuals, and Milagros has a full-time nurse who makes house calls.

The organizations also fund education and prevention programs. Milagros funds an education program for Latina women and a street-outreach program for IV drug users in east Los Angeles. Both APLA and the Minority AIDS Project provide anonymous HIV testing and counseling, and run workshops on AIDS prevention.

Ask E.T.

by Eliott Tressan

Q. What happened to Dr. Macher and what are you doing here?

A. Dr. Macher has left the University. Recent changes in the Soviet Union have created new opportunities and problems. Dr. Macher has been invited to study and treat a new upsurge of headbanging among former Communist officials after the failed putsch in August. He has decided to return to his homeland and is now the Chief of Psychiatry at the Lubianka Sanatorium in Moscow. Our loss is the world's pain.

I have studied with Dr. M. for several years and I have benefitted greatly from his knowledge and wisdom. Although his shoes are hard to fill (he wears a 13AA), I'll try to answer your questions with accurate information and insight. As always your inquiries and comments are welcome.

Q. The recent interview season has left me feeling not too good about myself and a bit depressed although I got some callbacks. Is there anything I can do?

A. Yes. In recent years, psychologists have discovered a phenomenon called "learned helplessness." When people are repeatedly subjected to circumstances in which they cannot succeed they give up in despair. All people learn best (emotionally and cognitively) through actively operating on the environment. Educators call this the "hands on" method. A prolonged inability to impact the environment interferes with individuals' usual sense of security in their ability to learn and reach their goals. During the law firm interview period students make a concerted effort to put forward their "best selves." When these efforts are met by the somewhat impersonal and dehumanizing quality of the interview process many of us loose confidence and self esteem. A downward spiral can easily be set in motion leading to bad feelings, depression and lowered performance.

Some people have what can be called a "pessimistic" response pattern when they encounter frustrating stumbling blocks. They suffer from the three p's of pessimism; permanence, pervasiveness and personalness. They experience an impediment (e.g. a late or seemingly disinterested interviewer, a slow callback, a teacher's sarcasm), as intensely personal, as saying something deeply and meaningfully negative about them. It pervades and undermines every aspect of life. Worse yet, it feels as if it's never going to get better: "that's how it will always be." This response is common and even in mild form can be toxic to your life as a student and make you feel terrible.

The key to avoiding this pitfall is to recognize that the pessimistic pattern is conditioned by one's own internal narrative. We are each deeply conditioned by our life experience. An internal narrative of that experience builds structures and expectations in our dealing with the world and colors our reactions to how the world treats us. The narrative begins in childhood which is why it has such unique and powerful characteristics. Children experience the world in a self-centered way. Events are referenced to the child's point of view (e.g. "The sun shines so I can see."). The child thus has a deeply personal view of every event. Children also have a unique sense of time. When a child feels badly or needs something minutes seem like hours, hours seem like "always." The experience can be all encompassing; a distressed child is often very difficult to engage in activities away from the area of immediate concern. It is easy to see how repeated experience can make the world feel responsive or frustrating and one's expectations optimistic or pessimistic.

If you recognize the pessimistic style in yourself look toward those experiences you have had that might condition someone to respond to the difficulties of life with a personal, pervasive and permanent sense of failure (however subtle). It is not a quick nor easy task but you can actually change ingrained patterns of response for your own benefit. For example, did someone in your life repeatedly criticize you or make you feel like you could never please them? Notice how you could feel like *you* were at fault, like *nothing* that you did was right and that it would *never* be any different. Was there someone who never seemed to listen? People need the responses of others to feel alive, impactful and valuable. When deprived of feedback they can experience it very personally as a reflection of their lack of ability and worth. Often these experiences are subtle and take some effort to decipher. Sometimes it is easier if you can share the experience with someone, especially a friend with whom you feel safe.

Once you spot the repeated pattern in life and how it got that way, you can use that information any time you come up against a "pessimism producing event." You can gradually detoxify the current event by comparing your poisonous conditioned expectation pattern with the meaning of the current situation. Ask yourself if your "interpretation" of the event is based on "now" or is being influenced by some old "ghost" that can be put to rest. It is often at this step that another observer (the "friend") can bring a fresh perspective to your exploration that is not subject to the same "narrative." The subject is an important and fascinating one and more will be said in future columns. I can supply some reading material to anyone who is interested.

UCLAW Student Wins Nat'l PILF Award

The National Association of Public Interest Law (NAPIL) will honor Charmaine Huntting, 2L, for Exemplary Public Service at its annual conference in Washington, D.C. on October 26.

NAPIL is the umbrella group for the public interest law organizations at more than 100 law schools in the country, including UCLA's own Public Interest Law Foundation. Like UCLA PILF, these student groups offer summer grants which enable students to perform legal work for nonprofit organizations.

Each law school nominated one grant recipient, and NAPIL selected several outstanding recipients for the award.

Charmaine spent her summer fellowship with the United Urban Indian Food Program, an agency which provides support to poverty-stricken Native Americans in Southern California. She helped clients apply for government benefits and referred those in need of housing and employment. Additionally, Charmaine researched foundations and drafted grant proposals.

"Overall, this was the most rewarding work experience I have ever had," Charmaine enthused. "I am a Native American—Cherokee/Creek—and I have always had the desire to work in some capacity helping my people. The PILF grant afforded me that opportunity."

Gonzo

(from p. 8)

not likely to be postmarked on that same day. There are official US Mail Boxes located by LuValle and Murphy Hall. Also, the Dean has agreed to try and find the financial resources to plant flowers in the empty planter boxes by the steps in front of the law school.

Wasn't last week's happy hour a success? There was plenty of food, the Lowenbrau beer was great and best of all there were no business students. Who needs those chumps anyway? Perhaps we could do a joint happy hour with the medical students instead. For those of you who did not crash the business school beer bust last week, I thank you. And again, I ask you to refrain from attending their beer busts in the future.

Finally, I would like to add that Gonzo is looking forward to the 40th anniversary celebration of the law school. I know several student organizations are disappointed on the selection of the keynote speakers. I would like to provide an insight as to why they were selected. Overall, I feel their invitations are reasonable. As many of you know, there are several reasons for putting on this celebration. A central reason is to seek funding for a new law library. Understandably, Pete Wilson, a person who controls how much of the funds in this State are distributed, should be invited. Also, the invitation of Ex-Governor Deukmejian is reasonable. He was instrumental in providing funding for the clinical wing. Because of his position, it is only appropriate that the President of the UC Board of Regents, President Gardner, attend this celebration. And after just learning that Justice O'Connor has declined our invitation to be the Keynote Graduation speaker, UCLA is fortunate to have any of the Supreme Court Justices attend a school function. Unfortunately, this school does not wield enough clout to be selective as to which Supreme Court Justices will attend our celebrations. Thus, in the eyes of Gonzo, the administration's decision to invite these individuals is not unreasonable and deserves the students' support and cooperation. In the future, the administration should seek student input for such events. With the aid of student input, the administration could have avoided the present controversy and the possible Celebration disruption. Concluding, I hope that anyone opposed to these invited guests' politics will save their energy and their political resources for the real fight that is sure to come.

Opinion

A STEP TO THE LEFT

by Ian Lurie, 2L

Dean Prager writes in her essay, "Legal Education at UCLA," that "[t]hroughout the past two decades, UCLA has played a major role in the growth of minority representation within the legal profession; the School of Law is committed to a vigorous program continuing that goal." She recognizes that this is due to UCLAW's "culturally diverse student body."

This succinct statement apparently fled the Dean's mind when she selected three influential and prestigious guests to attend the law school's 40th anniversary and dedication of UCLAW's new clinical wing. Her choices, Pete Wilson, Anthony Kennedy, and George Deukmejian, strike at the heart of UCLAW's tradition of diversity and insult much of UCLAW's diverse student body. The three speakers represent a single, exclusive ideology and perpetuate many groups' underrepresented status. Here are some of their professional highlights, to date:

Anthony Kennedy concurred in *City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706 (1989), which opened the door for renewed legal attacks on local, state, and federal affirmative action programs. He concluded in *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989), that 42 U.S.C. 1981 afforded no protection against post-formation racial discrimination in contracts.

In addition, Kennedy supported the decision in *Rust v. Sullivan*, which permitted strict limits on abortion counselling in federally-funded clinics. The impact of these decisions on poor women and victims of discrimination remains to be seen. I do not question Justice Kennedy's intelligence and judicial prowess—however, his dedication to a "vigorous program continuing" diversity in any environment is highly suspect. The Dean's selection of Justice Kennedy as a major participant in the dedication/commemoration ceremony is equally suspect.

Dean Prager's remaining two selections raise further questions. George Deukmejian vetoed two pieces of legislation similar to AB 101, the bill prohibiting discrimination based on sexual orientation, during his tenure as governor. Also, he appointed well over half of the California state judges during his two terms. His influence shows: The state judiciary, which was 75% white during Jerry Brown's tenure, was 89% white in 1988. Allen, "Special Report: The Deukmejian Judiciary", 8 *California Lawyer* 33(5) (July 1988). Unless Jerry Brown somehow exhausted the pool of talented people of color in California (highly unlikely), this statistic calls Deukmejian's dedication to diversity in the legal community into question as well. Where does this appointment record fit at the 40th birthday of a school committed to "the growth of minority representation in the legal profession..."? Certainly, not on the podium at the high point of the

See "Left" on p. 10

There Must Be a Middle-Ground to the JAG Controversy

by James L. Orcutt, Editor-in-Chief

I am not sure why, but COGLI has seen fit to drag me into the middle of the JAG Corps controversy. In a memo COGLI sent this month to the UCLAW community, they argue that the Jag Corps should be excluded from on-campus interviews because of the military's ban of gays and lesbians from military service. In support of their arguments, COGLI noted that only four student groups (actually, I am aware of at least five) did not sign a petition protesting the military's participation in on-campus interviews. In a footnote, COGLI noted that I was a member of three of these groups. I am not sure if this was meant as an ad hominem attack on me or the groups I associate with or whatever. Anyway, since I have been dragged into this, allow me to offer my thoughts on this problem.

