UCLA
The Docket

Title
The Docket Vol. 5 No. 4

Permalink
https://escholarship.org/uc/item/6104781w

Journal
The Docket, 5(4)

Author
UCLA Law School

Publication Date
1961-03-01

eScholarship.org Powered by the California Digital Library
University of California

UCLA DOCKET

Vol. V—No. 5 May, 1961

UCLA Law Students' Association

CONTRA

Should Rule 20 Be Adopted By the California Bar?

EDITOR'S NOTE: Two views on the California Bar Association's Proposed Rule 20 are presented in this issue's CONTRA forum. Mr. Hunt and Mr. Schlei are leading exponents of the opposite viewpoints on the Proposed Rule. Currently the California Bar Association is holding open hearings on this question.

'YES' by Clarence S. Hunt

The Bar of California has earned an enviable position in the nation for its leadership in the organization and administration of an integrated bar. By statute, subject to the approval of the Supreme Court, the Board of Governors is empowered to formulate and enforce Rules of Professional Conduct. A member is subject to discipline for a wilful breach of any of such Rules. These rules were first made effective May 24, 1928, and have been amended from time to time.

The Board of Governors has proposed the adoption of Rule 20, after study and report by committee. The Group Legal Services Committee, under the chairmanship of John A. Sutro, Esq., submtted its report May 6, 1959, (34 *State Bar Jour.* No. 3, p. 318) and after further study and consideration, the Board requested further study by committee, which reported to it July 27, 1960, (35 *State Bar Jour.* No. 6, p. 710) An examination of these reports will demonstrate that not only in this State but in many other jurisdictions, problems have arisen relative to the performance of legal services to various types of entities, corporate and otherwise, and specifically, to the individual members thereof. The subject matter, therefore, is not new.

There are proponents for the concept that many

(Continued on Page 6)

CLARENCE S. HUNT is a senior member of Ball, Hunt and Hart. Mr. Hunt was chairman of the Special Committee on Group Legal Services for the State Bar of California. (Reported in 3 State Bar Journal, No. 6, p. 710). The author was Deputy District Attorney of Los Angeles County between 1928 and 1945. He is a past president of the Long Beach Bar Association, a former board member of the Los Angeles County Bar Association and is a member of the American College of Trial Lawyers.

'NO' by Norbert Schlei

I am opposed to adoption of Proposed Rule 20, Rules of Professional Conduct, now pending before the Board of Governors of the State Bar. The proposed rule is so ambiguous, in my opinion, that if adopted in its present form it is certain to cause a great deal of confusion and litigation. Moreover, depending on what the rule is construed to mean, I feel that it is either unnecessary or contrary to the public interest, perhaps even un-constitutional. Finally, whether the rule is good or bad, its adoption would put the integrated bar in a position of deciding broad social and political issues which are not within its province, and the end result will be that the public relations of the bar will suffer.

Any attempt to analyze the effect of proposed rule 20 is severly hampered by the vagueness of some of the terms which it employs. Each sentence of the rule contains at least one ambiguous term which suggests hosts of problems. (1)

Undoubtedly the most important provision in the proposed rule is the one which says that a member of the State Bar shall not

> "accept professional *employment* by any association or other organization to render legal services to the members of such association or organization in repect to their individual affairs, nor shall he enter into with any association or organization, any *arrangement* having for its purpose or one of its purposes the rendition of such legal services. . ." (Emphasis added.)

(Continued on Page 7)

NORBERT SCHLEI, a member of the law firm of Greenberg, Shafton and Schlei, was the principle author of the Brief in Opposition To Proposed Rule 20, submitted by some 86 California attorneys to the Board of Governors of the State Bar. Mr. Schlei, Yale University Law School honor graduate and Law Review Editor was clerk to U. S. Supreme Court Justice Harlan in 1956-7. He was recently named the George H. Leatherbee Lecturer for 1960-61 of the Harvard University School of Business Administration.

130 Receive LL.B June 10

Dean Sees Law School Expansion

The Dean of the UCLA school of law looked into the future and foresaw the day when more than 1000 students will be preparing for a legal career at this institution.

Dean Richard C. Maxwell, speaking to a capacity audience at the Santa Monica Deauville Club, site of this year's Law Day dinner dance, reviewed the school's ten year history and looked forward to 1970 when he predicted that the school's current population will more than double.

Physical facilities will expand to meet the increased enrollment, as will the size of the faculty. The Dean foresaw a faculty of 44 full time professors and entering classes of over 400 students.

This expansion can be accomplished without any lowering of standards: the Dean noted that of more than 1200 applications for admission to the school each year, the number accepted is limited to less than 200—although the quality of the applicants would easily permit an acceptance of double this number if the space were available.

The overflow audience of students, faculty and alums dined and danced at the event, the climax of the annual Law Day observance here.

Class of '61 Largest In School's History

On Saturday, June 10 the largest graduating class in the history of the UCLA School of Law — 130 Graduates — will receive degrees conferring on them title of Bachelor of Laws.

This year—as in years past—the candidates will participate in bifurcated ceremony. At 9 a.m. Schoenberg Hall in the Music Building will be the site of the Law School's private ceremony. Connel Professor of Law James H. Chadbourn, departing the school for a one-year sabbatical as a visiting professor at Harvard Law school, will be the principal speaker at the event.

Recognition to outstanding graduates in the form of acceptance into the Order of the Coif will also be a feature of the early ceremony.

At 10:30 a..m the class of '61 will join the University's other candidates in the Dickson Art Center Parterre for the formal awarding of degrees. Dean Richard C. Maxwell will present the Law School delegation to the audience of distinguished guests, families and friends attending the ceremony.

The law school's LL.B candidates will be recognizable among the graduating classes by the wearing of academic robes adorned by three purple stripes on the sleeve. In addition law degree candidates wear the hat worn by Ph.D. recipients.

Curriculum Changes— Int'l Law Stressed

Two new courses in comparative law added to the curriculum along with the appointment of a permanent faculty member to teach various aspects of International Law indicate a new emphasis on World problems by the Law School.

Professor Paul O. Proehl, visiting professor in the fall of 1960, will return in September as a permanent member of the faculty. In addition to a three unit course in International Law, he will conduct courses next spring in International Business Transactions and Taxation of Foreign Income.

Prof. Proehl, formerly Associate Professor of Law at the University of Illinois, had been Faculty Editor of the University Law Forum and Editor of Legal Problems of International Trade. He served with the U.S. Army Air Force from 1942 to 1946 and with the U.S. Foreign Service as Counsel and Secretary in Diplomatic Service from 1949 to 1957.

Two courses, Comparative Latin-American Law this summer, and Islamic Law next fall, will be offered for the first time. Prof. Joseph M. Sweeney, A.B., Lic. en Droit, LL.B., Professor of Law and Director, Institute of Comparative Law New York University, will conduct the summer course in Comparative Latin-American Law as visiting Professor. Conducting the senior two hour course in Islamic Law next fall will be Prof. N. J. Coulson, a member of the Law Faculty of Cambridge University and a lecturer at the University of London

(Continued on Page 6)

MOOT COURT FINALISTS

The victorious team of Hillel Chodos and Alfred Keep (left) receive congratulations from defeated adversaries Shelly Bardach and Floyd Brown following the final 1961 round of the Moot Court Honors Program, held Friday, April 28 as a part of the Law Day observance at the school. The two teams argued their case before a distinguished three-judge panel made up of Hon. W. Turney Fox, presiding justice, District Court of Appeals, Hon. John C. Ford, justice, District Court of Appeals and Atty. Herman Selvin of the firm of Loeb and Loeb.

Out of the
Ivory Tower
News from Faculty Row

By PHYLLIS HIX

In an attempt to include previous omissions that may have been made in the items during the year and in order to preview the summer plans for the faculty, past, present and future plans will be included this issue.

The Conference of Western Law Schools was held April 14 and 15 at the Stanford Law School. Those attending from UCLA were:

Prof. John Bauman was a participant in the round table meeting which discussed the usefulness of the Law School Admission Test.

Dean Richard Maxwell took part in the session dealing with counseling and advising pre-law students.

Prof. Addison Mueller was chairman of the panel considering the problems of researching and teaching local state law.

Prof. Kenneth York was chairman of the round table on "Curriculum Consolidation, Solution or Illusion."

Prof. Mueller has written a book review on Sher's "Law In Society" which will be published in the fourth issue of the Stanford Law Review. In addition, Prof. Mueller has been appointed to the Los Angeles Copyright Society's **Copyright Anthology Editorial Board.**

Mr. Mueller has received a Fulbright grant for the purpose of traveling to the Waseda University in Tokyo in the spring of 1962 as a visiting professor. He will conduct a joint seminar in contracts with President Ohama of the University. He will also teach Contracts this summer at the University of Texas.

Prof. Arvo Van Alstyne has an article entitled "Claims Against Public Employees: More Chaos in California Law" in the June issue of the UCLA Law Review. This article is based upon a study Mr. Van Alstyne made in conjunction with the California Law Revision Committee. The general subject concerns a proposal to repeal all personnel claim statutes, involving either claims for money or damages, against all local governmental agencies.

