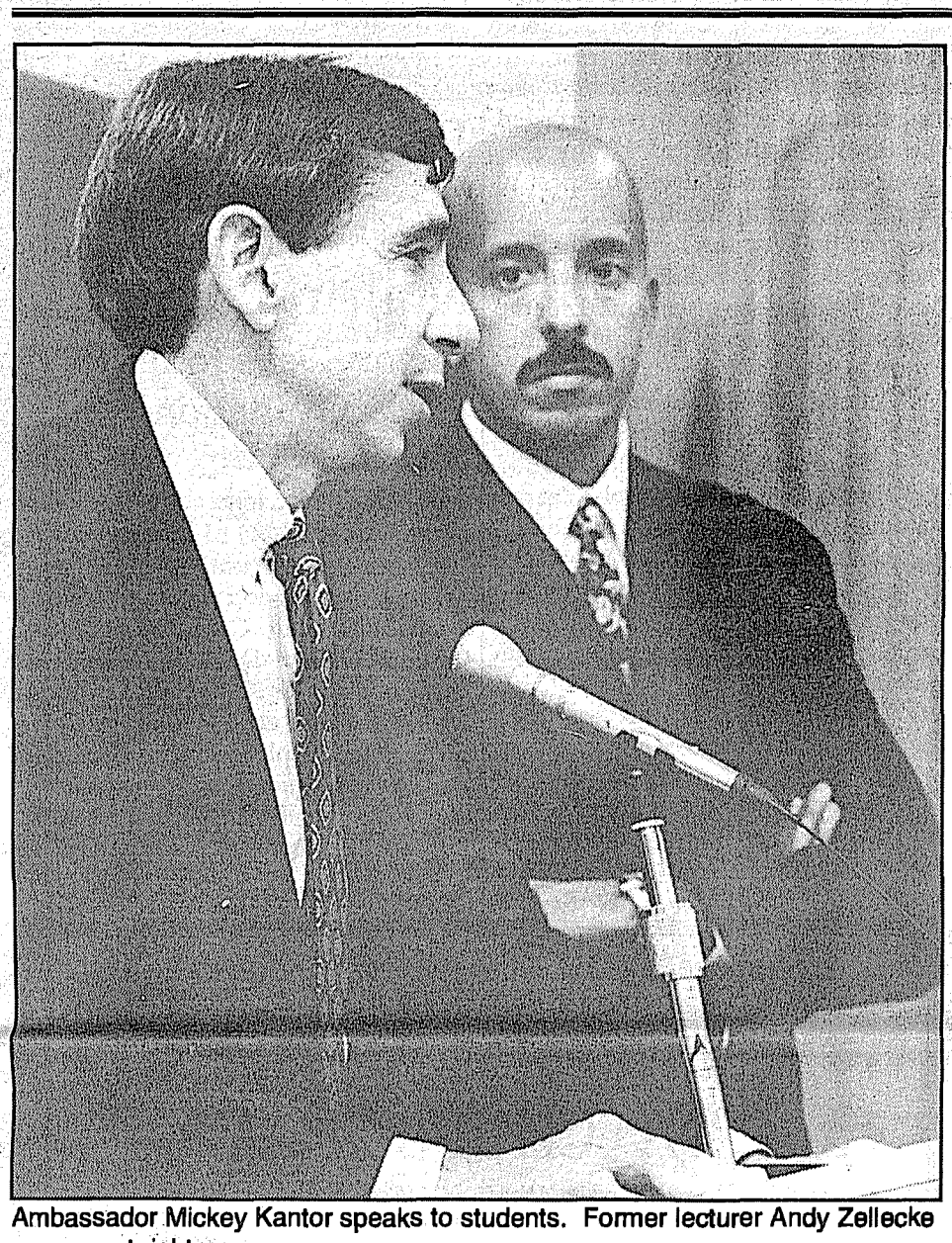
THE DOCKET
UCLA SCHOOL OF LAW

Volume 44, Number 3 THE DOCKET November 1995



Ambassador Mickey Kantor speaks to students. Former lecturer Andy Zellecke appears at right.

Kantor Returns to UCLAW To Hear Law Students

by Robert Jystad

"International trade is the new glue that will hold the world together," said United States Trade Representative Mickey Kantor, reiterating a theme he brought to campus almost two years ago to the day.

Then, Ambassador Kantor graciously consented to delivering the keynote address of a symposium on the NAFTA. This time, the Ambassador himself took the initiative to contact the school and request an audience of UCLA law students. According to Andy Zellecke, a former lecturer at UCLAW who helped arrange the visit, the Ambassador enjoys talking with students.

The International Law Society and the International Students Association organized the event which, because of welcome if unanticipated interest, had to be moved into the Law School's largest classroom.

Zellecke introduced Ambassador Kantor, calling him "the single most effective member of the President's Cabinet." He listed Kantor's major accomplishments including NAFTA, the Uruguay Round of the GATT, and trade agreements with Japan, the Asian Pacific region and Latin America. After 34 months in office, the U.S. Trade Representative has concluded 173 trade agreements.

Kantor spoke briefly. He mentioned a longstanding friendship with our own Professor Dan Lowenstein who, like Kantor, began his legal career

To KANTOR on p.12

Former UCLAW Lecturer Zellecke Brings VIPs to UCLA

Andargachew "Andy" Zellecke has played a central role in several high profile visits to UCLA over the last couple of years.

Two years ago, for an International Law Society symposium on the NAFTA, Zellecke contacted a law school friend working as special assistant to United States Trade Representative Ambassador Mickey Kantor. A combination of lucky timing and persistence by Zellecke paid off as the Ambassador accepted an invitation to deliver the symposium's keynote address.

Since the symposium, Ambassador Kantor has turned to Zellecke for help in planning several visits to Southern California.

Last spring, at the encouragement

See ZELLECKE on p.11

A LEGACY OF RACISM

Prominent San Francisco Lawyer "Passed" for White

by Dick Goldberg

Reprinted by permission of the Los Angeles Daily Journal.

Long before Johnnie L. Cochran Jr. and other black lawyers rose to prominence in California, there was Ernest J. Torregano.

Like Cochran, Torregano attained wealth and acclaim through the practice of law. Both were Louisiana natives who worked hard to build their careers and overcame racial barriers to achieve success.

There was one major difference, however. Cochran has dealt with racism on his own terms; Torregano was forced to deal with racial prejudice on other people's terms.

In the four decades Torregano practiced law, from 1913 to 1954, there was no federal Civil Rights Act, no government-sponsored equal opportunity or affirmative action laws, and little national concern about institutional racism. Blacks who wanted a better life had few options and bore a heavy price. Nonetheless, Torregano's death from a heart attack in 1954 was front-page news in San Francisco ("Civic Leader Found Dead," San Francisco Chronicle) — a clear affirmation he had made his mark in the world.

Ernest J. Torregano

But three years later, during a bitter probate battle over his hefty estate, it was revealed Torregano had "passed"

To TORREGANO on p.11

Van Alstyne Speaks On Nimmer, First Amendment

by Andrea Russi, 3L

The tenth Melville B. Nimmer Memorial Lecture was given by Professor William W. Van Alstyne of Duke University on November 2, 1995 at Schoenberg Hall. After a warm introduction by Professor Kenneth Karst, Professor Van Alstyne delivered a speech, entitled "Melville Nimmer & Some Notes on Commercial Speech." Professor Van Alstyne surveyed Melville Nimmer's career and his many contributions to legal scholarship. Although Nimmer is best known for his work in the area of copyright law, the speech highlighted Nimmer's important contributions to First Amendment law.

Photo on page 13

Professor Van Alstyne incorporated Nimmer's work into the broader topic of commercial speech. Van Alstyne discussed several First Amendment cases, highlighting commercial speech issues, and explained the dangers in the existing commercial speech doctrine. Van Alstyne warned that granting full First Amendment protection to commercial speech will dilute the protection given to other kinds of speech and effectively lessen First Amendment protection to all speech.

Federalist Society Debates Miranda

by Matthew Bixler

On Monday October 30, 1995 at 4:00 p.m. the UCLA chapter of the Federalist Society hosted a debate on the merits of *Miranda v. Arizona*. Approximately forty students and faculty members attended the hour-long event. The debate featured Professor David Sklansky of our own UCLA Law School and Professor Paul Cassell of the University of Utah School of Law.

Although the two debaters had rather divergent views on the virtue of the *Miranda* decision, their professional lives seem to be on parallel paths. Professor Sklansky and Professor Cassell first met after each had completed law school and were clerking for different judges on the D.C. Circuit. Professor Sklansky clerked for Judge Abner Mikva and Professor Cassell clerked for Judge Scalia while he was on the D.C. Circuit. The following year each man accepted a clerkship with different members of the United States Supreme Court. Professor Sklansky clerked for Justice Harry Blackmun and Professor Cassell clerked for Chief Justice Warren Burger.

After completing their clerkships with the Supreme Court, both Professor Sklansky and Professor Cassell accepted positions as federal prosecutors. Professor Sklansky spent seven years in the U.S. Attorney's office in Los Angeles. Professor Cassell worked for the Justice Department in Washington D.C. for four years. Following their employment

To MIRANDA on p.10

News & Notes

Specialized Library Resources by Individual Appointment

by Linda Maisner,
Instructional Services Librarian

LAST MINUTE RESEARCH HELP

What, haven't finished your research paper yet? Want some expert assistance in identifying useful sources? Call on your Law Library Reference Librarians. We can give you a boost. Just E-mail us at LIBRARY. Let us know your topic, and two or three good times for you. We'll get back to you with an individual appointment time and help get you get started/unblocked/finished with that paper.

NEW CD-ROMS

The Library has purchased two new CD-ROM titles, available through LawNet: *Shepards* for U.S., federal and California cites (available only through the LawNet DOS menu) and Bancroft-Whitney's *California Civil Practice Guide*, available though LawNet Windows (look for the CD-ROM icon from the Windows menu.). Both titles are fairly easy to use. We expect to be adding more Windows-accessible title. To find out what DOS CD-ROMS are presently available, type in CD-ROM on the DOS LawNet menu. To find out what are available in Windows, choose the CD-

To LIBRARY on p.15

BLOOD DRIVE

Faculty Team Turns in Record Performance

by John Power,
CFO, UCLA School of Law

The Law School's first blood drive in many years was completed in late September. Kevin Clark, the UCLA Blood Center Blood Drive Coordinator, advises that the Law School Faculty participation in the blood drive exceeded the faculty participation of any academic unit's blood drive in the past 10 years. The Faculty Team has thus been crowned the Winning Team for the September '95 Law School Blood Drive and has set an impressive benchmark for the upcoming January '96 Law School Blood Drive.

Among the Student teams, the 2L Team placed first, followed by the 1L Team. The Staff Team also had a good showing, including several platelet donations. (Platelet donations take a bigger commitment of time than blood donations and are highly valued by the Blood Donor Center as platelets are especially helpful to cancer and leukemia patients.)

The Blood Drive Top Recruiter award went to Professor Jody Freeman, who not only donated but also "encouraged" her colleagues to donate, thus playing no small part in the record-setting Law Faculty performance. Said Professor Freeman upon learning of the Blood Drive results, "I think setting a record shows that this faculty is willing to bleed plenty for a good cause. We'll

To BLOOD on p.12

Profiled Lawyer Wins in Case of Malpractice

Victory Fails to Indict HMO Capitation

by Bruce Barnett

Mark O. Hiepler, local attorney profiled in the UCLA School of Law newspaper last month, (see Bruce Barnett, "Family Tragedy Forces Local Attorney To Challenge Healthcare Giant," *The Docket*, October 1995, p. 1) has won his latest battle against HMO physicians. In the wrongful death action, *Ching v. Gaines* CV-137656, Hiepler successfully argued that two Ventura County physicians committed medical malpractice when they negligently delayed making the di-

See MALPRACTICE on p.12

ILS Update

by David Fleck, 2L

In its third year of existence, the UCLAW International Law Society has proven itself a major contributor to discussion of hot issues of our time outside of the law classroom.