Serving in the military is one of the noblest things a person can do for one's country. It takes a special person to risk one's life for the defense of one's family, one's friends, and the millions of other people in this country one does not even know. It makes little sense to me that we should make it more difficult for the brave people who wish to serve their country by hampering their access to military recruiters.

I also believe the military's ban of gays and lesbians from service is a bad policy. There is no evidence that gays or lesbians are any less suited for military service. However, I do not believe that banning the JAG Corps from on-campus interviews is the way to correct the policy. As I see it, there are four possible goals COGLI might have for banning the military from college campuses.

First, COGLI may hope the military might disobey regulations and begin to allow gays and lesbians to serve in the military anyway. This would set a dangerous precedent. One of the reasons that our liberties are as safe as they are in this country is that the military does not disobey the orders and regulations sent down by its civilian leaders. The ban on gays and lesbians from military service is a regulation sent down by the president and congress. *Only* the president or congress can change this policy.

Second, COGLI may hope that everyone sympathetic to their cause will boycott the military. This is also not desirable. I do not see how homophobia in the military (if it exists) can be combatted if this type of boycott is realized. Besides, gays and lesbians are covertly serving in the military right now. Some of them will get caught, and their first line of defense will likely be a JAG officer appointed as defense attorney. I would think COGLI would want the largest possible pool of attorneys available to ensure the best defense possible.

Third, COGLI may hope that everyone boycotts the military and thus we will not have a military any more. I would love unconditional peace just as much as the next person, but current

See "Compromise" on p. 10

Gonzo Gazette

by Chris Gonzales, 3L

Like George Foreman, the heavyweight Gonzo is back. I would like to extend a special thanks to all those who said, "Gonzo you can't quit, I'll just die if there is not another Gazette." Besides, someone has to compete against the F.T.W. in the battle for the Law School's reading audience. So here goes another dose of Gonzo Journalism.

This last month, Gonzo Man worked extremely hard for you. After a pleasant discussion with Dean Varat, the Dean has allowed us to utilize the information window as an out going mail slot. Just drop off your mail with the secretary and it will be delivered later to the post office. However, a word of warning must be issued to anyone considering using this service. This is not an official postal pick-up. Thus, it may not be as efficient as the regular mail service—if it is possible to have an efficient U.S. Mail service. Therefore, if the post-mark date on your mail is important, do not use the information window as a drop-off because it is

See "Gonzo" on p. 7

The Right Angle

by Dan Young, 3L

The appointment and confirmation of Judge Clarence Thomas to the United States Supreme Court marks a turning point in the debate over abortion in our country. In *Webster*, Chief Justice Rehnquist along with Justices White, Scalia, and Kennedy appeared ready to overrule *Roe v. Wade*. In order for the Chief Justice's view to prevail, he need only pick up one vote from among Justices O'Connor, Souter, and Thomas. One need not be a soothsayer to predict that *Roe* will soon be relegated to the proverbial ash heap of history. When this event occurs, presumably within the next year or two, the abortion question will once again be within the province of the states. In the absence of a constitutional bar to abortion regulation, we will be compelled to argue intelligently about the fundamental questions of life and choice which we have been able to avoid since the *Roe* decision.

The propriety of abortion inevitably depends upon the most fundamental question of all: When does life begin? Pro-lifers argue that life begins at conception while pro-choice advocates assert that life begins at viability or, perhaps, birth. Who is right? Certainly, no one would deny that a fetus will, in most cases, become a human being. And while I have an opinion on when life begins (conception), I do not presume to know the answer to a question which theologians and philosophers have been debating for millennia. However, I am willing to give the benefit of the doubt to the fetus. If abortion is permitted and the fetus is a living human being, we are re-

See "Right" on p. 10

THE DOCKET

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Professors' Corner

Senate Committee's Investigation of Thomas/Hill Relationship Raises Interesting Questions of Law

Senate Flunks Exam on Sexual Harassment—Twice

By Professor Christine A. Littleton

The weekend of October 5, 1991 began quietly enough. The Senate Judiciary Committee had finished its examination of Supreme Court nominee Clarence Thomas and voted 7-7 on his confirmation; a full Senate vote was scheduled for Tuesday, October 8. Despite the deadlock in the Committee, President Bush expressed the confidence born of careful vote counting; the Senate would confirm by a small but comfortable margin, and D.C. Circuit Court of Appeals Judge Clarence Thomas would take the seat recently vacated by Thurgood Marshall.

Then the bombshell hit. Anita Hill, a tenured law professor at the University of Oklahoma, had accused Thomas of sexually harassing her almost ten years ago when she worked for him at the Department of Education and at the Equal Employment Opportunity Commission (EEOC). The story ran in *Newsday* and on National Public Radio on Sunday, October 6. But nothing changed Sunday. On Monday, October 7, Hill held a televised press conference. *Newsweek* later described the effect: "She was credible, she was articulate, she was poised... ." Law professors started calling each other, resulting in two separate letters to the Senate Judiciary Committee calling for an investigation, one signed by over 160 women at law schools from New York to California. But nothing changed on Monday either.

By Tuesday, October 8, however, the mood at the Capitol had started to shift. Seven women serving in the House of Representatives marched up the steps of the Senate, demanding that the vote on Thomas be delayed. Finally the telephone calls, letters, and actions had an effect. Thomas supporters began to join opponents and undecideds in a request for additional hearings. On Tuesday evening the Senate voted unanimously to delay the vote one week.

In my own opinion (shared by many, but not all, women I have spoken with) the Senate had flunked its first exam on sexual harassment and was now going to sit for the Bar again. At least some members of the Senate Judiciary Com-

See "Harassment" on p. 11

Senate Ignores Evidence/Procedure Rules

By Professor Paul Bergman

Imagine that one Smith has just entered a restaurant. At first, all seems normal enough. But obeying the "wait to be seated" sign, Smith notices that things seem not quite right. Various diners haphazardly move from one table to another. At the tables, patrons are eating salads, entrees and desserts simultaneously. People shift randomly back and forth between the roles of waiter, waitress, diner and chef. Smith decides to stay, but is very unsure about whether "standard" restaurant behavior is appropriate.

Watching the recently concluded Senate confirmation hearing of Clarence Thomas, you may have had the same feelings of disquietude as the hungry patron of the Daliesque restaurant. Observed through a lens with a wide enough angle, the hearing resembled a trial: Witnesses under oath were questioned by partisans for the purpose of resolving a dispute about past events. Not unexpectedly, then, you may have thought of Clarence Thomas as "on trial," and debated whether it had been "proved" that Thomas had sexually harassed Anita Hill.

But the hearing was not a trial. To cite just a few differences, the "jurors" (many of whom were partisans and who in part were identical to the questioners) did not reach a verdict, the rules of evi-

See "Evidence" on p. 12

Letters to the Editor

Dear Editor:

On October 26, 1991, UCLA Law School will be celebrating its fortieth anniversary. To commemorate this splendid occasion, Dean Prager and staff have created a program which promises to be exciting and inspiring... but for whom? The "honored" guests—Associate Justice Kennedy, Governor Pete Wilson, and George Duekmajian—all have similar characteristics which they represent well: white male and conservative Republican. If the desire is to emulate the law school of the past, then I commend Dean Prager and associates for they have chosen well.

I was not represented forty years ago, neither as an African-American nor as a female. That would explain the lack of a person of color or a female from being one of the "honored" guests. I am not quite sure, however, how to explain away the fact that there were no Democrats invited to represent at least the Democrat of yesterday. (I am sure some existed?) I will say again, if the attempt was to capture an essence of yesteryear, then, with the exception of that one aforementioned flaw, this administrative staff has done well... you have successfully left me out.

I cannot help think, however, whether such a goal was a wise one to achieve. UCLA has always been known to represent a more diverse and liberal (yes, I said *liberal*, dammit!) environment compared to those law schools that still emulate the past. This fact makes one wonder exactly what this administration had in mind as it developed the celebration program which hosts these distinguished men. I refuse to believe that this was an oversight on the part of an administration that has shown extreme intelligence and foresight on most other aspects concerning the law school. Either the intention was as stated above, to recreate the law school of the past, or, in light of the fact that this goal is contradictory to the professed present state of UCLA Law School, this administration has some explaining to do.

—Denise McLaughlin Kearney, 3L

Witch

Stout, and portly proud,
The white-haired Senator addressed the crowd,
And called the woman out by name,
"For shame!
"From whence did'st thou came?"

"Never the mind, it is all clear now
"Thou art disgorged of the fiery bowel
"Of Satan's hell!
"A hex, a spell
"Upon us cast, upon this land
"Upon these wholesome countrymen.
"We are mesmerized
"By heresy, lies.
"Let us pray to God."

"A witch, a witch,
"I say she's a witch!
"And a witch must burn
"Or we all shall die!"
From the crowd, a cry,
"Burn the witch! Burn the witch!"
Cheers and applause,
And the Senators congratulate themselves.

—Robert H. Mahler, 2L

Job-Hunt Tips to Keep Your Sanity

by Professor Kenneth W. Graham, Jr.