Mr. Van Alstyne has been appointed by the Los Angeles County Board of Supervisors as a member of a special commission set up to study the County Superior Courts and their operations. The Commission will make recommendations for improving the efficiency of the courts and the administration of justice on this level and for speeding the judicial process.

In March, the Los Angeles Bar Bulletin published an article by **Prof. Norman Abrams** entitled "Legislative Powers of Administrative Authorities: The Rule of Law". This article discusses the scope of the rule-making powers of administrative bodies and agencies.

Assistant Dean Murray Schwartz has been selected as a member of the research committee of the Educational Testing Service. This committee will attempt to develop new methods of evaluating and testing prospective law students and correlating their Admission Test with other pertinent information, such as undergraduate performance.

In June Mr. Schwartz will have published the book "Federal Censorship of Obscenity" with co-author James C. N. Paul, professor of law at Univeristy of Pennsylvania.

Prof. James Sumner will attend the meeting of the Committee of Associations of Law Schools in Washington in May. Purpose of this trip will be to complete a study made over the past six years concerning the relations between law schools and university administrations. Mr. Sumner made four of the studies involved and wrote two of the chapters, all of which will be submitted as a report to the Committee of deans and law school professors. This has been an extensive study of all aspects of the operation of law schools, ranging in coverage from salary to text materials to be used, to the possibilities of fringe benefits for the professors. The report will be published in September.

UCLA law school has been the home this semester, of Prof. **William Oliver** of the University of Indiana. In addition to teaching here. Mr. Oliver has completed and published a revision of Volume I of Merten's Law of Federal Income Taxation and is presently working on the revision of Volume II. This major treatise contains thirteen volumes and is published by Callaghan and Company.

Dean Maxwell addressed the Utah State Bar Association at Salt Lake City on March 24, speaking on various remedies with emphasis on the remedy of damages. The Dean has been appointed Chairman of the State Bar Committee to study procedure for international litigation.

Because of a recent illness, Prof. **L. Dale Coffman** has been forced to cancel part of his summer plans, which included teaching summer school at Hastings Law School. He recently spoke to an adult education class at Orange Coast College.

The class is set up to point out the organization and aims of international communism. The lecture—"Decade of Decision"—concerned the economic, political and social changes which the world will undergo in the next 10 years. Mr. Coffman also gave the commencement addrss at Taft College in Taft, California in February.

Prof. **William Warren** was hired by the California Assembly to participate as technical adviser in the preparation and writing of the Report of the Subcommittee on Real Estate Contracts and Trust Deeds. The report was pulbished in December of 1960. The May-June issue of the UCLA Law Review will contain an article based in part on this report.

Mr. **Joseph Vodnoy** will leave the UCLA faculty in June to go with the Los Angeles firm of Mitchell, Silberberg and Knupp, located at 6399 Wilshire Boulevard. He will act in the capacity of a tax specialist.

ALUM MARVIN LEWIS
Honor Grad Uses New Criminal Defense Theory

To most people the killing of Robert Tanner by Albert Ortega in Oxnard last February 11 might have been an open and shut case of murder in the first degree.

But to Marvin Lewis, UCLA Law School honor grad ('55) and chairman of the Ventura County Legal Aid Society and a man who firmly believes that the purpose of the legal profession is to provide "legal access to the law' to all persons, there were facts about the seemingly cold-blooded and

MARVIN LEWIS
For the Defense

premeditated killing which indicated something more than the simple shooting of an estranged wife's suitor.

So when former Law Review Editor Lewis undertook the defense of Ortega, formally indicted for first degree murder by the Ventura County authorities, he sought an acceptable defense by which he could persuade prosecution or judge and jury that his client could in fact be guilty of some lesser crime.

He found his defense in the landmark case of **People v. Gorshen** (51 Cal2d 716, 336 P2d 492, 1959).

The fact situation was uncontested — and its simplicity seemed to damn Lewis' client. Ortega, separated from his wife by an interlocutory decree of divorce, had been on an outing with his son, as provided in the decree. On returning the boy to his mother he found a stranger—one Robert Tanner—having dinner at his wife's apartment. He was identified to Ortega as a "friend." Later that night while taking a shower, Ortega testified, something overwhelming and illogical forced into his consciousness the desire to kill the man he had seen in his wife's apartment.

Picking up a pistol he owned, Ortega drove back to the apartment, stopping on the way to purchase some cough medicine for the boy ("to gain admission to the apartment" the prosecution contended) and fatally wounded Tanner.

The reports of the arresting officers and statements made by Ortega himself painted a picture of a cold, calculating killer who showed no remorse for his crime. When Attorney Lewis was brought into the case by a phone call from his partner, Jerome H. Berenson, early the next morning, his preliminary investigation revealed little chance for anything but a first degree murder indictment and conviction.

This picture was changed when the attorney met his client for the first time in the Oxnard city jail. Ortega, Lewis found, had led an exemplary life, and had never so much as received a parking citation. The kind of man who not only stayed out of trouble, but actively avoided it. Lewis could not believe that a man like Ortega, if in full command of his faculties, could have committed such a crime.

Since there was no plausible defense on the facts of the case, Lewis turned to recent California cases for his solution, and in the GORSHEN case, found his answer. Conviction of the crime of first degree murder requires "a specific intent to commit the particular crime" and evidence is admissible which tends to show that "because of mental abnormality not amounting to legal insanity" the defendant did not possess the requisite intent.

Armed with this precedent Lewis sought the help of a distinguished Los Angeles psychiatrist, Dr. Andrew Hacker. Dr. Hacker examined Ortega at length and came to the conclusion that the defendant had suffered from a dissociative reaction during which an abnormal area of his personality had taken control of his conscious state, though his normal personality could still function. This dissociative condition Dr. Hacker termed a "fugue state," which can be likened to the musical fugue, where two themes are played, but one is dominant.

Dr. Hacker's findings were corroborated in independent examination by an Oxnard psychiatrist, Dr. Hugh Adams, and Lewis suggested, with the consent of his client, that a plea of guilty to second degree murder be entered. The prosecution however would not accept the plea to the lesser crime and proceeded to trial with Ortega charged with first degree murder.

The evidence of the two psychiatrists impressed both the court and the jury; the judge instructed as to murder in both degrees, and voluntary and involuntary manslaughter.

Getting this concession in the instructions Lewis thought was his most difficult task. He felt that the jury should not have an "all or nothing at all" decision to make. Their verdict: guilty of murder in the second degree. Ortega's "fugue state" consciousness had saved him from possible death in the San Quentin gas chamber.

Attorney Lewis has been

(Continued on Page 8)

LOOKING FORWARD

The American Bar Association has appointed a committee to study possible uses of computers in the legal profession.

We believe electronic computers can be of invaluable assistance in matters involving taxation, corporate structures and in looking up cases.

The Clary DE-60 electronic computer is small, low-cost and is finding wide acceptance in colleges as well as in industry, engineering and science.

Whenever you think of computers, consider Clary.

CLARY CORPORATION
Computer Division
San Gabriel, California

Your Law Library

(Editor's note: Mr. Piacenza, the author, is Law Librarian of the U.C.L.A. School of Law. Except for two years in the Navy during World War II, he has been handling law books for his entire adult life. In his early twenties he was associated with such personalities as Nicholas Murray Butler, John Dewey, Franz Boas, Mortimer Adler, Dean Harlan Fiske Stone (later Chief Justice Stone of the U.S. Supreme Court), Tom Dewey, William Orville Douglas, and many others. Some he knew as students. Some he knew as visiting lectures, such as Nathan Cardozo and William Holdsworth. For such men as these he shagged books, "truck loads of them," to and from their lectures and offices, often sitting through many of their lectures.

Mr. Piacenza was First Assistant at the Columbia Law Library from 1930 to 1943, after spending eight years at its loan desk. During nearly a quarter of a century at Columbia he was charged with keeping the flow of a very busy law library running smoothly and headed a staff of over twenty sub-professionals. This broad experience gave Mr. Piacenza the book knowledge that is now so useful in building a collection for our U.C.L.A. Law Library. He also gained the experience he now must utilize in hiring, training, and distributing the vast amount of routine work involved in the proper functioning of a law library.

On September 1, 1949, Mr. Piacenza reported to U.C.L.A. as a Principal Library Assistant in the new law library not yet opened. On September 19, 1949, classes started in the new School of Law and the law library opened for business with Piacenza at the loan desk.)

BY LOUIS PIACENZA

The process of acquiring legal materials is a little like the behind-the-scenes activity of a stage production. The library reader, like the playgoer, sees only the result behind which there has been placed a great deal of thought, planning, preparation, effort, and activity. In law library acquisitions there can be no inertia, indecision, drift; luck may bring us opportunity, but intelligent buying alone, born of training and experience, shapes it to our purpose. This requires reasoned, planned selection of materials, old and new, best calculated to expand the library's collection, strengthen its resources, support instruction, and support research in areas covered by the curriculum and other fields of interest of the faculty. It is a combination of librarianship, good business practices, and common sense, ranging from bibliographic detective work to approving invoices for payment.