During the year of its inception, the ILS orchestrated a symposium on NAFTA, which it was timed to take place just before the Congressional vote. Ambassador Mickey Kantor, the U.S. Trade Representative, delivered the keynote address. Last year, thanks to the ILS, leaders from the Arab and Israeli communities converged on UCLA to discuss

To INTERNATIONAL on p.11

FYI ...

Ronald G. Shafer, writing for the *Wall Street Journal* on November 3, 1995, reported significant differences between whites and blacks in their estimation of the honesty of judges as well as police. Only 35% of blacks questioned rated judicial honesty as "high" compared to 50% of whites. Similarly, only 38% of blacks described police as trustworthy compared to a 73% confidence vote by whites.

However, the brief note identified one area of agreement. "More than 40% of both races have low opinions of lawyers."

THE DOCKET
UCLA SCHOOL OF LAW

The Docket, UCLA School of Law, Dodd Hall 51A, 405 Hilgard Avenue, Los Angeles, CA 90025
(310) 825-9437

MANAGING EDITORS
BRUCE BARNETT & ROBERT JYSTAD

ASSISTANT MANAGING EDITOR
GERARDO CAMACHO

FEATURES EDITOR
DONNA DAVIS

BUSINESS MANAGER
DAVID RITENOUR

OPINION EDITOR
MELODIA HANNES

SPORTS EDITOR
ARMEN MARTIN

ENTERTAINMENT EDITOR
JENN SANSING

BUSINESS AND FINANCE EDITOR
JOHN HANCHES

CALENDAR EDITORS
AIELLEN FAGARDO WENDY STANFORD

REPORTERS
SIGFREDO A. CABRERA DIANE KLEIN
STEVE CHAHINE ELLIOT KLEINBERG
STEVE HAYDON BILL MOSHOFSKY
KIET HUYNH DOMINIC PERRY
KELLY ROZMUS

FACULTY ADVISOR
RAQUELLE DE LA ROCHA

TYPESETTING & GRAPHICS
ELLIOT'S GRAFX

FLEMING'S FUNDAMENTALS OF LAW
Short Term Bar Review

Preparation for February 1996 California Bar Exam Begins December 20, 1995

17 Reasons Why You Need Fleming's Fundamentals of Law (FFOL) Bar Review

- ☑ Live Individual **Substantive Law Lectures** For All **14 Bar Subjects**
- ☑ Superior Substantive Law **Outlines** With **Exam Approaches & Checklists** For Each Bar Subject
- ☑ Extensive Legal Exam **Writing Workshop**
- ☑ **Outline Organization Techniques** For Each Bar Essay Subject
- ☑ Essay **Crossover** Preparation
- ☑ **90 Bar Essay Hypotheticals** Analyzed/Outlined In Class - **(Key to Passing The Exam)**
- ☑ Weekly In-Class **Simulated Bar Sessions (Student Writes 36 Assigned Essays)**
- ☑ Individual Audio **Cassette Critiques** Of All Student Essay Assignments **From FFOL Attorneys** Who Have All Passed The California Bar Exam **Using FFOL Techniques**
- ☑ In-Depth **Performance Workshop** - Provide 32 Hours of in-class instruction, Materials and Training for the Performance Examination (minimum of 14 files presented/student writes 4 files for critique).
- ☑ **Multistate Instruction Including Testing Techniques & Reading Comprehension Pitfalls**
- ☑ Multistate Materials Containing Over **2,400 Mulitple Choice Questions** And **Answers** In Addition To **200 PMBR Multistates**
- ☑ Telephone **Consultation With** Staff **Attorneys**
- ☑ *Stress Reduction Presentations* By A **Hypnotherapist/California-Licensed Attorney** And A **Psychologist/Ph.D.**
- ☑ **Tape Recording Permitted**
- ☑ **Bar Predictions**
- ☑ **Home Study** Program Available On Audio Cassette
- ☑ One **Affordable Price** For All Of These Tremendous Advantages!

FFOL... 14 Years of Excellence

SHORT TERM SCHEDULE OF CLASS MEETINGS

December 20*, 23, 24, 30, 31;
January 2**; 3**; 6-9, 13-16, 20-23, 27-30
February 3-6, 10-13

Classes meet Saturday 9 am to 5 pm, Sunday 9 am to 5:30 pm, and Monday and Tuesday, 6:30 pm to 10:30 pm

*NOTE: Class meets 6:30 pm to 10:30 pm Wednesday, December 20, 1995
**NOTE: Tuesday & Wednesday, January 2/3, 1996 meets at 6:30 pm to 10:30 pm

- **All live sessions will be held at Pacific Christian College, 2500 E. Nutwood Avenue (at Commonwealth), Fullerton (across from California State University, Fullerton), Second Floor, Room 205.**
- Total Price: $1,395.00
- A $150.00 non-refundable deposit will guarantee space.
- **Audio Cassette Course is available by Mail for the Registration Price plus an additional fee of $250.00**

* **Performance Workshop**: Students who are not enrolled in FFL Short Term Bar Review but wish to attend the Performance Workshop may do so for a cost of $375.00.

FLEMING'S FUNDAMENTALS OF LAW
California Toll Free: 1 (800) LAW EXAM • 714/770-7030 • Fax 714/454-8556
23166 LOS ALISOS BOULEVARD • SUITE 238 • MISSION VIEJO • CALIFORNIA 92691

Entertainment

CROSSW RD® Crossword

Edited by Stan Chess

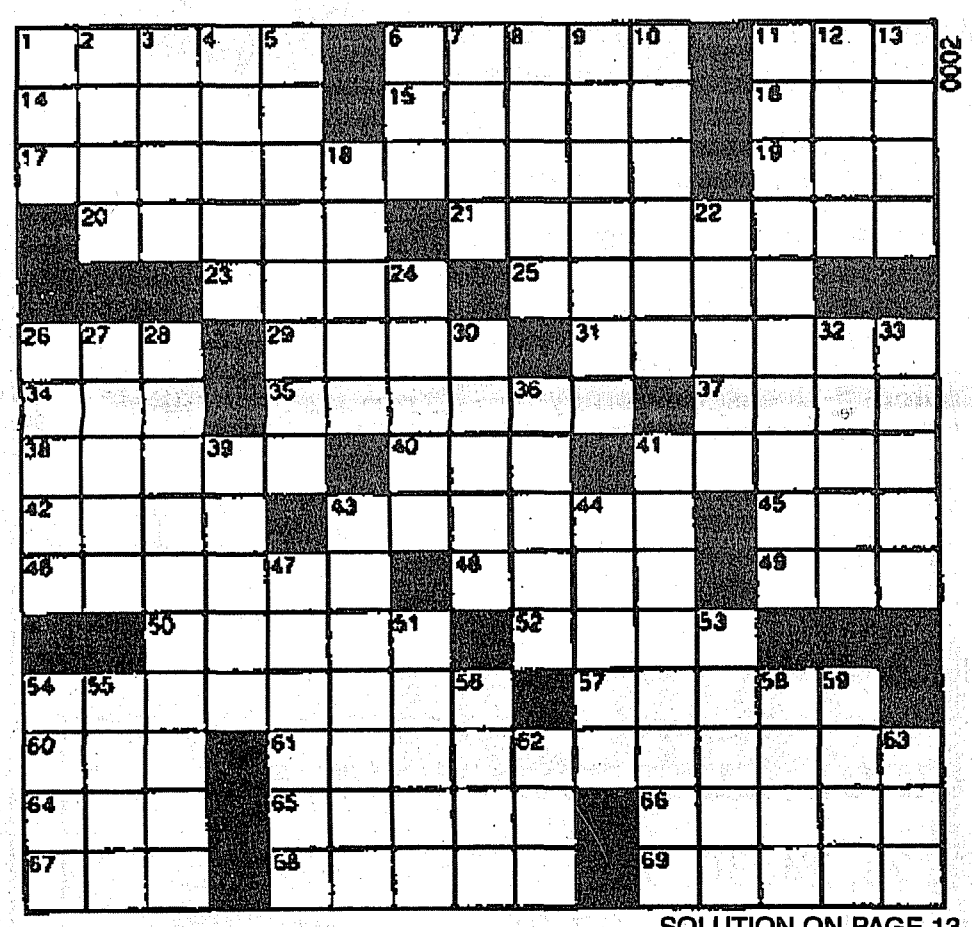
Puzzle Created by Richard Silvestri

ACROSS

1 Monkeyshine
6 Withhold the tip
11 Bother
14 Domino plays it
15 Bush-league
16 Over-permissive
17 Why did Fitzgerald sing "mi," Holmes?
19 *Mr. Adams and* ____ ('50s TV show)
20 Gives the once-over
21 Villagers
23 Slum problem
25 Nuts
26 Workout spot
29 Jersey bouncers?
31 Zoo attractions
34 Feel lousy
35 Stretched out loosely
37 Alcohol burner
38 Featured players
40 ____ Friday
41 Imposing group
42 *Ne plus ultra*
43 Go back to page one
45 Lines overhead
46 Pre-election event
48 Ponzi scheme, e.g.
49 "Hold on Tight" band
50 "I Still See ____" (*Paint Your Wagon* tune)
52 Speaker of diamond fame
54 Holds in check
57 Different
60 Gallery display
61 Is this in the style of a devilfish, Holmes?
64 Spanish sea
65 Star in Cygnus
66 Raise the spirits
67 Persevere at
68 Pieces of eights?
69 Inhibit

DOWN

1 Cheta, for one
2 Guitarist Lofgren
3 Address
4 "The bombs bursting ____ ..."
5 Issues orders
6 Little, to a lassie
7 Dyeing wish
8 Following along
9 Bird or Barkley
10 Dressing type
11 Where did this fruit come from, Holmes?
12 Humorist Barry
13 Babe's buddies
18 Artificial-fabric component
22 Mogul master
24 It's often set
26 Bar food
27 King or Queen
28 How do the sheep get into the pen, Holmes?
30 Certain servicewomen
32 Hitting ____ cylinders
33 Authority
36 Make a decision
39 Gave a hand
41 Came clean
43 Does some cobbling
44 Biblical brother
47 Torrent of abuse
51 Young, Ladd and King
53 Easily-split rock
54 Summer place
55 Voiced
56 A foe of Pan's
58 Q.E.D. middle
59 Have value
62 Stomach muscles, for short
63 "____ darn tootin'!"



SOLUTION ON PAGE 13

PILF Fund-Raiser *Justice Mall* Underway

by Alexander "Gator" Lee, 3L

This Spring, the UCLA faculty, students and staff will participate in the production of the annual musical. The musical, which raises money for the Public Interest Law Foundation, is an opportunity for members of the UCLAW community to showcase their many talents.

Written and directed by Professor Ken Graham, the annual musical is a clever and witty look at law school and the law in general. Past musicals have included: *The Wizard of Laws; Guise Enthralls; The Good Lawyer Svejk;* and last year's hit, *The Muzak Man.* This year's production is *Justice Mall.* Professor Graham is still holding auditions for anyone who is interested in performing.

As a cast member for the last two years, I can attest to how fun participating in the cast can be. I believe it is one of the most rewarding experiences I have had at UCLA School of Law and I strongly encourage anyone interested to participate.

In this age of top 10 lists, I have included my top 10 reasons for participating in *Justice Mall* ...

10. You can go on stage in your underwear to satisfy your exhibitionist tendencies.
9. An invite to the cast party (which rages past 3 am)!
8. A good way to meet all of the cool professors and learn who you should be taking in the third year.
7. For all you corporate climbers: certain top LA law firms have yearly skits where they parody the partners at the firms. If you have experience in this field, it may make the difference whether you get a job or not. Regardless, it looks good on your resume.
6. You get to hang out with Ken Graham and discover he is really a great person (nothing like the scary evidence professor you have heard rumors about).
5. The rehearsals are in January when there is no reason to go to class or study anyway ... you can do this to keep from getting bored.
4. You can get back at that professor that gave you a 71 by making fun of him or her in the musical.

To JUSTICE MALL on p.12

Justice Mall Cast

After several weeks of auditions, the producer and director of the 1996 UCLAW Musical have announced the cast for "Justice Mall."