We are now in the midst of the Silly Season. Normally sane people fall into fits of paranoia. The rankest sort of hearsay gets oracular credibility. Mass hysteria fuels more rapid changes of personality and costume than Clark Kent as students pop out of restrooms into recruiting.

I am no expert on the job market. Even if I were, no amount of rationality can halt the rush of the lemmings to the sea. But for those of you for whom Placement Office has not yet become the core course in the curriculum, perhaps some observations from one who has observed it for over thirty years will help maintain your sanity.

(1) You will get a job. It may not be the job you want, it may not come when you want it, and it may not come through on-campus interviews, but it will pay the rent and fill the pantry. It will not be driving a cab, flipping McLeans, or selling maps to homes of the stars.

(2) For most of you, your first job will not be your last. The people who end up as big firm partners are those who cannot imagine anything better. All of the interesting people who came with me to my first job were gone within two years.

(3) Twenty years from now you will think it good fortune, not misfortune, that you did not get the job you now think you want. Happy legal careers owe as much to accident as they do to careful planning. Ask any faculty member how he or she fell into this best-of-all-possible jobs.

(4) You will hear stories of people with opulent GPAs who don't yet have a job. Some of these stories are true. A few people who test well are actually smart enough not to spend their last two years of freedom searching for fetters. Some people whose LSAT scores seem suited for law school have personalities better suited to embalming school.

(5) Don't mistake the normal operation of the recruiting process for a hopelessly tight job market. Even in the best of years, the overwhelming majority of job interviews do not lead to jobs. Bad times will increase the number of firms who are merely "showing the flag"—interviewing without any intent to hire anyone. If the interviewer seems less than enthusiastic about this charade, blame it on Dan Quayle or the Tokyo Stock Market—not on your lack of legal skills.

(6) If things are as tough as some people say, how come students are not throwing themselves off the roof at the University of West Los Angeles School of Law? Big firms bloated with bucks from junk bond mergers, drug money laundering, or the looting of savings and loans may be cutting back. But bad times increase contract breaches, bankruptcies, and the commission of simple crimes by those who don't qualify for the Public Defender. Remember the t-shirt slogan "I am a Lawyer—I Get Rich Off the Misery of Others."

(7) Don't sell yourself short. Big firms are essentially Ponzi schemes organized on the principle "from each according to her ability, to each according to his greed." Senior partners have more need of you to maintain their seven figure incomes than you need them to pay off your student loans.

(8) There are a few things worse than selling your soul and finding no takers. This sometimes leads to deceiving yourself and others about what you really want in life. This is the kind of lie (like faking orgasm) that contains the seeds of its own punishment. Pretend to like what you don't really want and you won't get anything better.

(9) People search for good jobs, good jobs don't search for people. If you want a job that suits you rather than suiting yourself for a job you don't want, you have to go out and knock on doors. Law professors and federal judges did not get these cushy jobs through the want ads or the placement office.

(10) Try to maintain your perspective. The recruiting season can be stressful. But if you survived zits and junior high, this too will pass. If the faculty seems less than sympathetic, remember—we don't get a pay increase this year.

Left

(from p. 8)

celebration.

Governor Pete Wilson is expected to continue Deukmejian's judicial policy of appointing white, anglo-saxon prosecutors (or WASPS, as Peter Allen refers to them in "Special Report", *Id.*) to the California bench. In addition, in a dramatic display of spineless homophobia, he recently vetoed AB 101, which promised protection from employment discrimination based on sexual orientation.

Governor Wilson's list of accomplishments also includes his now-infamous comment that he would not raise welfare just so that welfare mothers can just get "another six-pack of beer.". Finally, the Governor recently vetoed a bill providing access to money damages for victims of sexual harassment in the work place in California. Pete Wilson in no way represents a move toward diversity; in light of these facts, Dean Prager's selection of the Governor and ex-Governor boggles the mind.

Dean Prager's choices for the three prestigious guests to speak at the commemoration/dedication insult us as UCLAW students.

Her choices insult us because they include no members of underrepresented groups. Her choices imply she cannot find any qualified speakers besides white, heterosexual, upper middle class males. Certainly, Wilson, Kennedy and Deukmejian accurately represent the people in power in America *now* in terms of race, class, sex, and sexual orientation. But UCLAW's diversity, which Dean Prager herself highlights in "Legal Education at UCLA", is premised upon looking *beyond* the dominant element of society at a given time. Perhaps decisions such as Dean Prager's speaker selections keep the corridors of power closed to all who do not conform to a white, male, upper middle class, heterosexual mold. Our responsibility at UCLAW is to promote change through diversity, not perpetuate stagnation through homogeneity.

Contrary to some arguments, this is in no way similar to choosing one graduation speaker who is necessarily limited in the interests he/she can embody. Here, the three-speaker format held the potential for representation of three vastly different ideologies. Instead, they represent a single, exclusive ideology.

Not only has Dean Prager excluded different backgrounds from the highlight of UCLAW's 40th anniversary, she has included three white males who work against the interests of women, people of color, and homosexuals. Look at the evidence previously set out in this column; these three men represent a triad of sexism, racism and homophobia that bars underrepresented groups from any position where they might eventually fulfill the law school administration's apparent speaker requirements for anniversary celebrations.

Evidently, Dean Prager wishes the ceremony and the entire celebration to hark back to the 1950s. Videos discussing the 50s will be shown; a photograph of the ground-breaking for UCLAW adorns the inside cover of the invitations we received. The California Governor will be present, just as in 1950 at the ground-breaking ceremony.

In addition, the highlight of the festivities, the dedication/commemoration ceremony, includes no people of color, Asian Americans, women from outside UCLAW, or homosexuals. Thus, the 1950s, when the legal community and, no doubt, UCLAW, formed a closed, white male establishment, finds faithful reproduction for a time on the podium at our ceremony. The bitter irony here multiplies when this situation is juxtaposed with Dean Prager's statements in "Legal Education at UCLA."

I recognize that the panels surrounding the commemoration/dedication supposedly add diversity to this group of honorees. But the panels are not the highlight of the celebration. No TV cameras will focus on them. The legal community and other spectators will remember little, save that the 40th anniversary festivities were dominated by three upper class white male conservatives selected by the Dean. The message is clear: If these men and their ideology dominate the ceremony, so too must they dominate the legal community and UCLAW. Nothing, it seems, has really changed that cannot be changed back in the blink of an eye or a nod of the Dean's head.

Dean Prager's procedure in selecting the three speakers also insults us in a way that should not be lost amidst the larger problem. She selected these speakers unilaterally and excluded us, as students and members of the UCLAW community, from an important decision with direct bearing on our enjoyment of a momentous occasion. She consulted no student groups. If she had, the choices for speakers might have held greater diversity.

We must, as students, consider what Dean Prager's unilateral actions mean to us. She states that one "distinctive quality at the UCLA School of Law lies in the strength and diversity of our student body." Yet, her unilateral speaker selections sap our strength as independent participants in the law school community and scoff at our diversity through the stagnant homogeneity they represent.

Right

(from p. 8)

sponsible for committing a genocide which eclipses that of Hitler and Stalin combined. On the other hand, if abortion is forbidden and the fetus is not a living human being, approximately 1.6 million women a year will be forced to carry an unwanted pregnancy to term with the attendant disruption of their lives and the specter of unwanted children. While I do not wish to minimize the burdens of pregnancy or the disruptions which occur in a woman's life due to an unplanned pregnancy, I do believe that the mere possibility that we are engaging in the bloodiest massacre in the history of the world justifies a ban on abortion.

A prohibition against abortion should not, however, be absolute. I would support the continued availability of abortion when the mother's life is in danger and in the case of rape or incest. The exception for danger to the mother's life is based upon simple principles of self-defense. A woman should not be forced (or expected) to sit idly by while a fetus unwittingly "attacks" its mother/host. The exceptions for rape and incest are more problematic. The rationale for the rape and incest exceptions is best illustrated by studying the case of the talented violinist and the hapless concertgoer. In that scenario, an innocent concertgoer is drugged and wakes up to find herself attached to a talented violinist for the next nine months. If she were to detach the violinist from herself, the violinist would die. Since we have no affirmative duty to come to the aid of others, the woman, so the argument goes, could detach the violinist even though it would result in his death. Although some would grudgingly support the violinist for the next nine months, our society rightly refuses to impose an affirmative duty to aid others where substantial burdens must be assumed by the aider and the aider did not contribute to the predicament of the third party.

Some have asserted that the violinist-concertgoer example applies to all unwanted pregnancies. However, efforts to extend the example's rationale past the case of forced pregnancy (rape and incest) fail. When a man and woman consent to sexual intercourse they implicitly accept responsibility for the results of their actions. Unfortunately, nature has imposed the early burden of nurturing the fetus entirely upon the mother. However, since she jointly contributed to the fetus' dependent state and is the only person in a position to sustain the fetus' life, she now has a duty to aid the fetus by not interfering with its natural development.

By now, pro-choice advocates are probably ticking off objections to my argument in their heads (if they're still reading at this point). I will now attempt to refute the primary objections to an abortion ban. First, I've ignored the woman's right to choice! Not true. The right to choose is outweighed by the possibility that we are engaged in an unparalleled sacrifice of human life and by concerns that are protective of the fetus' humanity. Additionally, men and women have made their choice when they engage in sexual intercourse and must accept responsibility for their actions.

But wait! What about unwanted children and children born into poverty! These concerns will only justify abortion if one assumes that the fetus is not a human life. Once again, the mere fact that we are uncertain about the humanity of the fetus justifies an abortion ban. To assume that the fetus is not a human life in the face of profound uncertainty over the question of its humanity strikes me as a particularly ghoulish assumption, especially where the assumption is used to achieve certain social goals. Additionally, many would consider an impoverished life preferable to death.