Our library is still young, not quite twelve years old, and has the growing pains of all things youthful. And like all things that grow, it is growing not prosaically but with enthusiasm. It is fast becoming a distinguished library of an equally distinguished law school.

During the first two years of its existence, the law library was housed, as was the law school, in an Air Force barracks on the north end of the campus and was hampered by lack of space and weak underpinning. Acquisitions at that time had to be held to the bare necessities for lack of shelf space. But when the School of Law moved into its new building and the law library's token collection rattled in its new quarters, it was time to acquire the books needed by the faculty which were being borrowed from other sources, such as the Los Angeles County Law Library, SC's Law Library, Boalt Hall's, Harvard's, Columbia's, and other law libraries geographically situated in between. We are very proud of our friendship and excellent relations with these libraries and we are exceedingly grateful.

To a greater degree than perhaps any other field of study, the legal profession, and above all the study of law, depends upon a complete record of the past, yet requires that all essential sources of information be kept current. This we are doing by acquiring long out of print material as fast as we can find it; and by subscribing to supplementations which we are receiving at the annual rate of 45,926 pieces (in 1960) of advance sheets, supplements, and new editions.

In the endeavor to assemble a working collection that will support instruction we have been somewhat successful, but we are constantly faced with and striving to fill gaps that inevitably loom before us as new areas are researched.
pardonable pride the library presents herewith a list by catagories of its collection:

American reports, statutes, & documents (including reports of attorneys General, Judicial Councils, Law Revision Commissions, etc.)	63,367
Bar association reports	2,446
Bibliographical materials	1,029
Biographies (legal	1,003
British reports, statutes, and documents	12,443
Dictionaries (mostly legal)	435
Foreign law (mostly a gift of Latin-American material)	296
Law school reports and bulletins	1,549
Miscellaneous (these are oddities such our Braille collection, and librarians' tools shelved in the library office and in the cataloging room)	339
Periodicals	14,347
Roman law (a nucleus collection in civil law which it is hoped will be developed)	424
Treatises (mostly Anglo-American textbooks)	30,463
Total number of volumes as of April 1, 1961	128,163

Since the collection is not in a classified arrangement, our public catalog is indispensable as an index to it and as a research tool, comprising well over 100,000 cards with entries under authors, subjects and titles, filed in so-called "dictionary" arrangement. Cataloging in a law library is a process requiring highly technical skill, broad bibliographical training, familiarity with the subject matter and knowledge of legal terminology. The members of a catalog department must be

(Continued on Page 8)

'Constitutionality' or 'Desirability & Wisdom'?

★ ★ ★

PUBLIC AID TO CHURCH SCHOOLS

(Professor Van Alystyne, UCLA professor of Law, prepared this analysis of the issues underlying the "federal aid to church schools" question for The Docket. The author is a prominant authority on Constitutional Law. He is co-author of a recently published study of California pleading and practice now being used by the Continuing Education of the Bar.)

BY PROF. ARVO VAN ALSTYNE

The continuing public debate about aid to parochial education illustrates again the subtle policy issues inherent in constitutional questions.

Despite the President's assertion that the constitution clearly prohibits financial aid to parochial schools, the plain fact is that the Supreme Court has not settled the question. Most of the public debate has focussed upon the implications which the various protagonists manage to read into certain broad **obiter dicta** in the school bus (1) and released time (2) cases. On the one hand, the Constitutional command that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" has been reified into an unbreachable metaphorical "wall of separation." On the other, much is made of the connotations of the "social welfare" theory underlying the constitutionality of public school bus service for parochial school pupils, (3) together with the theory of "accommodation" which was invoked to sustain off-premises released time religious education. (4)

The debaters would do well to heed Justice Frankfurter's well-known admonition as to the "practical limitations of a rhetorical absolute." (5) It should be conceded from the outset that conceptual symmetry is not an indispensable foundation for either practical or constitutional policy; and that complete consistency between constitutional ideal (however defined) and actual practice is probably as undersirable as it is unattainable. Such consistency is undesirable, for it presupposes agreement on what the exact dimensions of the constitutional ideal are — an agreement which the current debate as well as the slightest historical reflection demonstrates to be visionary. It is unattainable since in this area, as in so many others, practical policies inevitably involve some measure of compromise, adjustment and tolerable deviation.

Surely we as a people have learned that what is in fact done every day—indeed, what may have been done every day for decades—is not necessarily constitutional. Many of the anomalies and inconsistencies in our practices under the Constitution are explicable more in terms of custom, tradition, expediency or inertia than on the basis of principle. To argue the merits of aid to church schools by analogy to existing institutions and practices like religious tax exemptions, chaplains in the armed forces, or free textbooks and bus service to parochial school children, is thus to miss the basic issues.

The debate would be more profitable for all, it is believed, were it directed not to the question of constitutionary but to the question of wisdom. Even if public aid to church schools is unconstitutional, it may be sound policy; and even if it be very bad policy, it may (at least in some aspects) (6) be constitutional. We should not lose sight of the fact that the Constitution was not intended as a repository of wisdom, but as a practical instrument for allocating political power and controlling its exercise.

Turning to the issues of policy, then, certain basic assumptions may be identified on which there is probably a fairly broad consensus. First, religion is an esssential part of any meaningful education. In light of the impact of religious events and thought upon history, art, literature, philosophy, and the sciences, it could not be extirpated completely even if desired. Second, private church-operated schools and colleges are a desirable and healthy aspect of the educational process, for they give meaning and substance to the concept of freedom of religion as well as the right of parents (7) to select the kind of educational environment (whether consciously sectarian or deliberately secular) they deem best for their children, within broad and generally accepted minimum curricular standards set by the state.

The proponents of aid to church schools, however, press the logic of these assumptions too far. It is urged, for example, that the failure of government to extend equal financial support to parochial education discriminates against those parents who wish to exercise their admitted right to educate their children in a sectarian environment, and thus violates the principle of distributive justice. Church schools established to assist parents in exercising this right fulfill a public function and hence, the argument goes, are entitled to public support.

The whole argument is based on a faulty premise—that since the parents have a "right," the government has a reciprocal "duty" to provide financial suppomrt for its exercise. The Constitution, however, was framed on no such premise. The reciprocal public duty correlative to private rights was simply one of governmental noninterference with, and governmental protection for, their voluntary exercise. Affirmative assistance and promotion of such rights is regarded by the Constitution as a matter of policy, not of duty. To argue that the state has a duty to subsidize church schools thus begs the real question: should the state do so? The Southern racist has an acknowledged right to educate his children in a racially segregated private school; but few would argue that the government has a duty to subsidize his decision to do so. The fact that I have a right to lay out a private road on my property scarcely can mean that the state, in spending its funds upon public street improvements, must also as a matter of duty contribute to the paving of my private road. These issues are matters of policy, not of duty.

Among the basic policy issues at stake, two seem especially crucial:

(1) To what extent will government assistance to church schools tend to impair the basic values inherent in the public school system? To many thoughtful citizens, the public school system, with its consciously secular approach, its studious efforts to refrain from attempting to determine what is truth in the realm of ultimate things, its experimental attitude toward matters of morals and ethics, and its emphasis upon the desirability of suspending judgment, is one of the fundamental strengths of the democratic tradition. The open-minded search for ultimate values, the willingness to explore ideas and to test one's own assumptions — these products of public education are desirable ends in themselves. In a society which all too often tends to emphasize differences, the public school system offers a significant meeting ground where youngsters of differing religious convictions may work together for common goals while their diverse sectarian convictions are largely ignored. Is the potential impairment of these values through public financial assistance for private school systems founded upon a deliberately sectarian and admittedly authoritarian educational philosophy a consequence we are prepared to accept?

(2) To what extent will government assistance to private schools tend to impair the viability of democratic political processes? Any form of government assistance, whether in the form of subsidy, loan, or scholarship will inevitably involve some degree of government control. Yet, the chief proponents of assistance deny the legitimacy of any but the most minimal controls. The problem of resisting such control while enjoying the benefits of the grant thus poses political issues of the greatest magnitude; and the issues are of the type which may become the occasion for more direct involvement to a more intimate degree than has been the case in the past. Such involvement, in turn, may threaten the political independence of church members as ecclesiastical urgings become more frequently coupled with personal pecuniary interest.

On the other hand, if the effort succeeds and financial assistance is freed from obnoxious government controls, public funds will be employed to support a privately formulated system of education not subject to the political scrutiny, criticism, evaluation and adjustments characteristic of the public educational system. Yet it is precisely this subjection of the public school system to continuous political audit in an environment of local control which makes public education tolerable to many critics of the system. To utilize tax-derived funds to

(Continued on Page 5)

Docket Dicta

Summing Up

This issue closes the first year of the "new" Docket. We have tried to implement the promises made in our first issue last October. Briefly, we have found, that we have attempted to fill a gap on the legal horizon between a Law Review and a Bulletin Board, while not encroaching on the former or duplicating the sterility of the latter.