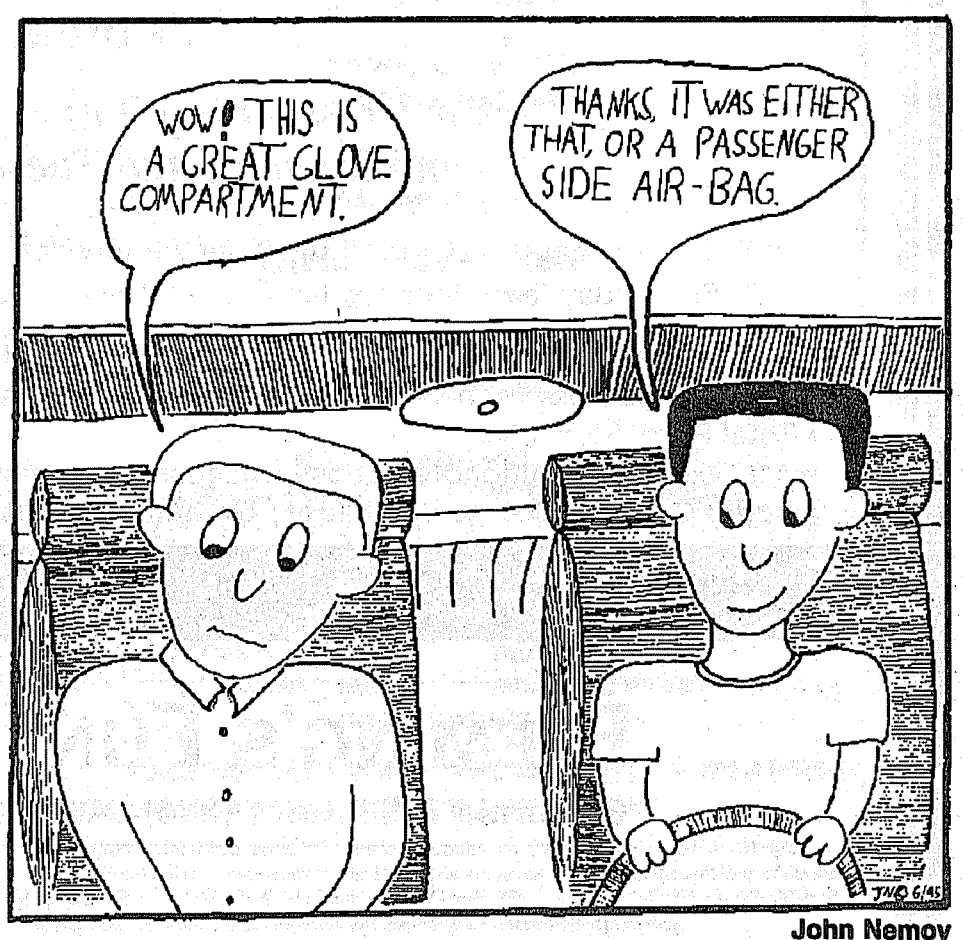
The role of Paula Varsi, a Pentecostalist law student will be played in the 7:00 show by Andrea Hoffman, and in the 9:30 show by Anaya Chamblis. Her friend and classmate, Jerome Boyle, a defrocked Catholic priest, will be played by Sean Morris and Richard Jackson.

Other members of their study group include Beatrice Potter, a working student, played by Maya Alexander and Jenna Cummings; Dante Q. Otay, an ambitious libertarian, played by Alexander Lee and Matty Mulford; and E.R. Dunne, a computer wizard, played by Megan Satterlee.

Appearing in the role of Professor A. Prentice Prolix, a legal writing (alias "legal skills") teacher are Tony Lee and Ken Karst, while Debra Westerberg and Rae Caldito will be one pro bono client, Debra Debitz, and the other client, Tereza Alcoa, will be played by Alison Anderson.

Dr. Gay A. Hotspots, a geologist will be played by Nicole Farmer. Ruben Garcia will play the mob boss Gino Stera. Cast as the managing partner of the law firm of McClean & Liberow, Jordan Columbo, are Tom Blankenship and Randy Clement. His daughter Chrissie will be played by Casey Prager.

To CAST on p.10



John Nemoy

Do You Want To Pass The MBE?

MBE SCORE 182

Professor Robert Feinberg
PMBR
1247 6th Street
Santa Monica, CA 90401

Dear Professor Feinberg:

I just received my TEXAS bar exam results and I am thrilled to learn that I passed with a MBE score of 182! This was the SECOND HIGHEST MBE score in the state of TEXAS. As a graduate of Thurgood Marshall School of Law, I am especially pleased because in past years Thurgood Marshall has had a relatively low pass rate. Most importantly, I never would have been able to achieve such a high score without the help of PMBR.

I wholeheartedly recommend PMBR to all students who are taking the bar exam and are serious about passing the MBE. My advice to TEXAS students is simple. "SINCE EVERYONE TAKES BAR/BRI, IF YOU WANT AN EDGE ON THE BAR EXAM YOU NEED TO SUPPLEMENT WITH PMBR"!

Best wishes,
David

David Pire
Thurgood Marshall class of 1994

2ND HIGHEST MBE SCORE IN TEXAS!

MBE SCORE 188

Dear Mr. Feinberg: March 9, 1995

Your course is a complete success! I am a PMBR graduate who took the three-day Multistate Review Course in preparation for the July 1994 Texas Bar Exam. Because of PMBR, I scored a 188 on the Multistate section of the exam and, thankfully, passed the Bar. I had heard that PMBR was excellent preparation for the Bar. Now, I believe it!

There are a few things I really liked about PMBR. First, the PMBR books really prepare you for the kinds of questions on the MBE. Apart from having literally thousands of practice questions, the books are packed with charts, mnemonics, and explanations that explain why a particular answer is correct. Second, the classroom instruction is excellent. Believe me, many of the MBE questions test fineline distinctions in the law. Our PMBR instructor really prepared us for these questions by going over these distinctions and by teaching us skills for answering such "trick" questions.

As anyone who has taken the Bar will tell you, during the hectic days of the Bar Exam, the value of peace of mind and confidence is immeasurable. Many of my friends who did not supplement with PMBR thought that the MBE exam was extremely difficult. Having reviewed the PMBR questions, however, I was not surprised by the difficulty of the MBE. In fact, I left the first day of the Bar with confidence that I had scored well. Now that I have received my results, I can strongly recommend PMBR to all students wanting an "edge" on the MBE.

Thanks Again,
Amy Hampton

Amy Hampton
(1994 Univ. of Texas Law Grad.)

1994 HIGHEST MBE SCORE IN OHIO!

Kenny Dym
450 7th Ave.
Suite 3604
New York, NY 10123

November 8, 1994

November 8, 1994

Dear Mr. Dym:

I wish to thank you and the staff of PMBR for a job well done! Thanks to your courses and materials, I received a scaled MBE score of 177, placing me in the 100th percentile on the multistate portion of the Ohio Bar Exam. Additionally, I received a perfect or near-perfect score on every essay question involving a multistate topic. Overall, I finished in the 100th percentile on the Ohio Bar Exam.

As a fellow graduate of Ohio Northern, and now a graduate tax student at the New York University School of Law, I can unreservedly declare that PMBR was the key to my bar exam success. I highly recommend your program to students as an essential preparation for both the MBE and essay portions of the Ohio Bar Exam.

Sincerely,

John Ivsan
(1994 Ohio Northern Grad.)

MBE SCORE 177

MBE SCORE 181

Robert Feinberg, Esq.
PMBR Multistate Director
211 Bainbridge Street
Philadelphia, PA 19147

Dear Mr. Feinberg:

I wish to congratulate you on PMBR's excellent MBE review program. In July, I attended the 3-day review session you gave in Washington, DC at Georgetown University Law Center. In addition to working through most of the practice problems contained in the PMBR Multistate Workbooks, I listened to the audiotape lectures while commuting back and forth to work. As you can see by the enclosed letter from the Maryland State Board of Law Examiners this study method was quite successful.

I am convinced that the PMBR practice sessions made all the difference. PMBR prepared me to make the fine line distinctions necessary to answer many of the more difficult problems on the Multistate. In fact, compared to many of the practice problems provided by PMBR, the Multistate seemed relatively easy. I recognized most of the questions on the Multistate. They were covered by the PMBR materials.

I highly recommend PMBR to anyone having to take the Multistate exam.

Sincerely,
David Van Nevel

David Van Nevel

Or
Do You Want To Nail It!

pmbr
MULTISTATE SPECIALIST

We Simply Have The Best Multistate Questions!

NATIONWIDE TOLL FREE: (800) 523-0777

PERSPECTIVES

One Last Hand Playing the Race Card Again

by Donna Davis

It had to happen. The shoe is on the other foot. The accused becomes the accuser. Racism loses the "race" factor. Poetic justice, so to speak. In a Chicago suburb, two white males were stopped by two black officers in a gang infested neighborhood. The police officers arrested one of the white males for an outstanding warrant, impounded the car and left the other white male "stranded."

Fifteen minutes later, a group of teen-agers beat the stranded white male and set him afire. He later died. His arrested white friend said that the two black officers **would not** give his white friend a ride to the station despite his begging, desperate pleas. This was the white public call to arms: **Black Cops Are Racist, Too.** Attorneys lined up to sue for violation of civil rights (à la Rodney King). Yes, now we shall show you how it feels. So there!

The black cops said the white man never asked, never begged for a ride. After a few days, their white accuser's story started to fall apart. He failed a polygraph test and admitted making up parts of his story. His white brother came forward and stated that the two white men had gone to this gang and drug infested black neighborhood to buy crack. Crack is the drug of choice for black street salesmen in drug infested neighborhoods across the country, despite the longer sentences that they receive for selling fewer ounces than their white cocaine dealing counterparts.

"They" only sell cocaine in the "good" neighborhoods, when you want "crack" you must cross the color line and drive into the drug infested "bad" black neighborhoods to make your purchase. Since bad things can happen to anyone in any neighborhood, you can lessen your embarrassment at being caught buying crack in a bad neighborhood and get revenge and ensure your fifteen minutes of fame, just by adding the "race card" to your bad situation. But, to play the race card, the situation must be right. No longer can it be blatantly thrown on the table. The race card cannot be played by anyone just on your say-so alone anymore. The rules have been changed by those who came before.

First rule change: The Charles Stuart Option. A white man killed his wife, but made a dramatic 911 call saying that a black man did it. The Boston Police responded and found a black man to fit his description. Then the stolen jewelry was recovered with Stuart's brother. His story fell apart, and he jumped in the river.

Second rule change: The Susan Smith Option. A white woman killed her two sons, yet stood before a television audience of millions and proclaimed that a black man took her car and her boys. The South Carolina police pushed to find that black man, but they looked at the mother as a suspect also. She confessed, before the police could find a black man to fit her description.

To RACE CARD on p.12

Not Guilty Means Innocent

by Melodia Hannes

Black's Law Dictionary defines acquittal as "[T]he legal and formal certification of the innocence of a person who has been charged with a crime; a deliverance or setting a person free from a charge of guilt ..."

Even though O.J. Simpson was arrested, charged, tried and found innocent of the murder charges against him, I am amazed at the number of people who continue to state with absolute certainty that he is guilty of murder.

Let me set the record straight. I am no fan of O.J. Simpson. As far as I am concerned, he is a morally repugnant wife-beater. However, that does not make him a murderer.

The trial of O.J. Simpson brought numerous thoughts to mind. On the one hand, I felt that this was a rare opportunity to watch a trial of an individual who could level the playing field. The District Attorney's office has almost unlimited resources. On the other hand, I must confess that I enjoyed watching the prosecution have to work at a level they are not usually forced to. This is because usually, the defendant has little or no money and is represented by an overworked public defender. The District Attorney, however, has the ability to out-spend and overpower the majority of defendants. I can't help but wonder if the majority of the trials held in this country would come out differently if the Public Defender's Office had the same resources as the District Attorney's Office.

The problem I wish to focus on, is not whether the verdict was correct or incorrect. The problem I wish to address is the aftermath of the verdict. The fact is that many people continue to cling passionately to their belief that O.J. Simpson is still guilty of these murders, even though he has been acquitted of them.