Hold it! The decision to terminate a pregnancy is a very personal one, and while I would never have an abortion, I refuse to legislate morality! While I certainly believe that some personal choices should not be the subject of governmental regulation, it would be facile of me to assert that I merely did not want to legislate morality. Virtually all laws make "moral" judgments and the opposition to a given law stems not from the fact that it makes a moral judgment but rather that it makes the wrong moral judgment. Furthermore, if we personally believe that a fetus is a human being, we are under a moral obligation to protect that life. I can think of no better governmental objective than the protection of human life since life is a necessary predicate to all other rights.

What about the lives of women who will die in the back alleys of America, you fascist male chauvinist pig! The loss of any human life is an occasion for sorrow. However, laws must be obeyed and the cost of breaking any law may be harm to the law-breaker. Many drug overdoses could be avoided if we required drug addicts to go to clinics to receive their drugs. However, we, as a society, have decided that the proliferation of drugs is a greater evil than the deaths which will occur due to unmonitored use of illegal drugs. So too with abortion.

I hope I have addressed the primary objections to a ban on abortion. However, if I have failed to address a particular objection, I would encourage you to write a letter to the editor or drop a note in my box. I will attempt to respond to these concerns in a future column. While I personally believe that life begins at conception, I also believe that the possibility that a fetus is a human life justifies (and perhaps mandates) a ban on abortion. We must carefully weigh the possibility that a fetus is a human being against the burden that we would be placing upon women. I would assert that the balance inevitably tilts towards the fetus since human life is the object most worthy of governmental protection.

Compromise

(from p. 8)

events tell me that humankind outside the borders of the United States just is not ready to lay down its arms and play peace. Civil wars in Europe—like the ones going on now—have a nasty habit of becoming global conflicts from which we have to defend ourselves. I do not see how we can lay down our arms when the rest of the world, even third-world countries, are armed to the teeth.

Fourth, COGLI may hope to get the attention of the president and congress so they will change the military's policy of excluding gays and lesbians. If this is the objective, why not be forthright and and write the president and congress directly. It achieves the same goal without risking the other problems listed above.

If you take the time to look around, you might be surprised how many former and present members of the military are members of UCLAW's students, faculty, and staff. The military is full of good people, and we should ensure that good people continue to have the opportunity to join the military. If the JAG Corps accepts me, I hope to be one of them.

Harassment

(from p. 9)

mittee had heard of Hill's allegations a month earlier, yet the only investigation had been an inconclusive FBI report. Thomas had not only been Hill's supervisor, and functionally her employer; he had also been the Chair of the EEOC, the very agency charged with enforcing federal equal employment opportunity law. Title VII of the Civil Rights Act of 1964 is the centerpiece of that law. It prohibits both public and private employers from discriminating on the basis of race, religion and sex. Although federal courts had earlier rejected sexual harassment claims, by the late 1970's the D.C. Circuit had accepted sexual harassment as a form of sex discrimination, and the EEOC itself had adopted regulations in late 1980 defining sexual harassment as sex discrimination prohibited under Title VII. If Professor Hill's allegations were true, Judge Thomas had not only demonstrated disrespect for women, but for the very law he was in charge of enforcing. Had he been heading the Securities and Exchange Commission instead and the Committee had heard of allegations that he had engaged in insider trading at the time would the charges have received so little attention?

The second bar exam on sexual harassment began on Friday, October 11. The Committee called and questioned witnesses, but, as Prof. Bergman details in his article on page 9, it did not hold a trial. Again in my opinion, the proceedings did not even deserve the designation of legislative fact finding. Despite the fact that numerous experts on sexual harassment were available, the Committee refused to call any of them, preferring to rely on their own sketchy, biased and opposing understandings of both the experience and the law of sexual harassment. Because of this unfortunate fact, many myths about sexual harassment were given credence by one or more senators, witnesses or commentators.

The remainder of this article identifies some of those myths and attempts to dispel them. It does not take a position as to whether Professor Hill's allegations or Judge Thomas' denials are in fact true. Because of the failure to order a full inquiry by trained sexual harassment investigators, we will never have even the usual chance of knowing the truth. However, as someone who has studied and taught this area of the law, has counseled victims of sexual harassment and has participated in both litigation on behalf of complainants and counseled employers on how to reduce or eliminate sexual harassment, I tend to view sexual harassment from the perspective of present and potential victims, rather than of accused harassers, guilty or innocent. Indeed the law, especially in the Ninth Circuit, requires that I do so. In 1986, the U.S. Supreme Court, in *Meritor Savings Bank v. Vinson*, accepted the EEOC's interpretation that sexual harassment is sex discrimination prohibited by Title VII. It also accepted the EEOC definition of sexual harassment as "unwelcome" sexual attention, ruling *against* an employer who claimed that an employee who acquiesced could not have been harassed because her conduct was "voluntary." Thus sexual harassment complainants need not demonstrate lack of consent (as do rape complainants), but only that they did not demonstrate either mutuality or independent interest. Additionally, in *Ellison v. Brady* (1991), the Ninth Circuit adopted the standard of a "reasonable woman" in evaluating whether sexual advances by a male co-worker to a female employee were sufficiently offensive or intimidating to create a "hostile working environment."

Thus, in failing initially to take seriously allegations of sexual harassment and in perpetuating myths about sexual harassment that reflect the perspective of a "reasonable harasser" rather than a potential or actual victim of harassment, several Senators flunked—not only in terms of my opinion, but in the eyes of the law.

Myth#1. **Because there was no adverse employment consequence, there was no "real" sexual harassment.**

There are two kinds of sexual harassment: "quid pro quo" and "environmental." Quid pro quo harassment takes place when the harasser threatens, explicitly or implicitly, to deny some tangible employment benefit unless the victim complies. "Sleep with me or you're fired" is obvious quid pro quo sexual harassment. However, the EEOC Guidelines on Sexual Harassment also prohibit unwanted sexual conduct that creates a discriminatory working environment—even if no tangible job benefits are threatened or denied. California's Fair Employment and Housing Commission has taken the position that employees have a right to a workplace free of discrimination. Sexual harassment can work both economic *and* dignitary harms—neither is acceptable.

Myth #2. **If there was no effect on work performance, there could not have been any sexual harassment.**

It is true that many victims of sexual harassment experience difficulty in maintaining a high level of work performance. That is one of the primary reasons why employers usually cooperate with efforts to reduce or eliminate sexual harassment—it's just good business to take steps to maintain the productivity of your employees. While male employees may be sexually harassed (and, if they are, are equally protected by the law), most victims of sexual harassment are women. As employers increasingly come to view women as important members of their work force, they are increasingly led to discourage sexual harassment in their place of business. However, the law does not require that the sexual harassment be so severe as to cause every victim to suffer a decline in work performance in order to make out a claim of sexual harassment. If the conduct creates "an intimidating, hostile, or offensive working environment" that is enough, even if the complainant is able to maintain a high level of productivity throughout.

Myth #3. **If he didn't touch her, he didn't sexually harass her.**

According to the EEOC Guidelines, sexual harassment can consist of "unwelcome sexual advances, requests for sexual favors, and other *verbal* or physical conduct of a sexual nature." It is true that the term sexual harassment covers a wide range of behavior, from lewd remarks, to touching and fondling, and even escalating to assault and rape. However, it is clear that even purely verbal conduct can be discriminatory. Indeed, a majority of complaints of violation of UCLAW's non-discrimination policy processed by our Placement Committee involve purely verbal conduct by on-campus interviewers. If an on-campus interviewer told a student interviewee "I think our clients might feel uncomfortable telling their legal problems to a Jew" we would not refuse to take action against the interviewer's firm on the basis that there had been no physical conduct.

Myth #4. **Sexual harassment is only committed by perverts.**

This seemed to be a favorite theme of Senator Hatch. Characterizing the alleged statements as uniquely gross and disgusting does make it harder to associate them with the apparently proper, respectable and hard-working Judge Thomas. But let's get real—many women have heard much worse. In fact, as sexual harassment complaints go, descriptions of pornographic films and comparisons of penis size don't even reach the middle of the scale. Anyone in a position of economic or social authority *can* impose on others, and many do. Surveys of federal employees in the early and late 1980's indicated that over 40% of women and 15% of men had been sexually harassed, and some experts estimate that as many as 80% of working women are harassed at some time prior to retirement. Sexual harassers are not rare, exotic or sick; they are depressingly typical, ordinary and normal. Indeed sexual harassment law was not designed to catch deviants; it was specifically designed to alter what had been "business as usual."

Myth #5. **A sexual harassment charge is particularly hard to defend against.**

This myth harks back to the old canard about rape charges being easy to make but hard to defend. In fact the opposite would appear to be the case: Professor Hill made very specific allegations, detailing location and actual words used, while Judge Thomas refused to discuss any specifics; yet his categorical denial of any inappropriate conduct carried more weight with many participants and observers. Unfortunately, most men do not believe women who say they have been sexually harassed; it is not even clear that a majority of women do. The myth surfaced in several versions. For example, Senator Spector stated that the statute of limitations for sexual harassment was very short (180 days) and suggested that this was because of the difficulty of defending against a charge. In fact the *same* statute of limitations applies to *all* claims of discrimination under Title VII, regardless of the type of behavior alleged or the category of discrimination (race, sex, religion, etc.) claimed. The reason for the short filing period is partly to guard against failing memories, but mostly to assure that discrimination is stopped as quickly as possible, before it festers, poisoning the workplace or resulting in additional economic loss. (If a complainant files with the state agenc—the Department of Fair Employment and Housing—a longer filing period is available, up to 300 days.) Another version of this myth is that sexual harassment is particularly subject to a "his word against hers" scenario. While it is true that much sexual harassment takes place out of the view of potential witnesses, it is not true that there is nothing else to investigate. The extremely short period (three days) between the decision to air Professor Hill's allegations and the start of the public hearings provided almost no opportunity for the kind of investigation that might have settled doubts one way or the other. Yet even in that brief period the Senators managed to find and attempt to use some telephone logs, numerous character witnesses, and other witnesses to support or discount various theories of motivation to misstate or misunderstand the allegations. Sexual harassment is no more, nor less, difficult to defend against than any other type of discrimination claim, or indeed any charge of wrongdoing that does not involve either a paper trail or other physical evidence.