The approach has been through creative legal journalism in combination with articles of special interest to students, alumni and the practicing professionals.

"CONTRA" and the original feature articles written especially for The Docket by members of our faculty and other authorities have tended to create an increasing audience. Both of the Daily Los Angeles legal newspapers have reprinted or summarized several Docket articles.

Circulation of the Docket now includes members of the Los Angeles County judiciary, the intermediate appellate court judiciary and the California Supreme Court. Also, members of the State Legislature and the California delegation to the United States Congress receive the publication

Although a beginning has been made, two areas remain for serious concern: these are the relationship to our Alumni and our need for positive utilization of The Docket by the Students themselves.

Along these lines, The Docket recommends that the Alumni consider this THEIR Newspaper, as much as students, and to participate accordingly.

It is time to acknowledge our deepest gratitude to those who, were kind enough during the past year to take time from already full schedules so that our readers might share their thoughts and opinions on current topics.

Our thanks to Dean Richard C. Maxwell, Assistant Dean Murray L. Schwartz, Professors William Cohen, William Warren, Arvo Van Alstyne, Kenneth York: Visiting Professor Paul Proehl; Professor Howard Taubenfeld, (Golden Gate College) and members of the Bar Melvin Belli, Clarence Hunt, Norbert Schlei and Loyd Wright for their important contributions.

A special expression of gratitude is due Professors Edgar A. Jones and Addison Mueller. Their constant help, advice and encouragment were responsible in great measure toward the publication of The "new" DOCKET.

MEL SPRINGER, EDITOR

'Outstanding Service'

Compensation for activities voluntarily undertaken and gratuitously performed must come, if at all, in the recognition of the value of the activities by recipients.

This year, for the first time, this recognition has been formalized — through the medium of a permanent plaque which will be presented to the Law School and displayed in the Library. Officially its the "Law Students' Association Award for Outstanding Service," and it will go each year to the student who, in the estimation of the LSA Executive Council, has done the most for the betterment of the school, the student who made the most significant contribution to the advancement of the school and its students.

The Docket is pleased that this award has been created: recognition creates aspiration and motivation.

More than this however, The Docket is particularly proud of the individual who has been chosen as the first recipient of the award: The man who "created" and shepherded the "new" Docket through a successful year: Mel Springer.

LEE W. CAKE

UCLA DOCKET

Published quarterly during the academic year by the Law Students Association, School of Law, University of California at Los Angeles. Mail address: 405 Hilgard Ave., Los Angeles 24, California. Telephone BR 2-6161.

MEL SPRINGER, EDITOR

Managing Editor: Lee W. Cake
Business Manager: Arland Myhrvold
Calendar Editor: Ken Simon
Features: Mel Albaum, Bronco Aleksich, Gerald Diller, Phyllis Hix, Maggie Roth, Ken Simon, Oretta Small, Hank Van Leeuwen

KNOW YOUR JUDICIARY

HON. W. TURNEY FOX

Presiding Justice, Dist. Court of Appeal

BY MEL ALBAUM

Q: How do you feel about present California Legal Education?

A: Having been a law professor, I have throughout the years maintained a deep interest in legal education and its effectiveness. It has greatly improved in the last 25 years, in general. Its scope has broadened to meet new business and social problems both in breadth and in depth, in that more time and concentration has been provided for many of the basic courses in the legal education curriculum. This is particular true in the field of constitutional law, trusts and taxation.

Q: Do you think the analytical approach is the most effective?

A: The analytical approach as represented by the case system has greatly improved in recent years, and the student's minds have been sharpened by the necessity of recognizing that there may well be weighty logic contrary to the decision reached.

JUSTICE FOX

It is, of course important that the student ultimately be left with a clear understanding of the underlying controlling principles in the decisions and the reasons therefor. I like to teach in a law school which keeps you confused to desparation through 40 minutes, and the last 20 minutes tells you what are the majority opinions and what are their applications. In that fashion you sharpen the intellect, but you also unconfuse it. So when the student leaves the classroom he knows what the controlling principle is and why.

Q: Did you have such a professor in your legal education?

A: One of the great men of this country was Mechem, who would conduct the class in that manner for 40 or 45 minutes, and at the conclusion of the class period he summarized. When you left the lecture room, you understood. I had five courses under him, and it was like sipping from a spring at the foot of a mountain, drinking cold water after you had walked until your tongue was parched and felt like it was falling out of your mouth. That is how satisfying his summary was at the end of the lecture. He had lead you through a desert of confusion and then gratified you with certainty.

There were other teachers who left you hanging up there, struggling to get down to firm ground. These were not my preference.

Q: How did you feel personally about teaching?

A: Had I left the bench, I would have gone back to teaching, because it offers great opportunity to train young men for a high quality of professional service.

Q: Do you see any particular area or factor which has brought about better legal education?

A: One of the greatest improvements in the end result of law schools today is the tremendous improvement made in legal writing. This is in a large measure due to the number of schools that have established law reviews since World War II and which in one way or another give some recognition to law review standing.

A second contribution in this area is due to the moot court system that now prevails. These experiences have served to teach students the importance of both accuracy and clarity in legal writing.

Q: Do you see any particular deficiency in legal education?

A: The one deficiency I see in present-day law school training is that too many of our law schools give too little training in the field of what might be termed 'professional behavior.' A lawyer is licensed by the State. He is set apart thereby as one who is equipped both by training and character to render a highly specialized service to his fellow man. We have had the unfortunate experience in this state in recent years of having too many members of the profession not living up to even the minimum standards of professional behavior and who have thus cast a shadow upon the profession and served to lessen public respect for the profession and its members.

Q: How did you come to decide upon the judiciary rather than private practice?

A: I was led to particular interest in the judiciary as a youngster in my teens by reason of the fact that my uncle was a Circuit Court Judge in my native State. I used to go to his court and listen to trials, and I became greatly enamored of the part the judge played in settling private difficulties and of the opportunities he had for service. Having experience both as a law professor and a jurist, I prefer the judiciary.

Q: Do you have any comments on the method of appointing the judiciary in California?

A: We have been fortunate in California, since the days particularly of Earl Warren as Governor, in the caliber, character and professional standing of the lawyers who have been

(Continued on Page 5)

Hon. W. Turney Fox - Pocket Biography

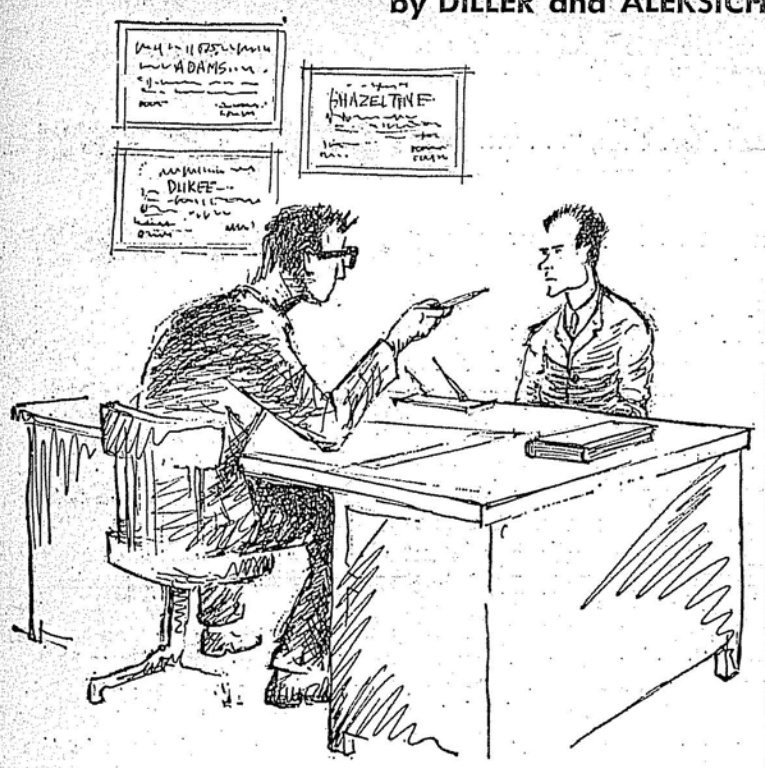
Born: Eastern Tennessee farm

Education: A.B. and M.A. from Carson-Newman, Jefferson City, Tennessee. J. D. (Cum Laude, Order of the Coif), University of Chicago Law School.

Professional Career: Professor of Law, University of Southern California.
City Attorney of Glendale, Assistant City Attorney of Los Angeles; in charge of the Legal Division of the Department of Water & Power.
Judge of the Superior Court, Los Angeles County
Justice (since 1952) of the District Court of Appeal, Second Appellate District (Los Angeles).

Civic Activities: Member, Board of Governors, Welfare Federation of Los Angeles Area; Board of Directors, McKinley Home for Boys; Executive Board, Los Angeles Area Council, Boy Scouts of America.