A Not Guilty verdict should mean that the person has been found innocent of the charges against him; that he is innocent of having committed the crime of which he was accused. It should not mean that there just wasn't enough evidence to convict. An example comes to mind: suppose that you, the reader, are arrested and charged with bank robbery. Let's also suppose that you did not commit this bank robbery. Let's then suppose that you are acquitted by a jury. Does this mean that you are innocent of the charge? Or does this mean that there simply was not enough evidence to convict you? To me, it means that during your trial you were presumed to be innocent because there had been no verdict. In this country, a defendant is presumed innocent until he is proven guilty. The verdict of not guilty then, means that you are entitled to continue to receive the presumption

To INNOCENT on p.12

The New African Pariah

by Robert Jystad

The end of the Cold War brought great hope to the human rights community. No longer would world powers have to fear or pretend to fear alienating "friendly" regimes. With the veil of bipolarity removed, recognized violators would be exposed and vulnerable.

So it came as a bit of a surprise when Nigeria, a country not known for its anti-Western vituperations, bucked an outpouring of opposition to the execution of a well-known dissident and proceeded with his hanging.

South African Archbishop Desmond Tutu called it "diabolical." He added, "It is as if they are telling the world to go to hell."

So it seemed. Major powers, including the United States, had called for a stay. Even so, the Nigerian government executed Ken Saro-Wiwa along with eight other dissidents.

Saro Wiwa, a writer, was nominated last year for the Nobel Peace Prize for his work on behalf of ethnic minorities in Nigeria. He had become famous as a playwright, screenwriter, and the author of children's books. The works that led to his death, however, were criticisms of the Nigerian government and its treatment of the Ogoni People.

He also had demanded compensation to the Ogoni by Royal Dutch/Shell, an international oil consortium that had caused environmental damage to Ogoni lands. Eighty percent of Nigeria's revenues comes from oil exports, about half of which are sold to the United States.

Last May, a riot broke out at a political rally that left four pro-government Ogoni leaders dead. Saro Wiwa, who insists he was not present, was arrested and later convicted of the killings. In further retaliation, the government carried out a genocidal campaign against the Ogonis.

Facing death, Saro Wiwa wrote: "I have devoted my intellectual and material resources, my very life, to a cause in which I have total belief and from which I cannot be blackmailed or intimidated."

The world condemned the conviction and the execution. Former President Jimmy Carter has called on the military government to release all political prisoners and to commute the sentences of all detainees facing death.

The current Administration has gone to great lengths to demonstrate its support of human rights. We can only hope that the distractions of the moment do not weaken its response to this outrage.

Opinions

Fighting Words, Tragic Consequences

by Bruce Barnett

The recent assassination of Israeli Prime Minister Yitzhak Rabin by a Jewish law student instantly elicited the question: how could a Jewish Israeli kill a leader of his own country, a country committed, above all else, to providing a homeland for Jews who were massacred in other lands? The first answers laid the blame on violent rhetoric which had been directed against Rabin over and over again in the course of heated debate about the Israeli-P.L.O. peace process. Among the more inflammatory statements and gestures made by the Israeli right wing, in opposition to Rabin's conciliatory gestures to the P.L.O. was to call Rabin a "Nazi sympathizer." Rabin's assassin apparently shared this view, and felt obliged to act upon it. He demonstrated no remorse for his actions upon his capture and arraignment the following day.

Rabin's murderer had long supported the viewpoint of the Israeli extremists opposed to Rabin. In describing his murderous act as bearing a divine validation, the mourning nation assumed the assassin was speaking more of actual language he had heard from Israeli mouths, and not the voice of a god speaking from burning bushes.

If these speakers could, they would go back in time to restate their positions with greater deference to the power of language.

In modern times we can find no better example of the nexus between vile speech and violent acts than this tragic death of a beloved world leader. Even those Israelis who opposed Rabin in the strongest of terms expressed genuine sorrow upon his death. Within Israel, the most ardent opponent of Rabin's policies condemned the taking of Rabin's life in the name of halting this political and economic process. One senses that if these speakers could, they would go back in time to restate their positions with greater deference

To CONSEQUENCES on p.12

Editorial

Are Law Students Ignoring The Current World of Law?

How many law students or faculty will notice that, for the first time since September 1994, the *Los Angeles Daily Journal* is not advertising in ***The Docket***? Not many, we suspect.

We tried to convince the *Daily Journal* that its financial support of UCLA's law school newspaper was worth the investment. Unfortunately, the evidence did not support our assertions; during the 14 months of its advertising, the *Daily Journal* did not measurably increase its subscription rate at UCLAW.

Lest someone misunderstand our point, we want to make clear that the purpose of this editorial is not to recapture an advertising account.

Moreover, we are sensitive to the fact that many law students would find unaffordable a year's subscription to either the *Journal* or to its counterpart, the *Enterprise*. The members of most student organizations might not find it prohibitively expensive to share the cost of a subscription to one or more legal newspapers. Nevertheless, the point is that students should exposed to the real world of law.

Perhaps L.A.'s legal newspapers have misjudged the UCLAW student experience as well as the world we face upon graduation. To the extent that employers cherish students with the highest grades above all other considerations, any information gleaned outside of the classroom is of no value preparing for our immediate future.

Do UCLAW students consciously ignore the world outside the halls of academia? Are we so committed to becoming court room gladiators that we fear exposing ourselves to issues outside of our firms' causes?

We do not doubt the wisdom of keeping one's nose very close to the grindstone of classroom work and disciplined study groups. But responsible and effective lawyers must look beyond texts and old classroom notes to find relevant precedents in the appellate decisions that are handed down each day. We should not make ourselves so busy with yesterday's lessons that we ignore the most pressing issues and decisions in current law.

Trial Lawyer as Client

by E. Robert (Bob) Wallach

This article, in its unabridged form, was first published in the American Bar Association journal LITIGATION (Vol 18, No.2, Winter 1992).

San Francisco litigator E. Robert (Bob) Wallach was in practice for nearly 30 years when he found himself caught up in the Wedtech influence-peddling scandal. Suddenly, the tables were turned, and Wallach was the one in need of legal counsel. In this article, wallach shares some of his insights and emotions as a client and discusses how the experience affected him as a lawyer.

Wedtech, a now-defunct metal parts manufacturer based in the Bronx, New York, allegedly hired Wallach to lobby on its behalf with Edwin Meese III, Wallach's friend and then-adviser to President Ronald Reagan, to help Wedtech obtain contracts from the defense department. Although there were no allegations that any lobbying was itself illegal, Wallach was prosecuted in connection with two letters sent to Wedtech and relating to $425,000 in legal fees, each of which supposedly concealed the true purpose of Wallach's services on Wedtech's behalf. When Wedtech paid the fees, these supposedly false descriptions permitted Wedtech to capitalize the fees rather than to expense them, thereby inflating Wedtech's earnings.

Wallach was indicted and tried in federal district court for, among other things, interstate transport of fraudulently obtained checks, conspiracy to violate the conflict-of-interest laws and to defraud the United States, and engagement in a pattern of racketeering activity. Wallach adamantly denied the charges. Nonetheless, after a 16-week trial, he was convicted on four of six counts, sentenced to six years in prison, fined $250,000, ordered to forfeit the $425,000 in legal fees, and suspended from the practice of law. In May 1991, the conviction was overturned by the U.S. Court of Appeals for the Second Circuit because of the government's substantial reliance on perjured testimony. The government acknowledged that Wallach was not involved in the internal corruption at Wedtech and announced last November that it intended to retry Wallach.

First of two parts

The Roman emperor Justinian defined justice as "the firm and continuing desire to render to everyone that which is his due." Every true defender of the jury system knows that justice constitutes everyone's due; justice is what the advocate proves. Every story has two sides, and the adversary system is designed to ferret out truth through the interplay of the advocates' presentations to a neutral forum.

I have been a strong adherent of this conventional wisdom for most of my life. As a trial lawyer for 31 years, I have taken 180 cases, mostly plaintiffs' personal injury claims, to juries and won all but 12. I gained a national reputation. I taught advocacy to other lawyers for 27 years and was elected a fellow of the American College of Trial Lawyers, earning and maintaining an AV rating for more than 20 years. I was president of the Bar Association of San Francisco. In short, I thought I had fairly keen insights into the U.S. system of justice.

Inside the System

When you first realize you have a serious legal problem, you see it as nothing short of a crisis. As a lawyer with experience in both personal injury and human rights cases, I had long understood that a client is fearful and anxious at the prospect of litigation — especially when the litigation concerns events that for the client have been irreversibly catastrophic. I understood

To WALLACH on p.13

Open Adoption vs. Closed Adoptions

by Melodia Hannes

When I was fifteen years old I had a baby. I have not seen her since she was three days old. She will be fifteen years old in April. The same age I was when I gave birth to her. I often wonder if she is safe, alive, happy. I also wonder if she is dead, sad, or living on the streets. I will never know how my daughter is because since my adoption was done through the State of Missouri, I am not entitled to know. In other words, I am a victim of a closed adoption. My daughter is also a victim. She will most likely never have the chance to know who she looks like, who her fingers, smile or her hair color came from. Both she and I are victims of a state-imposed policy. The policy of closed adoptions.

On the outside, everything looks fine ... On the inside, many adopted children wonder why they were put up for adoption, whether their birth mother loved them, whether their birth parent is alive

Closed state adoption policies foster pain. Pain for the birth mother's lifetime, pain for the child who wants to find his/her birth parents, and who is forced to travel through a maze of agencies. If they are lucky, and the state has not "lost" or "misplaced" the documents, they are given vital statistical information about the person who gave them life. Information such as the birth parent's nationality, eye color and height. Information that is irrelevant to many of those who are searching. If they are not lucky, they come up against a state-sponsored brick wall, and never gain access to the little information that the state is willing to divulge.

Proponents of closed adoption argue that it increases stability for the child and the adoptive parents because they don't have to live in "fear" of the birth mother disrupting their lives. This is ridiculous for three reasons. First, closed adoption creates what I call "mirror stability". On the outside, everything looks fine: Mom, Dad, kid. On the inside many adopted children wonder why they were put up for adoption, whether their birth mother loved them, whether their birth parent is alive, etc. Questions that are not answered by the vital statistics provided by the state. Second, the birth mother gave up her child because she could not care for her child in a way that she felt her child should be cared for. She loved her child so much that she put her child's welfare ahead of her love for her child. She gave a gift to a couple that might not have had a child in their lives but for her selfless act. And

To ADOPTION on p.12

THE KINGDOM OF LAW

By STEVE CHAHINE

(Satyricus Dicto-Maximus)

For the past century, scientists have endeavored to classify the multitude of species in the Plant and Animal Kingdoms. After decades of research and study, legal biologists and scholars have assembled the following chart of the Legal Kingdom with its three primary Phyla and respective Species.

COURTS

JUDGES
"*Dictus Convolutus*"
Related Species: The Lion
This ferocious king of the jungle displays all the pomposity of the common house cat combined with the savage cunning of a panther. Like a ball of string, they toy with prey foolish enough to wander into chambers before devouring them in a mighty gulp. *Dictus Convolutus* then memorializes the event in a long-winded, often rambling discussion where previous conquests are used as precedent to justify their present actions.

JUDICIAL CLERKS
"*Laborious Gratis*"
Related Species: The Koala Bear
Unable to forage for themselves, these fastidious creatures thrive best in positions of servitude under the watchful eye of *Dictus Convolutus*. Violating most natural laws of self-preservation, *Laborious Gratis* is convinced that the honor of doing the bulk of a judge's work is worth a $72,000 pay cut.

LAW SCHOOL

ADMINISTRATION
"*Bureaucratix Rex*"
Related Species: The Sloth
These creatures interfere with virtually every function of Nature, drastically decreasing its efficiency. Often traveling in groups called committees, the *Bureaucratix Rex* leaves a trail of forms wherever it goes. Every species is its natural enemy, however no creature has yet found a way to kill it.

TENURED PROFESSORS
"*Comprehensibus De Minimus*"
Related Species: The Rooster
This proud animal ritualistically climbs atop its podium and, like clockwork, cock-a-doodle doo's for 50 minutes at a time. By observing the expressions of those in attendance, biologists have concluded that no one actually understands the cacklings of *Comprehensibus De Minimus*, and listeners may in fact grow confused and disoriented in the process. What they do for the other 23 hours of the day remains an absolute mystery.