Myth #6. **It is impossible to tell the difference between legitimate flirting and illegal sexual harassment.**

It is true that the same words or actions can be either the start of a romantic relationship or the beginning of the end of a professional one, depending on the circumstances. Yet this fact does not place sexual harassment in some unique realm of human interaction. Even in mundane areas such as contract law, "I accept" has a very different legal effect when spoken in response to a valid offer than when it follows a mere invitation to deal. From the employee's (or student's) perspective, the best test is your own reaction. If you feel embarrassed, frightened or startled, tell the person to stop. Whether or not s/he intended the conduct as a sexual overture, s/he should be respectful enough of your feelings to desist. For supervisors, professors or others in a position to impose their own desires on others, the key word should also be "respect." Try to put yourself in the position of the other person—including that person's gender. Would you feel free to refuse, without worrying about consequences to your career, education or reputation? Sexual harassment law is not intended to penalize *mutual* behavior; it *is* intended to protect against *imposed* behavior.

If you are the target of unwanted sexual advances, physical or verbal, you can take advantage of the procedures developed to deal with this widespread problem. If the harassment occurred during an interview or job obtained through the programs of the Office of Career Planning, you can speak privately with one of the OCP staff or file a formal complaint with the Placement Committee. If it involves academic personnel—a professor, supervisor or fellow student—you can talk with the Assistant Dean of Students or the University Ombudsman. Even if you want to avoid talking to other people, you can take some action against unwanted conduct by writing a letter to the person whose conduct is making you uncomfortable. The letter should contain three parts: (1) an objective account of the behavior (e.g., "on October 3rd, during a conference in your office, you placed your hand on my thigh"); (2) a statement of your reaction (e.g., "this embarrassed me and made me feel that you might not really be interested in my paper"); and (3) a request for action (e.g., "please do not touch me again" or "if we need to talk about my work in the future, let's meet at LuValle Commons"). Send the letter by registered mail, and keep the receipt. If the person did not intend to impose on you, s/he may well alter her/his conduct in response to your communication. And if worse comes to worst, you will at least have evidence that you communicated the unwelcomeness of the conduct. This may prevent retaliation or further abuse. You also have the right to file a complaint with the appropriate state or federal agency, and to request an investigation and attempt at conciliation. If all else fails, you have the right to sue for discrimination in employment or education—both are illegal.

Myths about sexual harassment will not be dispelled overnight. However, the education process has certainly started. At the very least, the Thomas-Hill controversy has alerted people to the seriousness, and pervasiveness, of sexual harassment. I hope it has also alerted us to the need to remedy its effects in the present and prevent its occurrence in the future.

Evidence

(from p. 9)

dence did not apply, the issue and the standard by which the evidence was to be evaluated was unclear, and the lunch recesses were very short. But what if it had been a trial? What might have been different, and what affect on the outcome might those differences have had? While I don't pretend to be able to answer these questions, I do hope the discussion helps you think about whether rules of evidence and trial formalities are needless technicalities, bulwarks of justice, or something in between.

"PYA" advisory: I have done my best to be accurate, but I might well have some of the evidence wrong. It was difficult to watch all of the hearings. For one thing, they had more padding than the National Football League. For another, much of the testimony had a cyclical quality. To paraphrase a local news station, the hearing's slogan might have been, "Give us 22 minutes, we'll give you the evidence—over and over."

Who Had the Burden of Proving What?

Had Thomas been sued civilly by Anita Hill, Hill would have had to prove by a preponderance of the evidence (or perhaps in some jurisdictions, by "clear and convincing evidence") that Thomas had made statements or engaged in conduct, and that the statements and/or conduct amounted to sexual harassment. Many might urge the appropriateness of this same standard for the Thomas hearing, citing its similarity to a trial and our strong societal commitment to penalizing only those persons whose wrongdoing has been proven.

But would a decision that Thomas made sexual statements to Hill, and that because of those statements he is not qualified to sit on the Supreme Court, be a penalty? After all, the Senate might have refused to confirm him even in the absence of evidence of sexual harassment. And given the power and lifetime status accorded those who sit on the Court, might it make sense to ask appointees to establish that they are not wrongdoers? If so, by what standard—by a preponderance of the evidence? beyond a reasonable doubt? Should an appointee have to remove "any whiff of impropriety?"

These questions suggest that the Senate might have been justified had it adopted a different standard in the confirmation hearing than would apply at trial. But publicly at least, the members of the Judiciary Committee never articulated, or so far as I can remember, even discussed what had to be proved, and who had the burden of proving it. Perhaps the hearing should have been chaired by Savonarola.

Witnesses Who Corroborated Hill

Hill's supporters emphasized the importance of testimony from four witnesses that Hill had told them that Thomas (or at least, "my supervisor") had sexually harassed her. Would this testimony have been admissible at a trial?

The hearsay rule usually operates to bar a witness' out-of-court statements which corroborate the witness' in-court testimony. But somewhat inconsistently with a variety of evidence rules which have traditionally burdened victims of sexual offenses, the "fresh complaint" rule has been a long-standing hearsay exception. The fresh complaint rule admits into evidence hearsay statements made by the victim of a sexual offense that the offense took place. "Freshness" is the key to admissibility. The more the delay between offense and statement, the less likely a court is to admit evidence of the statement.

The ineptness of much of the questioning at the hearing (more on this later) makes it difficult to know whether Hill's statements to the four witnesses would have qualified as "fresh complaints." Neither Hill nor any other witness was asked for a chronology of events. It was impossible to determine the temporal relationship between any specific alleged statement or conduct of Thomas and Hill's report of it to a particular corroborative witness. Moreover, a court would have had discretion to bar the hearsay testimony of at least some of Hill's corroborators as "cumulative." Thus, the admissibility of the corroborative statements is difficult to determine.

Doggett's Testimony That Hill Fantasized A Non-Existent Relationship

John Doggett testified that Hill confronted him at a going-away party, and scolded him for falsely leading her to believe that he was romantically interested in her. Since, Doggett testified, he had done no such thing, it was his opinion that Hill was given to fantasizing things that had never taken place.

Little uncertainty surrounds the admissibility of Doggett's testimony under the rules of evidence. Though the dividing line is sometimes uncertain, the rules distinguish between admissible assertions of fact and inadmissible assertions of opinion. The latter are inadmissible unless helpful to the trier of fact. What this means, in essence, is that if a witness can tell the trier what happened, and the trier is in as good a position as the witness to draw an inference from what happened, the witness' opinion is not admissible.

Doggett had no difficulty describing what took place at the going-away party, at Yale law alumni gatherings, or on his occasional jogs. At trial, Doggett's testimony would almost certainly have been limited to describing these events. Whether to draw an inference that Hill had suffered rejections that caused her to engage in fantasies, or an opposite inference that her going-away party comment was warranted, would have been a decision exclusively for the trier.

Character Evidence

One of the more difficult issues is presented by Angela Wright's affidavit that Thomas had made sexual statements to her. The rules of evidence generally bar the use of character evidence—that is, evidence suggesting that because Thomas made sexual statements to Wright, he is a sexually aggressive individual prone to harassing women, and therefore likely to have made the same kind of statements to Hill. On the other hand, if Hill could convince the trial judge that evidence of Wright's statement was not offered to prove Thomas' character, but rather to prove something else (e.g., his "motive" for making the statements to Hill, or his "intent" in having private conferences with Hill), then a trial judge might have admitted Wright's statement for its non-character use.

Given the superficial level of much of the questions, and the difficulty courts have in distinguishing between the character and non-character use of evidence, it is difficult to do more than identify the issue. But Thomas' only defense was that "nothing ever happened," making many of the potential non-character uses of Wright's evidence irrelevant. The probability is that Wright would not have been permitted to testify at a sexual harassment trial.

What of evidence offered by some of Thomas' former female associates that he never made sexual advances towards them? Offered to prove that he never made sexual advances to Hill, this testimony too would likely have been rejected as character evidence.

Note: though evidence of Thomas' sexual conduct, or lack of it, with other women, would probably have been inadmissible at trial, the Senate Judiciary Committee's receipt of it might give some insight into what standard the Committee thought should be applied in evaluating the evidence. If the question were not whether Thomas sexually harassed Hill, but Thomas' character to sit as an Associate Justice, then Thomas' character for sexual misconduct would itself be in issue and the character evidence would be admissible. However, it is hard to credit the Committee with this degree of logic.

Expert Testimony

Some commentators wanted the Committee to take testimony from an expert on sexual harassment. Some committee members inferred from the facts that Hill did not make a formal charge of harassment against Thomas, and that she changed jobs along with him, that it was highly unlikely that Hill's testimony was accurate. An expert, said these commentators, could have testified that Hill's behavior was not inconsistent with sexual harassment having occurred, and thus could have rebutted this inference.