A NEW MAN IN THE FIRM
by DILLER and ALEKSICH



Allright Now Dick . . Let's Go Over The Meaning Of 'Proximate Cause' One More Time . . .

Your Judiciary . . .

(Continued from Page 4)

appointed to the trial bench. However the present system is vulnerable in that judicial appointments may be made by the Governor on a political rather than a professional basis. It therefore seems to me that the public is entitled to some protection against such a thing happening. One suggestion is the plan followed in Mississippi, where the local bar recommends or furnishes to the Governor the names of three lawyers whom they regard as qualified for judicial service. The Governor then must appoint from that recommended list. This plan has some disadvantage in that it limits the Governor's choice. But it has the advantage of greater assurance that the judge will have the legal training and professional background that is needed in the administration of justice. Personally I think this plan has definite merit in that it serves to accomplish two things: one, a competent judiciary, and two, a non-political judiciary.

A second suggestion has been made that the Governor submit the name of his proposed appointee to a qualifications commission whose duty would be to advise the Governor as to whether or not his selection meets the standards for judicial service. In the event that the qualification commission reports in the negative, the Governor then submits a new name. This is basically the system that now prevails in this state with respect to appointments to the District Court of Appeals and the Supreme Court. It has been in effect a little more than 25 years and has generally worked rather satisfactorily.

Q: Which system do you prefer?

A: I believe that perhaps the first system is more effective.

SHAKESPEARE v. BLACKSTONE

Two Portias Face the Legal Life

By ORETTA SMALL and MAGGIE ROTH

Having spent four years learning the refinements of literary style and learning, through interpretation, to get at the true and deeper meanings of the English language we trembling entered the hallowed Halls of one of the top law schools in the country.

Confident in our background, superior in our demeanor, bolstered by the knowledge that we were among the select few who knew the difference between Henry James, James Joyce and Joyce Kilmer we confidently attacked the legal field only to discover that our curriculum had left much to be desired.

We did not make the team! We just did not have the equipment! No one had trained us in the art of weight lifting and mile running. This obviously put us at a complete disadvantage. One mile each day, over the cobblestones, wearing spiked heels and carrying 30 lbs. of books is a bit trying on new **untrained** recruits — especially when you must never lose your professional gait.

Three weeks were lost in an attempt to gain the necessary muscles. Untold hours were spent in attaining this type of proficiency while the rest of the student body, having been properly trained from the beginning, could profitably study law.

But at long last we too were ready to open the law books. The discovery was dismal. Our knowledge of English had to be discarded. We soon learned that English and legalise do not mix. We were told that we must speak in a 'strange and wonderful language" that other lawyers would understand.

Legalise on top of not being English is further categorized according to the judge who uses it. And thus **consideration** might mean **legal detriment** to one and **legal benefit** to another. Proximate cause might mean cause in fact or legal cause (whatever that means).

All rules of pronounciation also have to be discarded. Law has its own system of phonetics developed no doubt in the days when lawyers could not read. It takes time to discover that the strange word the professor uses is really not strange but familiar when seen in print.

Legal terms seem to be a composite of mispronounced French and old Saxon with a dash of Latin. You soon discover that land is owned per my and per tout or only per my but in some cases only per tout. You also discover that a fee is not what you charge your client but an estate determinable or simple (only it's not simple at all). But at least we now know what Shakespeare meant when he said he was "his own fee simple absolute."

Another discovery you make is that mirror work with words is the most useful way to write. Don't, and we mean don't use simple sentences. Try at all times to confuse your reader. Judges spend hours thinking up methods to hide the real reason for the decision they have come to. Thus, for example, if the plaintiff has shifty eyes and the judge thinks he is guilty he doesn't just say so, but must deviously attempt to discover a small forgotten rule which, when properly presented, hidden in a maze of inconsequential pharases, will give a legal reason for his "judgment for the defendant."

Don't ever ask the meaning of a sentence. When construing a statute don't take the words at face value, i.e., Engilsh value. Go back to the intent of the legislator who obviously did not know the meaning of the words he was using and meant to say the exact opposite of what he did say and then apply the meaning the legislator meant to give to the statute and if your English soul cringes, well . . . let it.

Don't, though they tell you to do so, use common sense to find the problem. When they speak of **issues**, they speak of legal issues and these are not what you might think they are.

A word of encouragment—Justice is achieved, at least in the great majority of cases. But, never make the mistake of using logic. After a while

(Continued on Page 8)

JFK Names Prof to Board

Prof. Benjamin Aaron has been appointed by President Kennedy to a three man fact-finding board operating under the Emergency Procedures of the Railway Labor Act.

The Board has been holding hearings on the dispute between Northwest Airlines and the International Association of Machinists, representatives of the flight engineers. Its report is to be sent to the President on May 24th.

Prof. Aaron is Professor of Law at UCLA as well as Acting Head of the UCLA Institute of Industrial Relations. He is also one of three co-chairmen for the American Bar Association's Committee on the Development of Law of Union Administration and Procedure.

In 1960 Prof. Aaron along with Donald H. Wollett published the second edition of **Labor Relations And The Law** (Little, Brown and Company) and he has just completed the chapter on employer free speech to be included in **Public Policy In Collective Bargaining** which is to be published next fall by the Industrial Relations Research Association.

A prominent speaker of much note and demand, Prof. Aaron spoke on April 20th at the Institute of Industrial Relations' Seminar in San Francisco on administration problems of the Landrum-Griffin Act. On April 25th, he addressed the Federal Bar Association on the same subject and on May 11th he will visit Seattle to lecture at the University of Washington and to address the Seattle Bar Association.

Aid to Schools . . .

(Continued from Page 3)

support the indoctrination of private school pupils with religious precepts, dogmas and values is to tax for objects with which many taxpayers not only thoroughly disagree, but which in many instances will outrage their deepest convictions. The resulting religious exacerbation of the political processes should be solemnly evaluated before the decision is made. Is it consistent with a healthy democratic pluralism to encourage the framing of political issues along sectarian lines?

It is unfortunate that the fundamental issues in the debate have been obsecured by the tendency of the protagonists to define their positions in terms of constitutionality. Tested on that level, the claims of church schools to public assistance can readily find hospitable judicial language to lend plausibility to the asserted validity of at least certain forms of such assistance. Judged in terms of wisdom and desirability, however, the burden of persuasion has not been satisfied by the proponents. One may reasonably conclude that the inculcation of religious beliefs is best relegated to the realm of private endeavor, and that rigorous separation of church and state in educational matters will most effectively serve the long range interests of both the state and the individual.

FOOTNOTES

1. **Everson v. Board of Education, 330 U.S. 1** (1947).
2. **McCollum v. Board of Education,** 333 U.S. 203 (1948); **Zorach v. Clauson,** 343 U.S. 306 (1952).
3. **In Everson v. Board of Education, supra** note 1, the Court sustained the use of tax funds to pay bus fares of parochial school children on the ground that such expenditures were "part of a general program . . . intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare." 330 U.S. at 17.
4. **See Zorach v. Clauson, supra** note 2, at 314, where Mr. Justice Douglas states, "When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accomodates the public service to their spiritual needs."
5. **New York v. United States,** 326 U.S. 572, 576 (1946).
6. Since the issue is one of degree, it seems that relevant distinctions conceivably may be drawn between different forms of aid, e.g., outright grants, loans (at market or less-than-market interest), and individual scholarships.
7. This right was settled in **Pierce v. Society of Sisters,** 268 U.S. 510 (1925). See also, **Meyer v. Nebraska,** 262 U.S. 390 (1923).

The Bar Preparation Course

- *Experienced lecturers*
- *Complete and concise summaries*
- *Practice exams*

Course offered in Hollywood (2 programs) and San Diego for

Fall Exam

Beginning June 12, 1961

11779 Santa Monica Blvd.
Los Angeles 25
GR 3-3906

CONTRA: Rule 20 -- 'Yes' Says Clarence Hunt

(Continued from Page 1)

individuals can best be served by the lawyer if they are members of a group which is organized because of a mutual interest, be it a labor union, an association of automobile dealers, a group of civil service employees, property owners or club members. It is their contention that through the organization, the individual legal problems of the member can be serviced more economically, i.e., others in the group share the legal fees and costs; that the attorney will be known to the group as a whole; minor legal services will be performed without any charge to the individual client. the attorney, even though performing professional services to the individual, will be accountable to the group as a whole. An additional argument is that many persons, unacquainted with an attorney, will be less timorous in taking their problems to legal counsel employed by their union or group.

Weighed against these contentions is the concern that the legal profession must retain its place as a profession of absolute integrity, where the personal relationship of attorney and client shall remain inviolate, and the client shall be completely unhampered in selecting the attorney of his choice. Investigation has led to the unfortunate conclusion that too often selfish interests have resulted in unsavory practices, neither benefiting the client nor upholdng the high ideals of the profession.' The rigid restrictions against advertisement, fee-splitting, solicitation of busness, and the maintenance of the personal relationship between attroney and client have been thoroughly tested by time and experience, and have been found to be an integral necessity in maintaining our professional integrity..