UNTENURED PROFESSORS
"*Publishus Maximus*"
Related Species: The Bookworm
Often very young and abandoned at birth, these creatures are constantly nervous, as if knowing that students can sense how unqualified they feel. Between classes, they are constantly writing, guided by an instinctive need to survive. They seem to realize that their eloquence and coherence must be preserved on paper before the inevitable nature of tenureship deprives them of these transient skills.

CONSTITUTIONAL LAW PROFS.
"*Nitpickus Amendamentus*"
Related Species: The Spotted Owl
This Federally protected creature leads an idealistic lifestyle, unsuitable for the rest of its fellow creatures in the wild. Usually friendly, they attack only when threatened by a clear and present danger and only after giving its would-be assailant a ritualistic warning. It is never cruel or unusual in its punishment and only invades the territory of others after giving adequate compensation in return.

PROPERTY LAW PROFESSORS
"*Territorious Incomprehensibus*"
Related Species: The Timber Wolf
This highly territorial animal spends much of its time surveying its open and notoriously held territory and dividing it up among its clan members, called Remaindermen. In a series of yet undeciphered rituals, they grant others the usage of land, some for life, other in perpetuity.

CRIMINAL LAW PROFESSORS
"*Commentatus Photogenicus*"
Related Species: The Bear
The only species with a publicist, these extroverted creatures seek attention at every opportunity and are innately inclined to display their craft to a rapt, yet unsophisticated audience. Most of their time is spent rescheduling classes and lumbering through courthouses looking for microphones to speak into. During the lulls between high profile trials, they hibernate, feeding on their stored fame and notoriety.

STUDENTS

POTENTIAL

LAW FIRMS

PARTNERS
"*Profitas Ultimatus*"
Related Species: The Hyena
This much maligned scavenger prowls the legal serengetti, waiting for associates to make a kill before seizing the carcass and dragging it away. Considered the most ungrateful species in the Kingdom, *Profitas Ultimatus* occupies the most spacious lairs in the firm and never sets foot in the library. Its chilling laugh can often be heard on pay day or whenever a settlement check comes in.

ASSOCIATES
"*Billibus Maximus*"
Related Species: The Workhorse
These unfortunate creatures, known as the Beasts of Burden of the Legal Kingdom, all begin life with thoroughbred potential, but end up as mind-numbing pack mules. Slavishly working 14-16 hour days, they strive to join the ranks of *Profitas Ultimatus* but most are put out to stud or turned into glue long before their dreams come to fruition.

LITIGATION ATTORNEYS
"*Settlementix Inevitabilicus*"
Related Species: The Junkyard Dog
Far more bark than bite, these belligerent and litigious creatures will pick a fight with literally anything that enters their territory. After their initial encounter, they exchange barks back and forth, then amend their barks and file them with the court. After several months when an actual confrontation becomes inevitable, they retreat to a secluded room until one of them yelps his surrender, cuts a big check, and drags his sagging tail away.

...MORPHOSIS

POTENTIAL METAMO...

"*Obliteratus Curvus*"
Related Species: The Chameleon
Due to their elastic cerebral membrane, this highly adaptable species has the uncanny ability of conforming its writing style, opinions, and beliefs to those of its instructors. Comprising roughly 10% of the population, their natural habitat is the library, but they ritualistically venture out to their professor's office hours - the only species in the Legal Kingdom known to do so. Timid and shy, they respond poorly in social situations but their bulging eyes and pale skin make them highly recognizable in the legal environment.

MISCELLANEOUS

BAR/BRI
"*Solicitus Rex*"
Related Species: The Vulture
This scavenger feeds on the misfortune and fear of students by picking their bones and bank accounts clean. Although not indigenous to the Legal Kingdom, the *Solicitus Rex* has entrenches itself into the ecosystem, making virtually every species within it dependent upon its services in a twisted form of extorted symbiosis.

LAW REVIEW
"*Footnotus Maximus*"
Related Species: The Mole
Whereas most species instinctively sense the irrelevance of legal academia after their first year, *Footnotus Maximus* burrows deeper into the mulch in search of academic sustenance. Due to the harshness and scarcity in the legal ecosystem, these resourceful creatures are forced to find a tiny seed-pod of knowledge and meditate upon it until its complexity surpasses its triviality. Then they publish.

MOOT COURT
"*Babblious ad Nauseum*"
Related Species: The Tropical Parrot
As if there weren't enough litigation occurring naturally in the Universe, members of this species feel the instinctive need to mimic their litigatory mentors in a ritualistic right of passage. Biologists have no explanation for why *Babblious ad Nauseum* spends more time and energy on their Mood Court brief than they will on any other case in their legal career.

3Ls
"*Parasiticus Borrowus-Notus*"
Related Species: The Leach
Fully drained of optimism and academic integrity, they resort to spending their last year in the Kingdom by cannibalizing the skeletal remains of their predecessors. Rarely in the presence of a casebook or classroom, members of this species prefer outlines, case briefs, and borrowing the fruits of another's labor.

2Ls
"*Desperatus Fora-Jobus*"
Related Species: The Organ Grinder's Monkey
During their second year, members of this shameless species shed their casual skin for more formal and constricting business attire. Smiling continuously, they wave their resumes in a demeaning dance for passers-by as the organ grinder cranks a tune in hopes the coin of employment will be tossed into their tin cups.

1Ls
"*Outlineous Maximus*"
Related Species: Drone Ants
Imbued with voracious curiosity and an insatiable academic appetite, these creatures digest twice their weight in casebooks in their first year alone. No holding is too insignificant to memorize, no question is too inane to ask. And when 50 minutes of class will not suffice their antennae detect their professor's pheromone trail, and they chase them down after class seeking another kernel of knowledge.

JD/MBA
"*Materialisticus Egocentricus*"
Related Species: The Peacock
This perpetually tan creature can be distinguished by its excessive plumage, frequent use of corporate terminology, and shifty smile. Capitalizing on its specialization, the JD/MBA frequently uses their joint degree status to lure wayward 1Ls into bed. However, when frightened they flee northwest to their nests at the Business School.

FOREIGN STUDENTS
"*Europeanius Defectus*"
Related Species: The Duckbilled Platypus
As if learning law in your native country wasn't dubious enough, some species see fit to take irrelevance to the extreme by learning it outside their natural habitat. Biologists fear that while transplanted, Natural Selection causes these creatures to develop traits that prove utterly useless when reintroduced back to their natural environment. Often confused and incoherent, this species often makes comments like, "In my country we chop their hand off for that".

L.L.M.
"*Procrastinatus Maximus*"
Related Species: The Pigeon
Members of this species have an abnormal attachment to the Legal Ecosystem and refuse to leave their nests in a timely manner. Many members must be literally shoved off their precarious perches, some plummeting to their deaths.

JURY
"*Gullibilicus Acquiticus*"
Related Species: Sea Monkeys
Hatch them! Grow them! Start your one colony of impressionable lackeys! These unmercifully disposable creatures provide hours of fun and entertainment. When twelve are finally selected for duty, battle it out against prosecutors and defenders to see who can train them and sway their impressionable minds first. These creatures are the only known species dependent on mail order catalogs for survival. Order now. ($9.95. plus $2.99 s/h.)

LAW GEEKS
"*Powerbookus Rex*"
Related Species: The Woodpecker
Far and away the loudest and most intrusive creature in the Kingdom. In the silence of the classroom, their mating call can often be heard; an incessant click-clack roughly following the speech patterns of the professor. Their pecking is often used to intimidate classmates armed with traditional stenographic devices. Their dramatic rise in population has prompted the Department of Wildlife to issue licenses to hunt them for their pelts and hardware. It is though that the widespread hunting of *Powerbookus Rex* will have virtually no effect on the ecosystem except an upsurge of peace and quiet.

STUDENT ACTIVISTS
"*Democraticus Idealisticus*"
Related Species: Salmon
Comprising the bulk of the student body, these liberal creatures make the annual voyage to the financial aid office where they spawn and make tuition payments. Following their return to campus, they are often found protesting, picketing, and manning PILF or PUBLIC COUNSEL tables during lunch. Biologists have speculated that their unfettered desire to save the world is a result of their inability to save themselves. However, shortly after graduation when the financial stream runs dry, they miraculously get jobs, start families, and become Republicans: "*Suburbious ditto-headus*".

Business & Finance

Lawyers & Realtors

by E. John Rumpakis

(E. John Rumpakis was chosen Realtor of the Year for the greater-Portland metropolitan area in 1971 and most recently in 1994. Has served as president of his industry, lectured before the Oregon State Bar, and has written articles for Journals and trade magazines. Has appeared on both radio and television. Mr. Rumpakis resides in Portland, Oregon.)

One of the foundations of our American democracy has been the essential right of real property ownership. Without this element society would be deprived of a significant form of freedom and stability.

The highest and best form of ownership is the fee simple title. In recent years this has eroded significantly in various governmental jurisdictions throughout the United States. The rights of individuals to use their private property have been gradually narrowed by government regulations to the extent that in some cases the "owner" has become a custodian of the property for the government. Sensitivity is necessary to create a fair and equitable balance.

Many planners have a deliberate agenda for their community which may be contrary to the wishes of the citizens they serve. Complicated restrictions and overlays may very well affect your client's intended use of his or her property. When property is acquired it is paramount to fully know what forms of use are permissible. It is also wise to go beyond the written limitations and to seek out any pending or proposed changes. In most real estate agreements the purchaser has the responsibility to investigate the restrictions of use and the status of essential governmental services such as sewer, water, and police-fire protection.

The largest financial investment for most people is their home. Home ownership is the cornerstone to the American way of life. Approximately 66% of Americans own their residence. In some states such as Pennsylvania and Virginia, the percentage exceeds 72%. Ownership creates strength and stability in the community. Making the purchase a worthwhile and enjoyable event is a challenge. Realtors and lawyers who work closely together from the early stages of planning to the point of consummation of the transaction benefit immensely.

Home ownership is the cornerstone to the American way of life. Approximately 66% of Americans own their residence.

An earnest money agreement form usually provides a safe harbor for the meeting of the minds of the buyer and the seller. However, it is the addendum, and improper execution of that agreement which bring about contests that can turn the sale or purchase into an unhappy event. Clear and concise enumerated clauses which meet the five W's of who, what, where, when and why reduce the possibility of disagreements or misunderstandings. While it is advisable for your client to consult with you prior to the execution of the agreement, it is also expeditious for your client to purchase subject to the approval of the seller's attorney.

Representing the seller or purchaser in a commercial or residential transaction carries a significant responsibility. Many considerations and issues necessarily surface which mustbe handled with care. For example, the lawyer must ask himself a number of questions: "what are the tax consequences, if any, of this transaction; is there a due-on-sale clause in the financial arrangements; does the transaction require a survey to make sure that the improvements are on the land with appropriate setbacks; and are there any easements that traverse the property."

Environmental concerns of contamination must also be addressed. For example, residential fuel oil tanks or commercial storage tank leaks may require appropriate clean-ups. Proof of their safety and status must be determined prior to closing. The remedial costs and legal counsel costs associated with environmental concerns can be considerably expensive and cause substantial delay. If the transaction fails the property owner will need assistance in obtaining real property tax relief during the contaminated period.

Environmental concerns of contamination must also be addressed ... The remedial costs and legal counsel costs associated with environmental concerns can be considerably expensive and cause substantial delay.

Other concerns of the lawyer representing a client are: knowing how to cure a defective title, looking into whether the neighborhood has any special covenants and restrictions and if the dwellers are abiding by them, finding out if there is an association fee, and what is the prescribed community agreement. With the cooperation of the selling agent many of these questions can be answered. Paramount in a purchase is the matter of utilities, e.g. is the property on sewer or will it need to be connected in the very near future and at what cost. Water rights can also be very critical, and a seismic audit may also be in order.