I am not an expert on the law of sexual harassment, and newspaper deadlines certainly do not allow me to become one. However, my educated guess is that expert testimony of the type described above would have been admissible at a trial. The evidence would be offered not to prove that Thomas engaged in prohibited sexual conduct, but to rebut the inference that failing to complain and staying on the job disprove the fact that the conduct occurred. While a trier of fact might rebut that inference based on her or his everyday common experience, Hill's counsel could forcefully argue that an expert's opinion would nevertheless be helpful.

Moreover, expert testimony on the behavior of sexually harassed women would differ in many respects from an analogous but frequently barred type of expert testimony concerning "rape trauma syndrome." Typically, to try to establish that a rape took place, a prosecutor attempts to offer expert testimony that the victim suffers from rape trauma syndrome. Most courts have ruled such testimony inadmissible for various reasons, including (a) serious criminal charges are involved; (b) the expert's opinion rests to a large degree on statements of the victim; and (c) the expert's opinion implicitly informs the jury that the victim is telling the truth, thus "invading its province." By contrast, a sexual harassment is a civil proceeding, the expert's opinion would not rest on the victim's statements, and the opinion would not be offered to prove that Hill's claims are true (that is, it would remain true that women who have *not* been sexually harassed also fail to complain and remain on the job.).

On balance, then, expert testimony that female victims of sexual harassment often fail to file complaints and often remain on the job would probably have been admissible.

Trial Advocacy Issues

At least part of the uncertainty surrounding "what really happened" may be due to the very superficial questioning by the members of the Judiciary Committee. For example, Hill testified to a variety of sexual acts and statements by Thomas; Thomas denied them. Hill was not asked about the context in which these acts and conduct allegedly took place. That is, when and where did Thomas say or do xxx? What did he say or do before and after that? What was the reason that Thomas and Hill were together in the first place? What happened between the time Thomas said or did xxxx, and the time he said or did yyyy? What was Thomas' versions of these same events?

In a case tried by competent counsel, we would have learned Hill's and Thomas' stories instead of disconnected claims and denials. We might have heard from witnesses who could have substantiated or contradicted some portions of the stories, even if not what took place in private. We might then have been able to make an informed judgment about credibility. Without hearing about specific events, their details, and their temporal relationship, we could do no more than speculate.

The superficial quality of the questioning did not end with Hill and Thomas. Hill's corroborative witnesses, for example, testified that she told them that her supervisor (or Thomas) had "sexually harassed" her, but that she did not specify what had happened and they did not ask. At trial, a competent advocate representing Thomas surely would have subjected this testimony to closer questioning than did the Senators. Doesn't common experience suggest that people often describe what has happened to them, or what has been said to them, instead of using abstract labels like "sexual harassment?" Might one infer from that that at least the sordid details were a product of a later imagination? As friends of Hill, wouldn't the corroborators have realized that what she meant by the term sexual harassment might range from somewhat benign pushiness to dangerous aggressiveness? Yet they never inquired into what she meant by what she said, or whether she was frightened? Were their memories accurate

Doggett would have gotten off no easier. He claims to have had no romantic relationship with Hill whatsoever. And as evidence of the rejection which produced her fantasies, he cited her conversations with others at Yale law alumni gatherings, where she constantly pursued conversations with men, only to be rebuffed. If he had no interest in Hill, why was Doggett so aware of what she was saying and who she was talking with at these alumni dinners? Doesn't this suggest Doggett's genuine interest in Hill?

Finally, what of the two lawyers who met informally with Hill at an ABA convention in August of 1991? (I found these two witnesses, who I think were named Stewart and Grayson, the most refreshing of the whole lot, and thus in this little tragedy they were my Rosencrantz and Guildenstern.) According to them, during the meeting Hill was ecstatic over Thomas' appointment. But did Hill voice her own enthusiasm, and if so what did she say? Or did she merely go along with the lawyers' enthusiasm, reasoning that the lounge of a convention hotel was not the best site for disclosing the terrible acts she later described in her testimony? An important distinction, but apparently one too subtle to catch the questioners' attention.

The above discussion is admittedly brief. The issues touch on a wide variety of concerns; more than one person has suggested that the hearing could sustain much of the law school's if not the University's curriculum. We will never know the outcome had there been a trial, just as we will never know what would have happened had Rhett Butler given a damn. I hope the discussion at least has described some of the values that a trial would have embodied, and has helped you to compare them with those of the hearing.

Sports

SLF Brings Sports Enthusiasm to UCLAW

by Mark and Diaz

This fall has been an exciting time for sports here in California. The Cal Bears are ranked number three in the nation and sport a 6-0 record. Closer to home, the Bruin Women's volleyball team continues to dominate and sits atop their conference.

Still closer to home at the law school, organized and unorganized sporting activities abound. In fact, Jaime Lao has been demonstrating his power drives to the hoop on Thursday afternoons to work up a thirst for the Bar-Bri Happy Hours. Others run in the beautiful hills of Beverly while their peers sit quietly in the rarefied air of the library.

Rumor has it that the women of the second-year class, section six, get together for some hoops and that Mike Weiner's section has a tough coed football team. Brian Grossman is preparing for a career in management labor relations by running his own football team in the UCLA intramurals.

For those unwilling to organize their own recreation activities, there is always the Sports Law Federation. Dukeminier Cup Football action starts this week, after a boisterous pre-season. Graham's Crackers—all having passed evidence now—are the returning champs. However, they have lost the legendary Bo Solis to San Diego, and word has it their quarterback and All-SLF Clifford Childers are headed for the newly formed Bar-Bri Bombers. The Mooty Blues, last year's dream team, has lost its quarterback to Sheppard Mullin but have added 1L Beach Club founder Matt Elston and

See "SLF" on p. 14

SLF ROUNDBALLERS POSE BEFORE ENGAGING IN INTRMURAL BATTLE

SLF Announces Tennis Rankings

by Bob Haugan, 2L

Here are the totally arbitrary rankings of those playing in the Sports Law Federation tennis ladder. SLF apologizes to those people placed at the bottom of the ladder, but everyone needs to be ranked, and it is impossible to determine players' skill levels without having seen them play. SLF looks forward to a flurry of

See "Tennis" on p. 14

Late Score: Students Nip Faculty in Softball Thriller

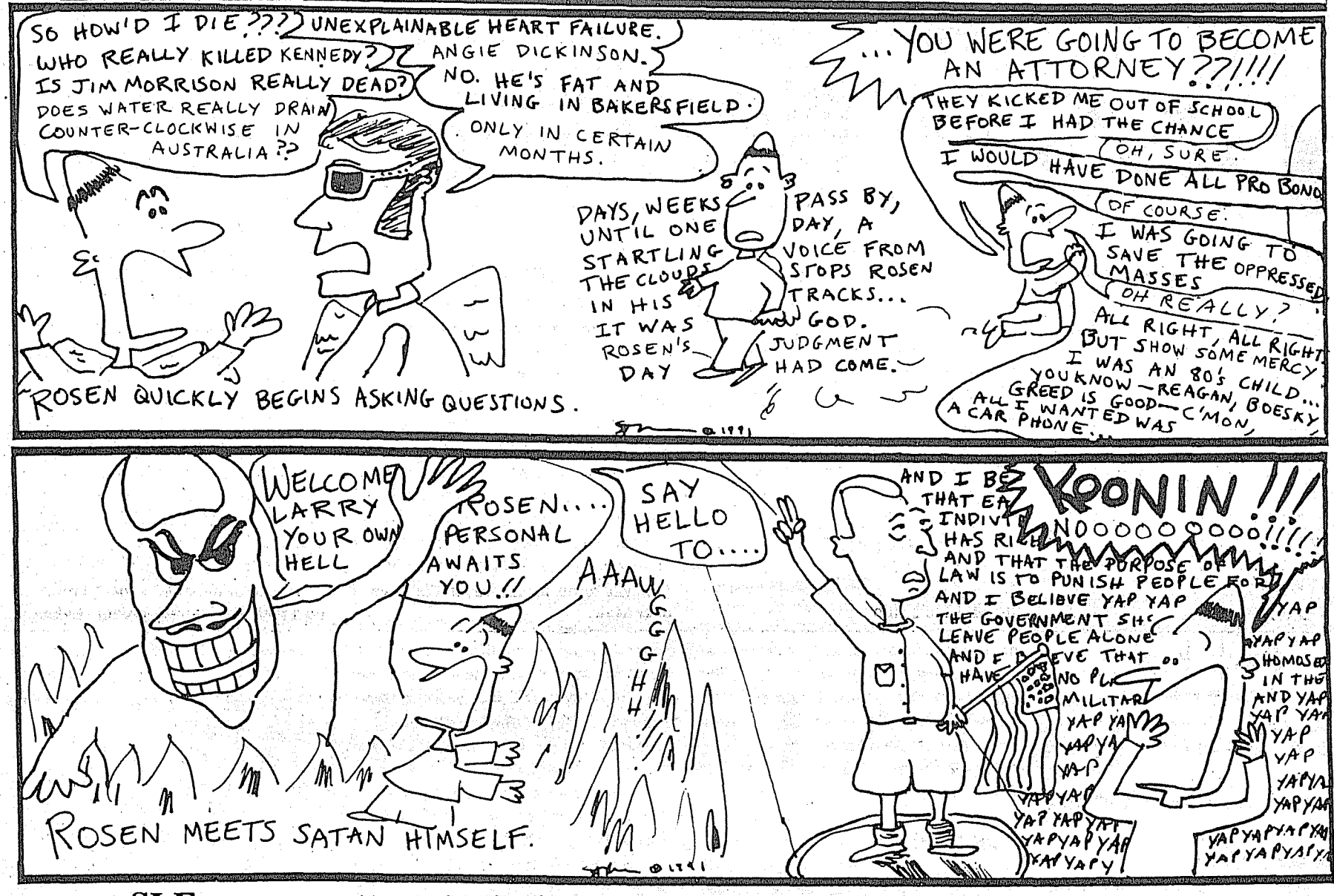
by Andrew Jaeger, 2L

On a beautiful April day last semester, J.R. Clisham and Ben Pavone led the students to a thrilling 4-3 10 inning softball victory over the UCLAW faculty. Clisham, the lanky right-hander, pitched eight scoreless innings in relief to silence the professor's bats. Pavone provided the offensive punch as he went 3 for 4 including the game winning hit in the 10th.