The proposed Rule is a clarification of existing rules of professional conduct. In the studies of the existing conditions and practices concerning the furnishing of legal services to groups and the individual members thereof, there were found to exist several instances where attorneys were seeking to comply with all existing rules of ethics, and were unsure of just what would be considered acceptable and proper in performing legal services for individual members. As the minority report of E. Avery Crary points out (35 *State Bar Jour.* No. 6, p. 72), many members of the profession feel there is room for minor legal services, e.g., by way of consultation, by the attorney employed by the group. There is a need for the elimination of ambiguity and doubt concerning the proper conduct of the attorney representing an organized group.

The critics of the proposed Rule will undoubtedly contend that it is too restrictive, and that the public needs and is demanding a more realistic approach to the accessibility of professional legal services. On the other hand, years of experience have demonstrated the abuses of funneling legal business through channels, or of permitting advertisement even by indirection. It is not the fact that one lawyer may be deprived of a source of business by the other, but the interference with freedom of choice, and the consequent impairment of the close relationship of attorney and client, together with the temptation which leads to abuse, that is of paramount concern.

The State Bar has militantly supported and implemented a program of voluntary legal-aid services, sponsored and administered by local bar associations. People without means have access to these services, regulated and performed with high standards and a sense of full responsibility to the client. This is supplemented by lawyer-reference services, for those needing and seeking legal counsel, and with a limited ability to pay. This system, although still in the growth stage, is now rendering an invaluable service in meeting the demand for legal counseling, and yet it preserves the sanctity and dignity of the attorney-client relationship, eliminating the chance for selfish abuse by an unscrupulous attorney combined with some representative of an organized group.

Rule 1 of our professional rules presently, by indirection, embraces in part, at least, the proposed Rule 20. It provides in part, ". . . The specification in these rules of certain conduct as unprofessional is not to be interpreted as an approval of conduct not specifically mentioned. In that connection, the Canons of Ethics of the American Bar Association are commended to the members of the State Bar." A comparison of proposed Rule 20 and Canon 35 will demonstrate that there is little fundamental difference concerning the ethical standards required. However, by the adoption of Rule 20, there can be no confusion in the mind of ony member of the State Bar as to the applicability of this standard of professional conduct. He may represent any organization with reference to its affairs, and in connection therewith, render legal services, even if for an individual member therof where the problem is one wherein the organization, as a whole, has an interest. It will also be apparent that the proposed Rule supplements the presen tRule 3. The provisions there that, ". . . members of the State Bar shall not knowingly accept professional employment offered to him as a result of or as an incident to the activities of any person not so licensed or of any association or corporation that for compensation controls, directs or influences such employment, except from an insurer whose financial interest in the subject matter renders such employment necessary and proper for the protection of such financial interest or from a person or party, who, by reason of guaranty or endorsement, has a direct financial interest in the subject matter of such employment, and who, because of such direct financial interest is permitted to participate in or control the subject matter of such employment.", is entirely consistent with the restrictive provisions of proposed Rule 20. Thus, a group or organziation may, so long as it does not provide for the means by which the individual member may wholly, or in part, compensate the attorney of his choice.

The bar has long been zealous in guarding its integrity. Historically, it has fought to preserve human liberties and justice. No matter how unpopular the cause, the lawyer has not and will not flinch from assuming his full responsibility to his client. But the bar can only maintain this standard by ceaseless vigilance in the policing of its own ranks. For thos of less than noble characetr, the opportunity for selfish gain by the sacrifice of principle is ever present. The proposed Rule is an additional safeguard to help all members of the State Bar maintain its true dignity. In the words of George Sharswood, "There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising . . . High moral priciple is the only safe guide, the only torch to light his way admidst darkness and obstruction."

FOOTNOTES

1. Article 5, State Bar Act; Bus. and Prof. Code, Sec. 6075, et seq.

2. Proposed Rule 20, 35 *State Bar Jour.* No. 6, p. 724 (Nov-Dec., 1960):

A member of the State Bar shall not permit his professional services to be controlled or exploited by any lay agency or other intermediary, personal or corporate, which intervenes between himself and any client. A member of the State Bar shall avoid all relationships by which the performance of his duties may be directed by or in the interest of such intermediary. A legal aid association or society approved by the State Bar, rendering charitable legal assistance, shall not be deemed to be such lay agency or other intermediary within the meaning of this rule. A member's responsibilities and qualifications shall be and are individual. A member's relation to his client shall be personal and his responsibility shall be direct to his client. A member of the State Bar shall not accept professional employment by any association or other organization to render legal services to the members of such association or organization in respect to their individual affairs, nor shall he enter into with any such association or organization, any arrangement having for its purpose or one of its purposes the rendition of such legal services. This rule shall not prohibit acceptance by a member of the State Bar of employment from any such association or organization, as an entity, is interested when the subject matter will affect the association or organization as an entity.

3. Conf. Sutro Report, 34 *State Bar Jour.* No. 3, p. 324, discussing *In re Brotherhood of Railroad Trainmen* (1958), 13 Ill. 2d, 391, 150 N.E. 2d, 163; *Doughty v. Grills,* (Tenn. 1952), 260 S. W. 2d, 379, and other cases.

4. Canon 35, Canons of American Bar Association: Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avod all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediares. lawyer may accept employment from any organzation, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

PROF. PROEHL
Now Permanent

Curriculum . . .

(Continued from Page 1)

School of Oriental and African Studies.

Other major changes in the curriculum and faculty have been announced by Prof. William Warren, head of the Curriculum Committee. The leading innovation will be the permanent combination of **Wills, Trusts and Future Interests** into a required second year eight unit course, **Trusts and Estates** (4 units each semester).

The effect of this change will be to allow more time for electives and seminars in the 3rd year. The distinguished instructor who will conduct the first edition of this new course will be Visiting Professor of Law George E. Palmer, Professor of Law at the University of Michigan. He is well known to the 2nd and 3rd year students as co-editor with John P. Dawson, of **Cases on Restitution**, and co-editor with Richard V. Wellman, of **Cases on Trusts and Succession.**

Also available in the Fall semester will be a seminar in the Philosophy Department open to law students. H. L. A. Hart, Professor of Philosophy at Oxford University, will conduct the seminar, entitled "Mind and Deed," in his capacity of Flint Professor of Philosophy. Prof. Hart, widely acknowledged as one of the finest analytic philosophers today concerned with problems of legal and moral philosophy, occupies the Chair in Jurisprudence at Oxford. He was Visiting Professor at Harvard University in 1956-57 where he instructed in both the law school and the philosophy department.

Insurance will again be offered this fall as well as a course in Legislation tentatively scheduled to be taught by Assistant Dean Murray Schwartz.

Special
Law Department
Texts
Hornbooks
All Outlines and Study Aids
Most complete stock in West
COLLEGE BOOK STORE
At Gateway to U.S.C.
3413 So. Hoover
Richmond 9-7329

CONTRA: Rule 20 – 'No' Says Norbert Schlei

(Continued from Page 1)

The "employment" aspect of this provision obviously makes illegal any activity comparable to that carried on by the group medical plans which have become so common in recent years. It also seems to prohibit employers' associations from hiring counsel to represent member companies in labor matters, particularly strikes. It would prohibit shipowners' associations from hiring counsel around the world to handle damage claims against members ships, a practice that now apparently is common. Possibly it would have the effect of making unethical many practices now engaged in by corporate house counsel, depending on what the terms "organization" and "members" mean.

The "arrangement" portion of the rule is more ambiguous and more far-reaching. Clearly its purpose is to prohibit some or all referrals or recommendations of members of an "organization" to the organization's attorney. The report on which the rule is based, a document that is bound to be influential in construing so ambiguous a rule, seems to take the position that all such referrals are unethical. Thus, the report contains a "policy statement" which the rule was evidently designed to implement, and which reads in part as follows. (2)

> "It is proper that a corporation, organization or group, may retain and employ legal counsel to serve it in any manner **(scil. matter)** in which such organization, corporation or group as an entity is properly interested. **Such lawyer shall not have referred to him by the group, either directly or indirectly, an individual member of such group or organization for the purpose of representing such individual member with respect to legal problems concerning his individual affairs. . ."**

I have heard the view expressed that Rule 20 does nothing more than to put the rule of **Hildebrand** v. **State Bar** in statutory form. (3) If this were so, the rule would be quite unnecessary, for the **Hildebrand** case is the law now, based on rules of practice that are already in effect. Moreover, the **Hildebrand** decision is clearer and more informative that the proposed rule, so that the rule could not be defended as a clarification of existing law. But I do not really believe that Rule 20 has such a limited purpose. Both the rule and the report make clear that the rule is intended to change the law drastically. **The real question is whether the rule would change the law for all "organizations" or only for certain kinds.**

If the rule is construed broadly, in line with the report, to condemn all referrals by every form of "organization," including corporations, it conflicts with practices that are almost universal among attorneys throughout the United States. The rules of practice now prohibit solicitation and advertising, so that recommendations by satisfied clients probably constitute the primary source of business of lawyers everywhere. This manner of obtaining business has repeatedly, and correctly, been approved by the courts. (4) How many lawyers, and what kinds, depend heavily on "dropin" business to sustain their practice?