One of the safeguards in a purchase is an agreement condition or contingency which requires a report from an inspection. Knowing the shortcomings of a property together with its advantages makes a more informed buyer. Disclosures, representations and declarations by all parties need to be on the most professional level. If one feels incapable of meeting these essentials to a

To REALTORS on 15

Note:

A new organization is starting up at the law school this year — the **Business Law Society**. Its main purpose is to facilitate interaction between UCLA law school students and members of the Los Angeles business community. Those who are interested in joining should contact Bruce Kokozian (2L).

John Hanches, 2L
Business & Finance Editor

Editors' Note:

THE DOCKET especially welcomes contributions from both JD and MBA students for this section.

Sports

Calling All Aspiring Sports Agents

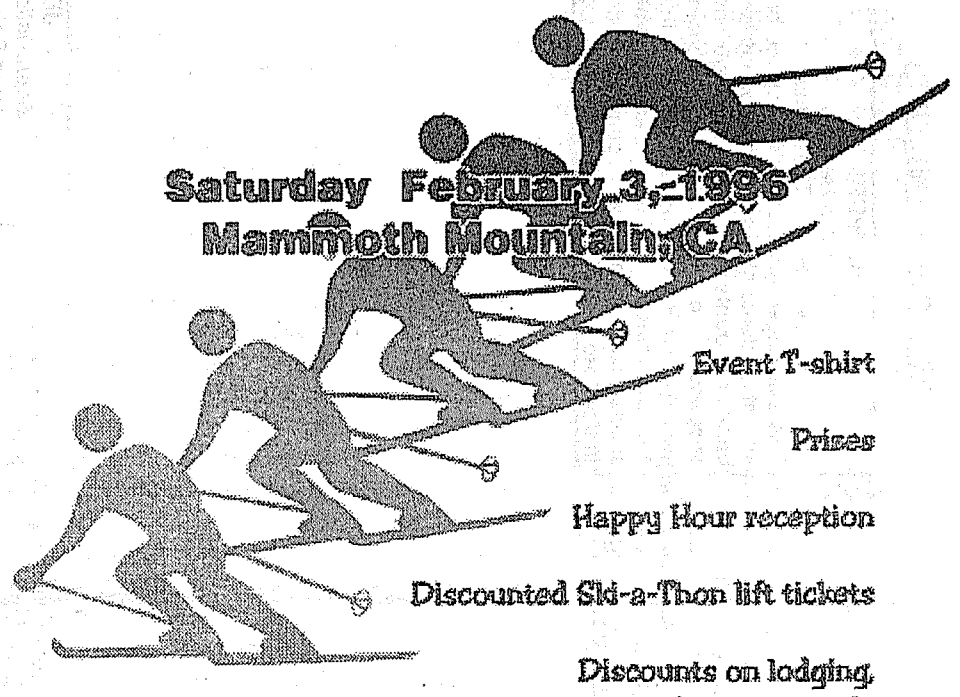
by Armen Martin & Stephen Cazares

A night school hack, Robert Troy Caron had become quite a successful PI attorney in Oxnard (Larry Parker's hometown). However, it appears that Caron got somewhat sick of chasing ambulances and wanted to fulfill his life-long dream of becoming a sports agent. Well accustomed to the field of PI litigation, Caron figured that some of what worked in a classic slip and fall action might work in the area of sports representation. He thought up an innovative scheme to attract any athlete who had yet to suffer soft tissue injuries. Caron's system consisted of paying off every PAC 10 player who would take his money. After all, when have ethics ever stopped a determined PI attorney? Numerous suspensions and tarnished careers later (only of the athletes of course), Caron claims that he intends to continue his budding new career. We at Sports Briefs have a little advice for Bob: you may want to go back to the PI mill.

Free Agent Franchises

This thing with football teams moving is getting just a little ridiculous. First it was the Rams moving from Los Angeles to St. Louis to replace the Cardinals who had moved to Phoenix...I mean Arizona...and might move to Los Angeles. Anyway, next it was the Raiders moving from Los Angeles back to Oakland in order to thank the loyal fans that it had...um...abandoned a decade earlier. Not to be outdone, Art Modell announced that he will be moving the Browns from Cleveland to Baltimore to replace the Colts who moved to Indianapolis (will they be using Mayflower moving vans???). Next, it seems as though Bud Adams is going to move the Oilers from Houston to Nashville, after all the New Jersey Devils flaked. One problem is that the stadium has yet to be built, and besides, when is the last time you saw an oil derrick in Tennessee? Next year's AFC Central division may feature the Pittsburgh Steelers, Jacksonville Jaguars, Baltimore Browns, Cleveland Bengals, and Nashville Oilers. All that remains is for Rooney to move the Steelers to Arkansas and call them the Pine Bluff Tyson Chicken Chunks.

1st Annual UCLA Disability Law Society
SKI-A-THON
Benefiting the U.S. Disabled Ski Team



Contact Penny Menship, 1L for registration
or
UCLA Disability Law Society, Box 951476; L.A. 90095
before January 8, 1996

TORREGANO

from p.1

as a white man for more than 40 years in order to grab his share of the American dream.

By all accounts, there was surprise, even shock in the Bay Area legal community. Friends, colleagues and clients who had known him for years had no idea the courtly, distinguished-looking attorney was anything other than Caucasian.

The startling and often tragic details spilled out during three years of bitter litigation wherein a black woman from New Orleans claimed to be Torregano's daughter and produced a birth certificate and baptismal papers to prove it. Ultimately, the California Supreme Court put it in perspective in a precedent-setting decision on the rights of pretermitted heirs in *Estate of Torregano*, 54 Cal.2d 234 (1960).

The fair-skinned Torregano was born in 1882, the son of emancipated slaves, and grew up in the bayou country of Louisiana. He was, according to accounts, bright, articulate and very enterprising. "He wanted to be a big shot," an elder sister testified, never realizing at the time how far his ambition would eventually carry him.

Sometime around 1900, Torregano became a minstrel performer, acting as the "interlocutor" or master of ceremonies for a troupe that traveled through Louisiana and Mississippi. He fell in love with Viola Perrett, a beautiful tawny-skinned dancer in the chorus. They were wed in 1902 and he brought her to live in his mother's house in New Orleans.

A daughter, Gladys, was born in 1904. Torregano left the minstrel troupe and was hired as a Pullman porter — a prestigious job for a black man in the early 1900s — traveling between New Orleans and San Francisco. He remained a dutiful husband and father, according to accounts.

In 1906, following the epic San Francisco earthquake, Torregano quit his porter's job and settled in the Bay Area, but continued making "infrequent" trips home, according to court records. During that time, he began to pass for white, and it is possible he apprenticed with a local lawyer.

In 1912, according to newspaper accounts, Torregano enrolled at the newly opened St. Ignatius College School of Law, the predecessor of the University of San Francisco Law School. That same year he informed a black friend, Henry H. Godfrey, that he was "crossing over" to, the white community. A year later, on April 17, 1913, under the sponsorship of two San Francisco attorneys, Torregano took an oral examination before justices of the California Supreme Court and was admitted to practice law. Godfrey testified that he saw "very little" of Torregano from then on. "Crossing over was something blacks had to do in those days if they wanted a good job and social acceptance," Joseph Williams, 82, a prominent black attorney who began his practice in San Francisco in 1956, said in a recent interview. "If someone had the right skin color and the right kind of hair, they might pass, and their black friends and neighbors would never betray their secret to white people."

During Torregano's crossover period, he continued to support his wife and child in New Orleans. He maintained two mailing addresses — one at his home in the white section of the city and another in the black area where he sent and received letters from his wife and mother, according to court records.

The family link was broken, abruptly and tragically, in 1915. Torregano's mother came to visit her son, and when she realized how well he was doing as a lawyer in the white world, she felt it was in his best interests to sever all ties to his past life.

She concocted a massive lie, telling her son that his wife and child were killed in a fire. Then she returned to New Orleans and told Viola Torregano and daughter Gladys, age 11, that Ernest Torregano was dead. Viola later remarried and died, presumably without ever knowing the truth. It would be 40 years before Gladys learned of her grandmother's deception and began the long and painful process of restoring her birthright.

Meanwhile, Torregano created a credible past for himself and eased comfortably into San Francisco's white community. He claimed to be of Gallic descent — raised in New Orleans' Creole community, he could speak passable French — and joined the Lafayette Club, a social and charitable organization made up of Bay Area residents of French heritage. He was even elected the club's president.

Professionally, he thrived as a bankruptcy attorney, dealing exclusively with a white clientele, mostly businessmen trying to rebuild from the economic ravages of the earthquake. He told clients and associates who inquired about his professional background that he had been a tax agent with the U.S. government.

He also became a player in San Francisco's political establishment, serving as a member and eventually a term as president of the San Francisco Planning Commission, which oversaw the rebuilding of the city after the earthquake.

In 1917, a respectable two years after his "widowing," Torregano married Pearl Clauncy Bryant of Oakland, a Caucasian. The marriage produced no children and she died in 1947, presumably without ever learning her husband's secret.

Meanwhile, Torregano's brother, Alfred, had settled in San Francisco and "passed" the color line as effortlessly as Ernest. He worked as a maintenance man, married a white woman and sired two children. When Ernest Torregano died in 1954, he willed the bulk of his $350,000 estate (it would be valued at more than $2.5 million in 1995 dollars) to Alfred.

In lawyerlike fashion, Ernest had inserted a clause in the will that bequeathed $1 to anyone who claimed a share of the estate or otherwise contested the will. That disclaimer would serve as the basis of Alfred's defense when Gladys Torregano Stevens surfaced in 1957 to claim her share of the estate.

It is not known exactly when or how Gladys Stevens, a domestic living in New Orleans, learned of her father's death, although other members of the large Torregano family living in Louisiana shared the grandmother's secret. It is likely an envious relative revealed it all when they discovered Torregano's estate was going to the one brother who severed his racial ties.

Gladys Stevens hired a local attorney, Bergen Van Brunt, now deceased, and filed suit in January 1957 to establish her lineage and claim a one-third interest in the estate as next of kin. The case was assigned to Superior Court Judge Thomas M. Foley and a jury impaneled.

The evidence appeared overwhelming. Aside from the obvious physical resemblance, Stevens produced a birth certificate and baptismal papers bearing Torregano's name. Relatives supported her claim. Predictably, the only dissenter was Alfred Torregano, who swore that in all the years with his brother, both in New Orleans and San Francisco, he never once heard him mention the names Viola Perrett or Gladys Torregano.

The jury never got a chance to decide the issue, but privately told reporters they would have voted in favor of Gladys Stevens. Ironically, Judge Foley said he agreed that Gladys was probably Torregano's lawful daughter, but he still denied her claim. He cited the clause Torregano inserted, which bequeathed $1 to "any person who contests this will." This effectively disinherited Gladys Stevens and made the jury determination moot, Foley concluded.

Van Brunt appealed on behalf of Gladys Stevens. The 1st District Court of Appeal in San Francisco said Foley's judgment on the pleadings was premature and remanded the case to the Superior Court for a jury determination.

Maynard Garrison, a young attorney representing Alfred Torregano, appealed the 1st District decision to the California Supreme Court. Now in his 70s and retired, Garrison said the law at that time favored the specific language of the will to determine the testator's intent.

"If claimants were not specifically named as beneficiaries, they were presumed as a matter of law to have been excluded," he recalled. "That is precisely what we had in this case, and to protect my client's interests, I wanted a determination by the Supreme Court."

But in a 4-3 opinion, the high court ruled that as a matter of public policy, it is the "natural right" of children to share in the inheritance of their parents. This right cannot be taken away without the presence of "strong and convincing language."

Writing for the majority, Justice Raymond E. Peters said the wording of the will was not controlling; extrinsic evidence would be admissible to prove a testator's lack of intent to omit a presumptive heir. In this case, the evidence would likely show Ernest Torregano was deceived into believing his wife and daughter were dead, Peters stated. Therefore, the exclusion of Gladys Torregano from the will was unintentional, and her rights could reasonably be established.

For the first time in more than 100 years, the court recognized the rights of pretermitted or overlooked heirs — a decision that has stood for 35 years and paved the way for jury trials in thousands of disputed will cases.