The faculty jumped out to a quick 3-0 lead as captain Jon Varat had his team ready to play. After the game, Varat said, "We wanted to bury the students early and demoralize them. It's the same philosophy we use in deciding on the first year workload."

Viet Do took the hill for the students, and it soon became apparent that Viet

See "Softball" on p. 14



SLF

(from p. 13)

the Golden Bear tandem of Carlos Escobedo and Vince Sarmiento.

SLF also fields a coed basketball team featuring the ferocious ball handling of Debra Hochman and the sharpshooting trio of Aaron Dyer, Kimberly Arouh and Bruce Busch. One-L Alan Calhoun will try to crack that lineup for some game time. The team lost its opener to Slam'n'Jam but looks to recover before the playoffs.

SLF is still looking for more women to compete as a part of its Coed flag football entry in the single-elimination intramural tournament. Interested women should notify Angie Yang, 1L.

SLF is looking forward to a big showing for the Reg Alleyne Softball Tournament. Look for the sign-up sheet posted on the Bar-Bri Sportsboard located just to the right of the 3L's mailboxes.

SLF has had two successful events in extending itself out to the community. On September 21st, SLF hosted a Little League Baseball team from Boyle Heights to a day of fun with a bar-B-Q and a football game. Professor McGee was on hand to celebrate the culmination of the team's successful year. La Raza students donated five t-shirts and SLF hopes that it can get eight more for the kids that missed out on the beautiful t-shirts.

In the other event, SLF members girls to the Cal-UCLA football game at the Rose Bowl.

Professional basketball season is just around the corner, and SLF anticipates some great nights at the Sports Arena watching L.A.'s favorite team. the Clippers.

On the lighter side, hope the party with Bar-Bri at Stratton's prepares you all for future parties at Party Central. This year has been a bit slow on the party scene (must be the recession) with only SLF and 1L Jack Halprin trying to get people to have a good time.

It is not too late to join the fun with SLF, so pick up an application. This could be the missing entry on your resumé—one SLF member claims that his SLF membership got him an offer.

Finally, Gaby and Paul will be back in January and will want to party it up with their Second-Annual Ski Trip, so be selective with your Christmas wishes.

Softball

(from p. 13)

was not to be confused with Roger Clemens. Viet struggled to get his shopping done early and make the game, only to be pulled after breaking a nail in inning number two.

Students' owner, manager, radio announcer, player, and mascot, Andrew Jaeger, then made the move to bring in Clisham. "Heater" retired 24 straight faculty members in what professor Gary Schwartz called, "the best pitching I have seen since Andrew's dissent in Palsgraf."

Clisham explained that this was why he came to law school. "To compete on this level is what I dreamed about as a kid. I just took it one pitch at a time and things went my way, " Clisham said.

Not to be overlooked was the effort of Ken Karst. Karst pitched a whale of a game, going all the way for the professKarst showed the students that his fastball does have a fundamental right to travel by striking out 13, including Jim Kozmor looking 4 times.

In the eighth, however, Karst began to tire. Pavone singled, and Cal Steinberg followed with his league leading 36th homerun of the season to tie the score at 3.

In the tenth, the students finally won the game. With Karst tiring like a student in a legal research and writing class, John Early stepped up and rapped a double to left. Neil Squillante, fighting off a bruised nose sustained in pre-game fielding practice, followed with a double of his own. Early, however, did not score, as his cigarette went out rounding third and he stopped to light another one. Then it was Pavone's turn to win the game. Ben hit a single to center, and the students won. After the game, a confident Pavone said, "I have been doing it with my stick since

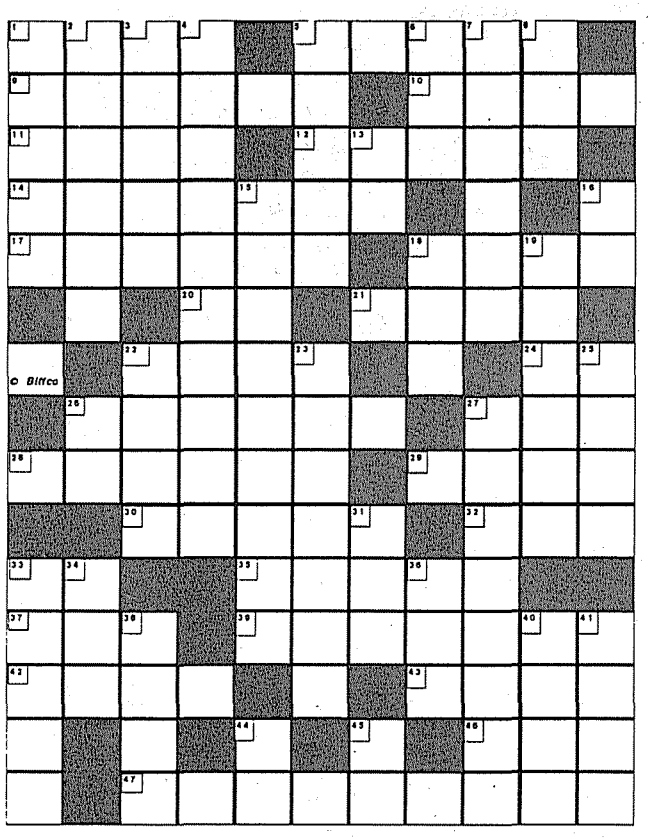
Tennis

(from p. 13)

competition to provide information to firm up the rankings. Play more matches!

1. Craig Shelburne, 1L
2. Robert H. Mahler, 2L
3. Brian Center, 2L
4. Matt Fishler
5. Dan Zohar, 1L
6. Robert Haugan, 2L
7. Jordan Jones, 2L
8. Dean Schefrin, 2L
9. Andrew Jaeger, 2L
10. Steve Cope
11. Ken "Hollywood" Hymes, 2L
12. Lee White, 2L
13. Steve Levy, 3L
13. Laura Lewis, 1L
15. Scott Emery, 3L
15. Nancy Cohen, 2L
17. Todd Strine, 2L
17. Adrienne Nash, 2L
19. Don Fishman, 1L
20. Clay Gaetje, 1L
21. Lisa Anderson, 2L
22. Lee Rierson, 2L
22. Viet Do, 2L
24. Gabrielle Zink, 1L
25. Dave Thomas, 1L
26. David Rauch, 2L

Robert H's All-Star Celebrity Crossword



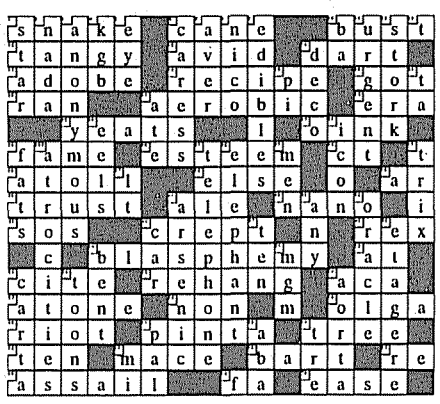
ACROSS

1- for lack of a _____ a horse was lost
5- tree (Spanish)
9- announce
10- _____ot (American wildcat)
11- give off
12- mad as hell
14- _____al Rescue
17- part of a choir
18- the same (German) as in "it's all the same to me"
20- Westlaw space
21- small brown singing bird
22- don't open till _____
24- Coke is _____
26- city (Spanish)
27- SEC university
28- rank
29- Alles _____ Herr Kommisar
30- _____ly ghoul
32- nice gnome
33- "Life _____ short, play hard"
35- aunt (German)
37- power _____, cat _____
39- _____ pregnancy
42- before (Latin)
43- place to build
46- computer maker
47- dreiperronuit

DOWN

1- sailor's rope
2- sewed
3- Pleides chaser
4- pig out
5- to God (Spanish)
6- baby eater
7- the fertile _____narian
8- denim label
13- Marcus Welby helper
15- illuminate
16- he (Spanish)
18- women's amendment
19- man is a social one
22- caution: deer _____
23- sight for sore eyes
25- astro _____
26- the Golden State
27- "You are _____, you do not want to believe" (Smiths fans only)
31- dynamite
33- meaningless, lacking significance
34- saint (Spanish)
36- los vien_____ (the winds (Spanish))
38- McHale's ship
40- 7 year _____
41- _____ denied
44- _____ Better Blues
45- Hooked _____ a Feeling

Last Month's Solution



Cosmic Law

by Bev Chaney, 2L

Scorpio (Oct.24-Nov. 21): Don't worry so much. That professor that's been giving you problems lacks the muscle to follow through on threats.

Sagittarius (Nov. 22-Dec. 21): Direct confrontation will see you emerging victorious. Check references and keep options open. That offer will be coming soon.

Capricorn (Dec. 22-Jan. 20): Stifle your emotions. Remember that those in positions of authority are watching you.