Application of the proposed rule to recommendations by all types of organizational clients would have such peculiar and irrational effects as to raise problems of constitutional law. As to the recommended lawyer, whose "good will" is property, the rule might be deemed a deprivation of due process of law, for no legitimate public purpose would be served by the rule in most situations which it would affect. (5) The recommended party, on the other hand, surely is being arbitrarily restricted in the means that are available to him of choosing an attorney, contrary to court decisions based on principles which may rise to the constitutional level. (6) And, if attorneys for groups are automatically disqualified from representing their members, adverse effects upon the availability of representation to such groups may well be expected, particularly if the membership is large or otherwise important. Freedom of speech on the part of associations and their members seems to be at least incidentally involved.

The fact that an even-handed application of the proposed rule to all types of clients, including corporations, seems so extreme, lends credence to the contention that this aspect of the rule is intended to affect only certain groups. Thus it may be that an "arrangement" is thought to be shown circumstantially where an attorney receives many small referrals, but not when he receives a few important ones. On this theory, attorneys whose clients are wage-earners and are numerous would probably be heavily affected; attorneys whose clients are men of large affairs, and are relatively few in number, would be affected only slightly, if at all.

If Rule 20 is construed to apply only to unincorporated associations and groups such as labor unions, employer groups and clubs, it raises constitutional problems under the equal protection clause are perhaps even more difficult than those presented by a broad construction.

It seems difficult, if not impossible, to justify discrimination against labor unions, for example, as compared with corporations so far as "group practice" or "referrals" are concerned. Indeed, since corporations are normally profit-making institutions while labor unions are not, such grounds as exist for discrimination seem to point in the opposite direction.

In at least one respect, the rule appears certain to be open to a charge of discrimination. As the report makes quite clear, the rule is not intended to disturb relations with the so-called "treaty" groups, including the California Bankers Association, the California Land Title Association, Automobile Associations, and Insurance Adjusters. Yet some of these groups seem to be "exploiting" legal services as the rule apparently uses that term. Furthermore, liability insurance companies, which are expressly excepted from consideration in the special committee's report, are engaged in the exploitation of the services of attorneys; they undertake, for profit, to defend prospective policyholders in the event of suit against them, thus relieving policyholders of the necessity or opportunity, as the case may be, of finding and engaging an able attorney. Again, the fact that the groups now exempted are organized for profit, while most of those seeking equal treatment are not, makes the burden of justifying such discrimination a heavy one indeed.

Wholly aside from constitutional problems, it seems to me that the rule and the committee report head in the wrong direction. They ignore the fact that more than half of the people in the United States are without needed legal services because they cannot afford them. (7) They do not appear to have considered the strong probability that the practices which they propose to condemn developed in response to legitimate public needs and may well be the only feasible answers to the problem.

Thus far, at least, true "group service" plans comparable to those available for medical services are extremely rare. The principal means which have developed of meeting the widespread need for legal services in small uneconomic matters, normally not acceptable to attorneys but outside the scope of legal aid, seem to involve one of two features. Some types of matters, notably industrial accident cases, apparently can be made to pay their way if handled in large numbers. Specialization enables the attorneys involved to handle such cases with maximum efficiency, so that the severely limited fees permitted by law are adequate.

Other types of matters, too small to be accepted by the ordinary practioner, have been handled by attorneys who feel a special obligation to serve the members of organizations they represent. Such matters, including minor debtor-creditor controversies, wage garnishments, wage claims, some domestic matters, minor criminal charges, repossession of chattels, eviction defenses, and so on, are apparently handled at a loss which must be carried by fees from more compensatory matters. Again specialization and volume play a role, for the loss incurred in handling small matters is minimized if the practitioner meets frequently with the same problems and thereby acquires the capacity to deal with them rapidly and efficiently.

I have been told by a number of attorneys who represent labor unions that a very large proportion of the legal services rendered by their firms to clients who are referred to them by unions would not otherwise be rendered at all. If this is indeed the case, prohibition of such referrals will not promote free choice of attorneys; it will deprive many members of the public of the only services that are now available to them.

It would seem that permitting non-profit groups to combine their resources to assist their members in obtaining needed legal services would go far toward ameliorating the need on the part of the public for legal services that is now not being fulfilled.

The question that requires an answer is why it is "that individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credit, lower taxes, better health— everything, except better or cheaper advice and aid?" (9) There may be an answer to this question, but thus far it has not been provided. It seems to me that, far from enacting a rule like the one now proposed, we should explore ways of amending existing rules to make it easier for the public to get needed legal services. I have in mind the vast segment of the public which is made up of persons who are not indigent, but have resources that cannot bear or would be severely taxed by the fees that lawyers now ordinarily must charge for their time. Our professional responsibilities require us to consider the needs of this major group in our society.

Rule 20 as it now stands constitutes a severe restriction on members of the public. It tells them that they are **not** free to choose certain lawyers they may want. Whether inadvertently or not, the rule discriminates against lower income groups — people who do not often meet lawyers socially or in connection with their work, and hence are more likely to need to be referred by an organization. This is not a mere matter of legal ethics, proper for an integrated bar to regulate, but a political and social issue that can be dynamite, as the American Medical Association found when it opposed group medical services. If the bar takes this step and attempts to act like a legislature, it is likely to arouse a storm of public criticism and weaken its ability to perform its legitimate public functions. I would strongly urge the Board of Governors to give these questions a lot more study, at least, before they proceed.

Footnotes ...

[1] (a) When are the professional services of an attorney "exploited"? May representatives of a corporation, trade association or union represent to prospective employees, officers or members that a competent attorney is retained by the group, and that his connection with the group improves its effectiveness or otherwise adds to the desirability of becoming a member?

(b) When does a lay agency, personal or corporate, "intervene" between a lawyer and his client? When it pays the lawyer, or only when it chooses him as well? Must some consideration move from the lawyer to the agency? Does intervention occur when the "agency's" officers, employees or members recommend the lawyer to others?

(c) What is a relationship by which the performance of an attorney's duties may be directed by or in the interest of such intermediary? Does this occur when an attorney represents at the same time an insurance company which does not want to pay a claim and an insured who feels that he was at fault? When counsel for a corporation is asked for advice concerning the tax problems of an officer, employee or stockholder?

(d) What do the terms "association or other organization" mean? The term "organization" is not a standard legal term and has no well-established meaning. Does it include corporation?

(e) What is an "arrangement" having for its purpose or one of its purposes the rendition of . . . legal services" to the members of an association or organization? Is an "arrangement" the same thing as a contract? Does the purpose have to be express, or may it be implied or inferred? Is "conscious parallelism" enough? Whose purpose governs? Suppose an attorney accepts a retainer agreement with an association in the hope that he will thereby obtain business from its members, although this possibility is not mentioned? Is his purpose enough? Suppose the attorney's hopes cause him to set a low fee to the association? Are his services being "exploited"? What if he voluntarily affords counseling services to members without demanding fees? Does it make a difference how many people are involved, or how well he knows them?

(f) When does the "subject Matter" of a "matter" affect an association or organization "as an entity"? Is an association of workmen affected by the proper handling of its members' claims for workmen's compensation? By the firing of an employee who is said to be unable to do his job because of work injuries? Other injuries? Do these questions depend on whether broad or narrow legal issues are involved?

[5] The due process clause, which applies to state action affecting the

(Continued on Page 8)

LOUIS PIACENZA
Librarian

Your Library ...

(Continued From Page 6)

well-trained and experienced professional librarians. Our catalog department meets these exacting standards in its staff of three professionals whose chief function is the making available through expert cataloging the materials which might otherwise be lost to research. Its full time staff is composed of:

Mrs. Frances K. Holbrook, Head
Miss Momoko Murakami, Librarian II, Cataloger
Alan Paul Harris, Librarian I, Cataloger
Gailord P. Shepardson, Processing and Bindery Clerk

Our staff has been bolstered by the addition of two assistants experienced in law library service who replaced inexperienced part-time clerks. Mr. B. T. Davis came to us after 5½ years at the Yale Law Library, where that busy library has given him a well-rounded experience in circulation techniques and an elementary knowledge in legal bibliography. Mr. Lloyd H. Rily, a Texas attorney, has had his practical experience at New York University, where he also earned an LL.M. More recently, Mr. Riley was Librarian of the U.S. Court of Appeals, 9th Circuit, Los Angeles.

The full time staff at the loan desk is presently composed of:

Louis Piacenza, Law Librarian
Robert Faris, Head of Circulation & Reference
Mayme Claytom
B. T. Davis
Lois LeCain
Lloyd Riley

Over 3,000 "outsiders" are registered to use our library facilities. These include other UCLA students and faculty, students and faculty from other law schools and 560 attorneys.