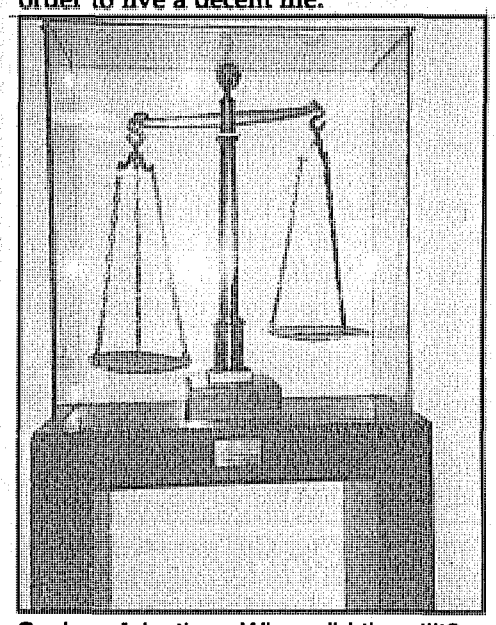
The case was remanded to the Superior Court and for three years Gladys Stevens pressed for a jury trial to legally establish her birthright as the daughter of Ernest Torregano. But on Sept. 16, 1963, weary of the long delays and burdened with mounting legal costs, she finally agreed to settle out of court. She got her lawful one-third share of the estate, about $120,000, and moved to Los Angeles.

"It is not a happy story. Almost everyone was a victim," said Garrison.

Viola Perrett and Gladys Stevens were, to be sure. Because of racism, they were denied strength, stability and family pride. Alfred Torregano was also a victim; the fear of racial prejudice drove him to deny his birthright for the sake of a decent-paying job and acceptance in a hostile society.

And Ernest Torregano was perhaps the most tragic victim of all. In retrospect, he lost more than he gained. He had the talent and ambition to be a success anywhere, irrespective of race, creed or national origin, and in a perfect world, there would have been no need to hide his vast achievements behind a false mask.

"Maybe blacks today could never endorse what he did, but it wouldn't be fair to judge him," said attorney Joseph Williams. "People are the same everywhere. They do what they have to do in order to live a decent life."



Scales of Justice. When did they tilt?

CAST

from p.4

Currently scheduled to appear as The Con Law Mafia are Alison Anderson, Gary Blasi, Liz Cheadle, Steve Derian, Sonna Franklin, Christine Goodman, Ken Karst, Kris Knaplund, Martha Matthews, Al Moore, Susan Prager, Cruz Reynoso, and Pam Woods.

Staffpersons will be played by Nancy Berkowitz, Lori Boskin, Karen Nikos, Jason Mascarenas, Bill McGeary, Fred Smith, and Debra Westerberg.

INTERNATIONAL

from p.2

various aspects of the conflict in the Middle East.

This year the new leadership of the ILS is proving itself no less ambitious. As the fall semester of the 1995-96 year comes to a close, the organization can claim to have co-hosted a Q&A session with Mickey Kantor. The organization, among other social events, also organized an International Law Practitioners Panel and co-sponsored a discussion with members of the UCLA community who attended the International Women's Conference in Beijing.

During the Spring Semester, the ILS will host its annual conference. This year four panels and a keynote speaker will address international environmental issues. The topics will cover the impact of environmental concerns on business, environmental issues in industrializing nations, the environmental impact of NAFTA, and methods of regulation and enforcement. The International Law Society is currently seeking Vice President Al Gore to deliver the keynote address.

ZELLECKE

from p.1

of Ambassador Kantor, President Clinton joined with UCLA in celebrating its 75th anniversary. Again, Zellecke played an integral role in arranging the visit.

Most recently, the Law School hosted Ambassador Kantor for a second time. This event was made possible by not only the International Law Society, but also through the efforts of Mr. Andy Zellecke.

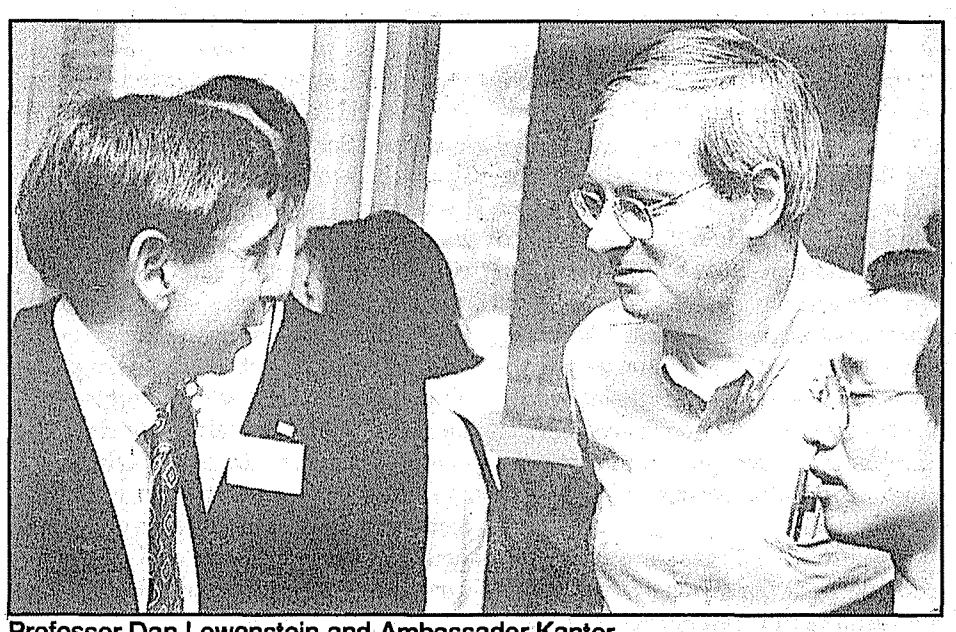
[Andy Zellecke is taking a year to coauthor a book on race relations.]

KANTOR

from p.1

representing farm workers. Kantor then turned to trade, focusing on the dominant peg of the Administration's trade policy: global interdependence in the post Cold War era. Interestingly, the United States' share of gross global product is shrinking. But this is good news, according to Kantor, because it means an emerging middle class will solidify the global shift toward democratization.

Questions from the audience comprised the balance of the forum and produced some lively responses from Kantor. Ravi Mahalingham came very close to earning himself a place on Kantor's staff after lauding Kantor as an "historic" figure and then asking how the American public can be made more aware of the importance of international trade.



Professor Dan Lowenstein and Ambassador Kantor

Other students brought up some sensitive issues. One student asked if the United States was not being hypocritical in its treatment of Mexican avocados. Japan had barred U.S. apples and rice claiming unsatisfactory health standards. Kantor had been able to break that barrier. But now that Mexican farmers wanted access to U.S. markets, the United States seemed, hypocritically, to be adopting the same protectionist strategy; Mexican avocados do not meet U.S. standards. Another student asked about industrial espionage. A third student asked about the welfare of Serbs under the Bosnian peace plan.

Kantor handled the questions adeptly. Hypocrisy is relative, he said. The United States has led the way in globalizing trade and many countries have done much to inhibit the process. The United States, as a matter of policy, does not engage in industrial espionage for U.S. corporations. Finally, the people in Bosnia have been brutalized and need help in restoring the region to normalcy.

Asked about how a law student can begin to prepare for a career in international trade, he said it is probably important to have lived outside of the United States. The view, he added, is different there.

CONSEQUENCES

from p.7

to the power of language, and not use the words which might inflame others to violence. But they cannot undo the insults and the vituperative epithets which preceded this assassination.

Here in America, we can learn from this event. The rhetoric of militant leaders is serious stuff and may motivate others to kill. Recent violent acts by this nation's ultra-extremist groups are fresh in all of our minds.

Fortunately, few law students or lawyers endure verbal abuses "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942). The very rules of courtroom decorum are designed to prevent adversary rhetoric from degenerating into violent response.

The assassination in Israel should remind us, once again, that the balance we achieve between permitting free speech and restraining fighting words is a balance worthy of serious consideration.

RACE CARD

from p.6

Third rule change: The O.J. Simpson Option. A white female and a white male are brutally killed. The police and the DA blame a black man. The black man hires several expensive attorneys. They say the racist cops planted evidence. The cops say they are not racist. Then one cop is his own words reveals how racist he is.

Fourth rule change: The Crack Option. Two white men go to buy crack in a black neighborhood and get their car impounded by the cops. One white male says that the racist black cops refused to give his friend a ride to the station. His friend is killed. Two black teen-agers are charged with his murder. The racist cop story falls apart after a polygraph test and his own story changes.

Based upon these instances, one can surmise that the appropriate manner to play the race card is not by dramatic phone calls or television pleas or revenge motives, but to let the racist person speak for himself or hire an expensive attorney.

JUSTICE MALL

from p.4

3. C'mon you have to, all the cool people do it. And it's a great way to get a date!

2. Even if you don't have talent, you can stand in the back of the chorus and mouth "watermelon" to all the songs. Your parents will not know the difference and will be so proud.

1. You're not going to get a job when you graduate from UCLA anyway, so you will need something to look back on that made law school worth the professional fee.

ADOPTION

from p.7

what does she get in return? nothing. Not a card, not a letter. Nothing. In return for her act of love and compassion, she is treated as the enemy. She is sentenced to a life where she is not even permitted to know whether the child she loved so much and gave up, is happy, safe, or alive. Finally, whether the adoption is closed or open, the birth mother usually has about 90 days to change her mind. Ironically, studies have shown that birth mothers change their minds much more frequently in closed adoptions than in open adoptions. I believe I know why. An open adoption gives the birth mother peace. It enables her to go on with her life. It allows her to know that if she ever wants to know how her child is doing, she can call the adoptive parents and ask. She may hear laughter in the next room and feel assured that her decision was the right one. The knowledge that she made the right choice gives her confidence and takes away the desperation and sadness that fills the lives of birth mothers who have beensubjected to closed adoptions.

A question that comes to mind is, why then, don't birth mothers elect to go through open adoptions. The reason primarily, is that open adoptions most often occur in private adoption settings. However, many states do not allow private adoptions within their borders. So children born in these states can only be adopted by going through the state's closed adoption procedures. In addition, even if a birth mother is aware of these policies and travels to another state where private adoption is allowed, legal matters get complicated. States do not like their "citizens" being taken to another state and adopted there. Inter-state adoption proceedings are far more costly and protracted, so many adoptive families are reluctant to become involved. This leads to fewer adoptive families willing to adopt out of state children, which in turn leads to less out-of-state children being placed through open adoption. The result of course is the needless pain of the birth mother and the nagging questions of the child.

A day has not gone by since I kissed my baby girl and handed her to a social worker, that I have not wished that I could know how she was doing. Just the knowledge that she is well and happy would give me the peace of mind that I deeply long for. Is it really to much to ask that I know that she is happy and doing well? I don't think so. It seems so little for having done so much.

INNOCENT

from p.6

of innocence because you were not convicted.

I am annoyed when I hear people speak with certainty that O.J. Simpson murdered Nicole Brown Simpson and Ronald Goldman. Unless they were present the night these tragic murders were committed, I cannot see how they can be so sure.

I myself do not know if he killed Nicole or Ron Goldman. I only know that a verdict came back less than three hours after the case went to the jury. I can only assume that these 12 people who sat through and heard months and months of testimonywere also not sure.

The bottom line is that we have established a system that gives defendants a presumption of innocence until they are convicted. If they are convicted, then they should lose the benefit of that presumption. If they are acquitted, they should not.

BLOOD

from p.2

see in January if the students can keep pace."

The Law School Blood Drive Committee thanks all who participated in the September '95 Blood Drive. Everyone is encouraged to mark their calendars for the weeks of January 15 and 22 for the next Law School Blood Drive — which is modestly being touted as "The Super Bowl of Blood Drives." Details will follow in early January.

Students who would be interested in helping to promote donations by individuals from their class are encouraged to contact John Power at 825-2325 in the Accounting Office (Room 1429).

MALPRACTICE

from p.2

agnosis of colon cancer in a young mother. The jury returned a verdict of $3 million for the decedent's husband and son.