Aquarius (Jan. 21-Feb. 19): Pay no heed to critics this month, but be careful not to release any privileged information. Discovery is long and arduous but will result in immeasurable reward next May.

Pisces (Feb. 20-Mar. 20): Take expert legal advice (if you can find it) when colleagues seem about to renege on an important deal. Minimize your losses, and don't be surprised if misfortune results when Neptune, your ruler, is challenged by the Sun.

Aries (Mar. 21-Apr. 20): The Sun in Libra challenged by Uranus and Neptune means the winds of fortune will blow in your favor this month. Lie low and hope like hell the rains don't follow.

Taurus (Apr. 21-May 21): You may be giving too much. (Try this as a response to your crim. law professor!) It's important to take care of your own needs and ensure that emotional or academic problems aren't undermining your overall well-being.

Gemini (May 22-Jun. 21): There's no point in pretending that this month's planetary activity means anything at all to you, personally or financially. make up your mind and set your sights straight, fickle Janus.

Cancer (Jun. 22-Jul. 23): The Sun in Libra challenged by Uranus and Neptune means sell your Microsoft stock now...and don't expect more details from the stars.

Leo (Jul. 24-Aug. 23): While things may be proceeding slowly on the work front, and it seems that that's the only front there is, remember: your ancestors were kings.

Virgo (Aug. 24-Sept. 23): You will attain enhanced bargaining power (though not quite arm's length) with a love interest or a hiring partner. Don't be overwhelmed.

Libra (Sep. 24-Oct. 23): Fatigue at the end of the month will be relieved by a renewed interest in your studies.

Back Page

(from p. 16)

the UCLAW recycling program.
Contact: Matt Swafford, 2L

Federal Communications Law Journal (FCLJ)

The FCLJ is the official publication of the Federal Communications Bar Association. It is published three times per year, and is devoted to communications law and related fields.
Contact: Dan Butler, 3L

Federalist Society

The Federalist Society is an organization of libertarians, conservatives, and people who thought they were liberals until they saw some of the illiberal things today's so-called "liberals" are doing. Our goal: to bring genuine intellectual diversity to the law school; our motto: "Politically Incorrect... and Proud of It."
Nov. 5: Debate on Term Limits, 4:30 p.m., Room 2357

Prof. Varat vs. Prof. Mark Petracca of UCI
Nov. 20: Debate on Tort Liability, 4 p.m., Room 1430

Prof. Anderson vs. Peter Huber
Contact: Eugene Volokh, 3L

Jewish Law Students Association

Contact: Boaz Brickman

La Raza Law Students Association

La Raza Law Students Association promotes issues of importance to Latino law students. It sponsors tutorials, mentor members and increase student awareness. Membership is open to anyone. The Halloween Party will be on October 26th. (Time TBA.) Please see the La Raza board for further information.
Contacts: Virginia Lazalde, 2L and Alta Rodriguez, 2L

Law Review

The UCLA Law Review is a student-run legal periodical published six times a year, featuring articles by law professors, judges, law students, and other legal commentators. Membership on the Law Review is earned through a one-week writing competition during the second semester of the first year.
Contact: Jack Weiss, 3L

Moot Court

The Moot Court Board organizes the annual UCLA Moot Court Competition among second year students. Finalists compete in the prestigious Roscoe Pound Competition. (825-1128)
Contacts: George Ruiz, 3L and Mike Donovan, 3L

National Black Law Journal

Contact: Brenda Sutton

National Lawyers Guild (NLG)

The NLG is working with CARECEN to train students to assist Guatemalans in applying for political asylum in the United States. Contact Betsy Cotton, 3L for more information.

This semester, members are educating themselves and the law school about race and poverty issues in 3 neighborhoods of Los Angeles: Downtown, Westlake, and South Central. Over the next few weeks, we plan to meet with community organizations in these areas about the issues they are facing, their various strategies for dealing with these issues, and the roles they would like to see lawyers and law students to play. Our efforts will culminate in an Education Week the second week in November. We invite everyone who is interested to participate. For information, contact Lisa Payne, 2L.
Contacts: Lisa Payne, 2L, Danny Wan, 2L and Betsy Cotton, 3L

Pacific Basin Law Journal (PBLJ)

The PBLJ is a student-run law journal dedicated to international and comparative law concerning the economic sphere within the Pacific Basin. PBLJ is interested in receiving Comments from UCLA students.
Contact: Gene Chao, 3L and Everett Hendrickson, 3L

Phi Alpha Delta (PAD)

PAD is an international law fraternity. The McKenna Chapter at UCLAW offers various social, academic, and educational events to its members.
Contact: Murray Robertson, 3L and Jeff Barker, 2L

Phi Delta Phi

Contact: Joseph Montes

Public Interest Law Foundation (PILF)

During the end of October, PILF's Loan Repayment Committee will conduct a survey on indebtedness and career choices. Contact Dady Blake, 2L, Committee Chair. Drop by the PILF office in Dodd 51C for more info on fellowships and pro bono opportunities. Mon. 11-12; Tues. 3-4; or Wed. 12-1.
Contact: Jeff Galvin, 2L

Republican Law Students Association

The Republican Law Students Association is affiliated with the California College Republicans and serves as the official branch of the California Republican Party at the Law School.
Contact: Marc Koonin, 2L

Student Bar Association (SBA)

The SBA is the student government at UCLAW. Elections are held near the beginning of the Fall semester for first years, and near the end of the Spring semester for second and third years.
Contact: Leslye Fraser, 3L

UCLA Legal Society on Disability

October is Disability Awareness Month!
Contact: Suzanne Rosen, 3L

Women's Law Journal

The Women's Law Journal is a publication that will focus on women's issues and feminist jurisprudence.
Contacts: Nicole Bershon, 3L, & Jollee Faber, 3L

Women's Law Union

Back by popular demand! The new and improved UCLA Women's Law Union. Female bonding—not for women only. Featuring—monthly newsletter, chance to meet your peers and women lawyers in the community and brown bag lunches with speakers you won't want to miss. Stay tuned for future events. So far we've had a cocktail party with the fac-

The Back Page

A Guide to UCLAW Organizations and Events

The Back Page is a quick guide to the UCLAW organizations and their upcoming activities and events. Announcements of future events should be submitted to the Back Page Editor, Nick Mikulicich, 2L.

American Indian Law Students Association (AILSA)

Oct. 25th: UCLA American Indian Alumni Banquet
Nov. 2nd: AILSA Homecoming Bush
Nov. 4th: 12:00 p.m. AILSA General Meeting
Nov. 16th: Repatriation Workshop
Nov. 21st: 4:30 p.m. AISA General Meeting
Contact: Loretta Tuell

Asian/Pacific Island Law Student Association (APILSA)

APILSA is a student organization for Asian and Pacific Island law students. It provides educational and social support for its members, as well as information about job opportunities and community outreach events.
Contacts: Vicki Yuen, 2L and Terry Truong, 2L

Black Law Students Association (BALSA)

BALSA is a student organization for Black law students. It provides support for its members, as well as a forum for discussion of issues unique to the Black community. (837-6157)
Contact: Kelly Harris, 2L

Career Planning Office

The Career Planning Office offers assistance in finding full and part time employment. It conducts On-Campus Interview Programs during the Fall and Spring semesters.
Contact: Bill McGeary, Dodd 77

Chicano-Latino Law Review (C-LLR)

The C-LLR is a student-run journal entering its 20th year of publication. It provides a forum for issues that affect the Latino community and other minority, low-income, or discriminated-against communities. It is looking for new members interested in helping in the production process for upcoming volumes. Its faculty advisor is Professor Cruz Reynoso. All students are encouraged to submit articles for publication.
Contact: Carlos Escobedo, 3L and Sonia Sharma, 3L

Christian Legal Society

The Christian Legal Society is composed of students committed to maintaining a Christian presence within the UCLAW community. Bible study and worship are on Thursdays at 4 p.m. in room 1329. Prayer meetings are on Mondays at noon in room 3473. Social events are to be announced.
Contact: Gilbert Chavez, 2L

Committee on Gay and Lesbian Issues (COGLI)

COGLI is an association of lesbian and gay law students, providing emotional and academic support for members. COGLI also provides information about lesbian and gay issues and acts as an advocacy group for minority issues. COGLI is currently involved in protesting the Department of Defense's recruitment at UCLAW and the appearance of Governor Wilson on campus on October 26 in light of the Governor's veto of a non-discrimination bill passed by both houses of the Legislature. Last mopnth we raised nearly $1500 for the AIDS walks. The involvement of all students in these activities is appreciated.
Contact: Rick Villasenor, 3L

The Docket

The Docket is UCLAW's monthly student newspaper (published seven times per year). All students, faculty, and staff at the Law School are encouraged to contribute articles, letters, cartoons, and photos for publication.
Contact: James Orcutt, 2L

El Centro Legal

El Centro Legal seeks to aid low income persons who are in need of legal advice. Students volunteer their time to work in a clinic, interview clients and meet with attorneys to discuss the clients' problems. Meetings are on Tuesday and Thursday nights at 6:15 at 612 Colorado Street in Santa Monica.
Contact: Karen Bray, 2L

Environmental Law Journal (ELJ)

The ELJ is a student run journal that publishes articles by professors, practitioners and students concerning environmental and land use issues. It encourages all students to submit articles for publication. We will be working on Volume 10:1 this fall. New members welcome!
Contact: Lillis Grove, 3L

Environmental Law Society

The Society organizes career forums and panel discussions related to environmental law, and sponsors

See "Back Page" on p. 15