Ex LSA Pres. Farewell Address

"The real need is for more professional identification while we are students."

John Liebman, retiring Law Students Association Executive Committee president, summarized his analysis of the basic problem confronting the law school and law students.

As a June 1961 graduate John will soon take his place in the professional community in association with the Los Angeles firm of Weisman and Dreisen. His comments on the law school experience from the special vantage point of LSA president may interest Docket readers.

The retiring officer sees a related need for closer relations between the school's faculty and the "bulk of the student body—not just the relatively few who participate in LSA, Law Review and Moot Court.

These problems are at the heart of the trouble—which he placed under the general classification of "making the law student's life more complete."

Two roads to this goal, he urges, are through the improvements in the areas cited above. "After all," he comments, "the legal profession considers that law students are 'almost-lawyers'. Both the administration of the school and the members of the profession should make a better effort to help the student gain an appreciation of that status and the responsibilities that go with it."

The retiring president was born 26 years ago in Evanston, Illinois, attended schools in Winnetka, took his A.B. (Political Science) at Dartmouth in 1956 and was commissioned in the United States Marines.

But before starting on the professional road John took a bride: the former Marilyn Van Cleef.

As a student Liebman has compiled an impressive scholastic record: in addition to student government activities he ranks in the upper one-fourth of his class, was 1959-60 chairman of the Federal Defender Program, garnered the AmJur award for high mark in Equity, was Marshal McKenna Chapter, Phi Alpha Delta, 1960 and has published an article, "U.C.C. 8-206: a Semantic Quagmire," 36 Los Angeles Bar Bulletin 152 (March, 1961).

Also he is active in the National Security Studies program, Ford Foundation, Institute of International and Foreign Studies, UCLA, and is currently serving as the Legislative Chairman and on the Board of Directors of the Los Angeles County Young Republicans, is an associate member, Republican State Central Committee and a member of the Riviera Young Republicans.

He feels that as LSA president he has helped make a start however toward the important goals of a "fuller life for the law student" through the operations of LSA.

"It should be the major effort of LSA, as the voice of the student, to work closely with our administration to secure greater recognition for the school and students, both on the campus of the University and in the professional community outside."

"I feel," he summarized, "that we are moving in the proper direction. It is my hope that succeeding Executive Committees will continue the work."

Marvin Lewis . . .

(Continued from page 2)

practicing law in Ventura County since September 1955, associated with the firm of Nordman and Berenson. In January of 1958 he became a full partner in the Oxnard firm. He has done a great deal of trial and appellate practice in the criminal area. An early case in which he participated on appeal led to a revision of the state Penal Code Section 190 and the addition of Section 190.1, which provides for the bifurcated trial in capital offenses.

The case of the People v. Ortega is now history and attorney Lewis has gone on to new problems, but the concept of the "fugue consciousness" is established as an aspect of California's criminal law thanks in part to his diligent and effective advocacy.

Two Portias . . .

(Continued from Page 5)

you discover that most of the time logic only leads down the wrong path. Don't rely on rules because rules are not to be relied on since they are not really rules at all.

Well, it has been nice to descend once more in the everyday world that is made up of people who speak that the world might understand. But we must now go back to our own world, to the select few that outwardly comunicate only with each other and most often succeed in communicating only with God (or the devil). Excuse us be we must go and try to figure out why 'compromise accord executory differs from an accord and satisfaction and accord and satisfaction and how the three differ from each other.

Election Results

LSA Officers

The following were elected to L.S.A. offices for the academic year 1961-1962:

President: Irwin "Chip" Chasalow; Vice-President: Vern Davidson; Secretary: Nancy Norbury; Treasurer: Cecil Ricks; G.S.A. Representative: Bob Berton; A. L. S. A. Representative: Jerry Levitin; Senior Class President: Gerry Dicker; Junior Class President: Irv Sepkowitz; Senior Class Secretary-Treasurer: Don McVey; Junior Class Secretary-Treasurer: Jack Margolis.

Moot Court

The UCLA Moot Court Honors Program will be under the direction of Ronald Schiess during the coming academic year.

Schiess, who will serve as Chief Justice, will be assisted by three associate justices:

Luke McKissack, Administrative assistant; Harry Woolpert, Competition Review Board; and Robert Walker, Case Evaluation Committee.

Law Review

Editor of the UCLA Law Review for the 1961-62 School year will be Jan Vetter, 1956 UCLA graduate. Vetter will be assisted by Ernest L. Bishop, managing editor, and Associate editors Leonard E. Castro, Vern G. Davidson, Erwin Diller, Arlington R. Robbins and Foster Tepper.

Contra: 'NO' . . .

(Continued from Page 7)

practice of law (Schware v. Board, 352 U.S. 232, 238), requires that statutory restrictions bear some reasonable relationship to a legitimate governmental objective. Weimann v. Updegraff, 344 U.S. 183 (1952).

[6] State v. C. S. Dudley & Co., 102 S.W. 2d 895, 899 (Mo. 1937) (right to employ an agent to choose an attorney).

[7] According to American Bar Foundation, Research Memorandum Series, "Prepaid Legal Expense Insurance," p. 1, and "Supplementary Memorandum on Prepaid Legal Expense Insurance" (March, 1960), of "working class" families with legal problems only "about 30%" consult a lawyer. Of "middle class" families with legal problems, only "about 50%" seek and obtain legal advice. See also Koos, The Family and the Law (1950).

McGrath Bids Adieu to Moot Court C.J. Post

"Chief Justice" is a title with which most members of the legal profession would be pleased to conclude their careers. June grad Bill McGrath has already had the title, and looks forward to beginning his practice with the San Diego firm of Seaminar, Sorbo, Andreen, Thorn and Gallagher.

As the student chairman of the Law School's Moot Court program, Bill has had of the problems of the high bench, without the compensating prerogatives.

And his job has been made even more complicated by the trail blazing nature of this year's program: for the first time, UCLA has now a full three year moot court program to offer participants. It has fallen to Chief Justice McGrath to pioneer in the effort to make the second and third year honors program a functioning operation.

CHIEF JUSTICE McGRATH
Moot Court Leader

What role does Moot Court fill in the life of the law student? What value does it—especially the Honors Program—offer the would-be attorney? And particularly, what virtues distinguish it from the longer-established Law Review activity?

Bill is proud to offer his analysis.

"Moot Court is unique in the Law School experience. The program has one objective: Development of the skills of advocacy. In the final analysis, any legal issue which confronts the practitioner must be viewed from the moment of truth when it is tried in court. This holds true whether the lawyer wants to avoid future litigation or is questioning whether to bring the matter to suit. Meeting this demand requires the skill of an advocate. Development of these vital skills is the purpose of Moot Court."

On the relative merits of the Law Review experience the graduating chief justice points out that "Moot Court participants are proud of the excellent work done by the Law Review and appreciate the recognition it has brought to the school. But theirs is a scholarly publication which treats interesting legal questions from an objective point of view and is of great assistance to the student and the lawyer. Obviously both honors programs offer advantages to the participants."

Annapolis born and San Diego reared, Bill is the son of a Navy Doctor, who, "like most doctor's sons, always wanted to be a lawyer."

After college (San Diego State, AB, Poli Sci, 1955) Bill entered the Air Force, was commissioned, and operated as a special agent, Office of Special Investigations. His particular task: "penetration" studies, which involved testing security on Strategic Air Command bases. Biggest problem: dogs on the flight line.

The Chief Justice has been married five years. Wife Patricia is a former school teacher and the couple has two children with a third expected this November.

How do you become Chief Justice of the Moot Court program?

In Bill's case the line of progression was obvious. In college he was an active debater and involved in student government. In his first year "Pound Competition" in Law School Bill placed number one in his division. Last year, when the competition (Honors Round) was formalized for second year students he was named Associate Justice.

Now firmly established at UCLA and in the Law School's scheme of things, Moot Court participants will begin to seek recognition for the school in both state and national competitions.

Meanwhile Bill McGrath has carved out a place on the UCLA School of Law "Roll of Honor" as the first chief justice of the three-year program.

California Bar Review Course

Summer Sessions beginning on June 12, 1961

Review of

Substantive Law

Detailed Outlines of Every Bar Subject

Practice Examinations and Bar Sessions

Approved for State and Federal Veterans Benefits

Summer session beginning in June 1961 (to be announced)
Tuition $150

4203 W. OLYMPIC BLVD.
Los Angeles 19, Calif. WEbster 4-3878

Marvin S. Cahn Co.
INSURANCE
* Hard To Place Risks!
* Monthly Payments!
* Low Rates!
Diamond 8-1204
4401 Leydon Avenue
Woodland Hills, Calif.

UNIVERSITY OF CALIFORNIA
School of Law
405 Hilgard Avenue
Los Angeles 24, California

NON-PROFIT ORG.
U. S. POSTAGE
PAID
LOS ANGELES, CALIF.
Permit No. 12378