Yet, Hiepler is not altogether satisfied with his latest victory. He had hoped to put not only the physicians, but the HMO system of paying physicians on trial. Ching's physicians were compensated according to how many patient were assigned to them. The physicians received a monthly "capitation" payment, regardless of illness of the assigned patients.

Under their contract with the HMO, Patients are guaranteed all the necessary medical services from the capitated physicians in exchange for the monthly premiums they pay or their employer pays.

Hiepler argued that in addition to the physician's professional duties, this capitation system imposed upon the defendant physicians a fiduciary duty to properly administer the money needed for Mrs. Ching's care. Accordingly, Hiepler charged, not only had Mrs. Ching's physicians practiced medicine negligently, but in addition, they had breached their fiduciary duty to provide her with adequate medical care. Hiepler explained this breach as motivated by greed, and encouraged by the capitation system.

The controversial fiduciary duty claim survived multiple pre-trial defense motions to dismiss. However, during trial, Judge Riley granted a defense motion for a nonsuit of the fiduciary duty claim. The *Los Angeles Daily Journal* reported that, according to the defense, the plaintiff's fiduciary duty claim failed because the defendants "had nothing more than a contract and a financing program authorized by the state of California." (Matthew Heller, "MDs Lost, But HMO Industry Survived Intact," *Los Angeles Daily Journal*, November 20, 1995, p. 1).

Defense attorney Michael D. Gonzales, a partner in Hillsinger & Costanzo of Los Angeles, told the *Los Angeles Daily Journal* that Hiepler "should be happy" with his malpractice victory. (*Id.* at 9). Nevertheless, Hiepler is not likely to be fully satisfied with the courts decision, notwithstanding the substantial award provided to his client. Hiepler began his Oxnard practice challenging the HMO industry immediately after winning an action against Health Net for its refusal to provide his sister, Nelene Fox, with a bone marrow transplant. Ms. Fox died from breast cancer sometime after receiving the transplant which she paid for without any help from her HMO.

Hiepler apparently has deep feelings about the obligationsof HMOs and HMO physicians to their enrolled patients. The Ching case is but one round in a long fight.

WALLACH

from p.7

that a client needs sustenance.

It might not seem surprising, then, that my reactions to the accusations against me were what I had seen in many clients. Yet it was surprising to me. I found that even with my experience counseling thousands of clients, I still felt frightened, confused, outraged, humiliated, and desperate. I had lost control. The parameters of my life were askew. Questions I had not asked since my admission to the bar tortured me. How would I earn a living? Would I lose everything I had acquired for the future? How would my family sustain this burden? I wondered in disbelief how all this could be happening to me. Why, after all, would anyone think I was a crook?

I even wondered how I would select a lawyer. My experience had never included criminal work; my colleagues were from the civil bar. I was not sure what to look for in a criminal attorney. Mostly, I just wanted it all to be over. I was not in the best frame of mind to protect myself against a threat that promised to end my life as I had known it.

I had marveled for years at the courage of people I had known who had faced real adversity, and I tried to draw some of that courage for myself. I thought of clients who in a split second had been left quadriplegic, their lives transformed forever, but who were nonetheless determined to prevail with dignity. The indictment against me was handed down 10 months after I had concluded my tenure as U.S. Representative to the U.N. Commission on Human Rights. The United States had invited 20 former prisoners of Cuban jails to appear as witnesses before the commission to illustrate some of Fidel Castro's abuses. Among them was a Cuban farmer, imprisoned for 18 years for resisting with a single-shot rifle the state's seizure of his one-acre farm. He had spent those 18 years teaching himself to read and write. I think my experiences as a personal injury and human rights attorney helped me keep matters in perspective.

Still, I was frightened. As a client seeking counsel, all I could hear my lawyer telling me was in essence to collect every penny I could put my hands on and shove it to the center of the table to save my life. I felt as if I were standing on a railroad track with a speeding train approaching. It was war. Total war. Like Clarence Darrow's phone, my phone would not ring for five years. I was ruined.

Lessons A Lawyer Learns When He Becomes a Client

It was amidst these anxieties that I learned in a new way the self-evident proposition that lawyers must be compassionate. It sounds trite, but it is true. Compassion goes beyond mere empathy for the client's plight, though that is important. Compassion requires the lawyer to create an environment of trust that will open an overwhelmed client's mind to constructive advice. I am convinced that this is the essential prerequisite to effective representation.

As lawyers, we are taught to tell the client the truth. Do not coddle. Tough love supposedly shocks the client into reality, and it gives the lawyer the control necessary to manage the case. Indeed, lawyers pride themselves on an ability to detach themselves from their clients' causes. I now believe this attitude is potentially destructive. Truth is important, but it must be moderated.

The tone should be set in the initial client interview. A personal injury lawyer interviewing a mother whose child was injured while playing outside knows that parental neglect will be raised by the defense. But that should hardly be your lead comment to the mother. Being candid should not mean demolishing the client. What the client needs at the outset is support—the truth stated with forceful gentleness. Convince your client that you understand not only the legalities but the human consequences of the problems she faces. You can gain more client awareness and control the case better by listening hard in a long uninterrupted first interview than by sounding siren calls about the dangers ahead.

Your compassion must continue throughout the representation. The client is trying to live a burdened life. The problems of living are magnified, and it is the client — not the lawyer — who must overcome them. Often the problems involve more than the lawsuit. For example, my own legal problems were overshadowed when I discovered a growth in my throat near the thyroid gland. It took two weeks to be sure I did not have cancer.

Lawyers often forget that clients in crises come to them not out of choice but out of necessity. Accustomed to being surrounded by opulence, dining at the most expensive restaurants, and sleeping at luxurious hotels, lawyers risk confusing clients with items on their account ledgers. Lawyers act as if clients have nothing to do but respond to their demands, and pride or a desire to avoid appearing to be a crybaby often leads clients to acquiesce to unreasonable lawyer requests, even amidst the turmoil.

A Lawyer Client acts like a Client, not a Lawyer

During those first several months of investigations by the media, the Congress, the U.S. attorney, an independent counsel, and the grand jury, I was incompetent to represent myself or even to select counsel, much less to participate cogently in my defense — despite decades of experience with the legal system. These investigations went forward as I watched my professional and financial world collapse. Despite the pressures, I was repeatedly produced to testify. My lawyers (not the one who later defended me at trial) knew the importance of these appearances. My cool demeanor led them to decisions they now probably regret — though not as much as I do. I also learned firsthand that the consequences of a decision — no matter how emotionally or financially painful — are far less significant to a lawyer than to the client.

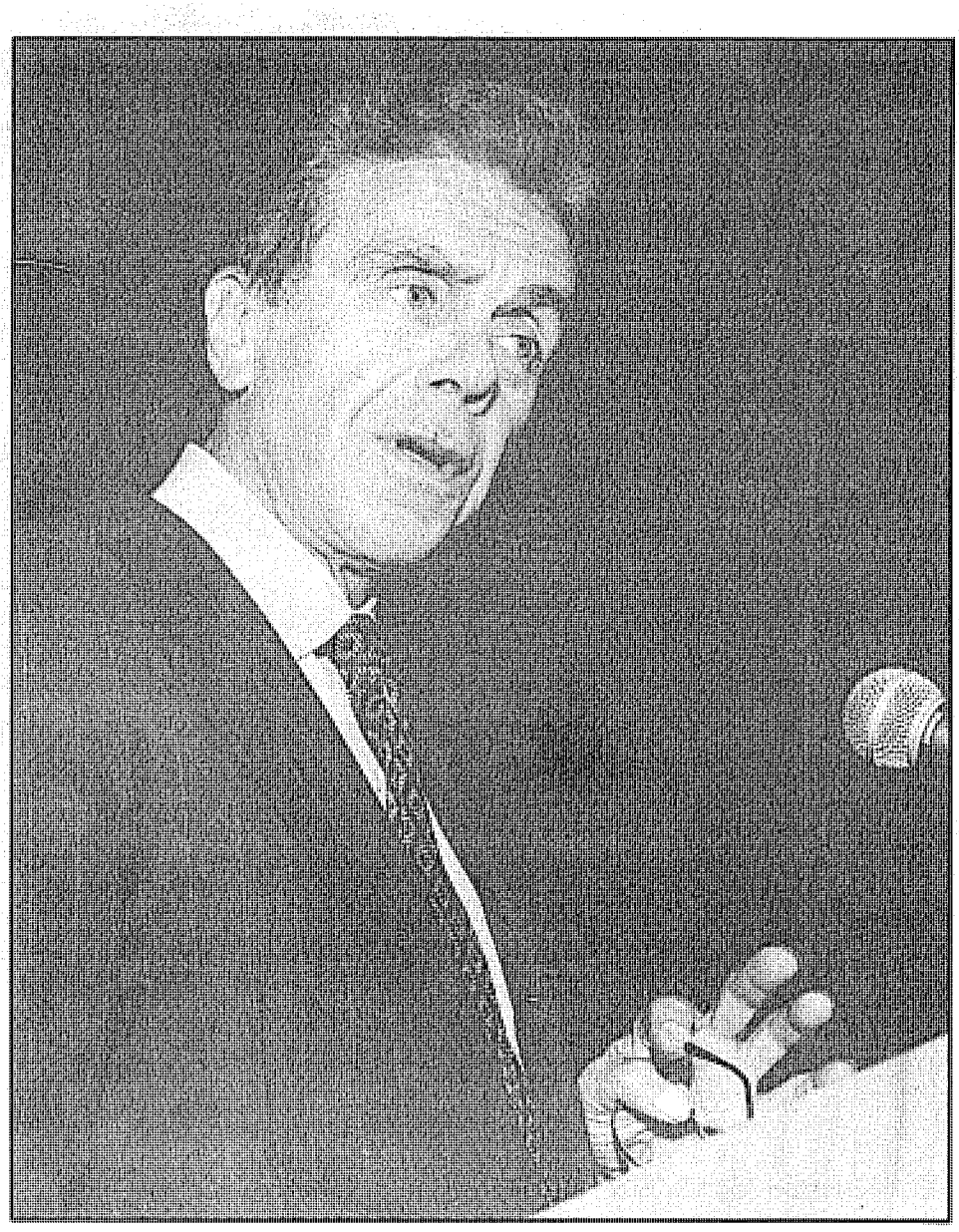
I now see that during this investigative period I was suffering from denial — a malady usually associated with women with lumps in their breasts or men with pain in their chests who do not see doctors. I did not recognize denial in myself. If my lawyers saw it, they said nothing. If they had, I might not have listened; the required degree of trust was not there. I never saw the brilliant criminal defense lawyers because all I could hear through their stolid appearance was their request for a huge fee, payable immediately. Objectively, the fee was reasonable, but I was not objective. I could not be receptive.

The ability to communicate compassion to a client is what separates the mere lawyer from the advocate. Your loyalty to the client, articulated by manner and genuine concern, forms a bond. It opens the client's mind and permits the client and you to form a partnership that can overcome the obstacles. Although you must maintain sufficient distance to evaluate clearly what must be done, in many ways you and the client must be mirror mental images of each other. The client is uniquely able to assess certain issues in a case and has the superior knowledge of the facts. The client's advantages complement your courtroom skills and facility with the law. The attorney-client partnership is not merely desirable; it is essential.

Beyond the strategic benefits, your compassion is important for basic human reasons. The lawyer fills an inevitable void. When the crisis struck, I found out who my real friends were. For their affirmations I am grateful. Yet there were people whom I had counted as friends of long standing who let me down — in some cases at critical points in the litigation. These disappointments occur. The point is that being a lawyer for a client in crisis requires support beyond courtroom skill. The client will be assaulted in ways you cannot prevent; you can and must respond to these setbacks if the client is to have the strength necessary to carry on the battle.

I knew my battle would be a long one, and I felt that as a lawyer, I could and should participate fully in trial preparation, especially because I retained my trial team only three months before trial. For roughly a year before that, a long-time friend had represented me, but he had to withdraw when his wife became seriously ill. Surprisingly, I found that breaking into the inner sanctum of trial preparation was not easy. There was a symbiosis among the members of my trial team the like of which I had never seen. My lawyers worked together as one, and they were good. Perhaps because of their close relationship, my status as a trial lawyer was initially subordinated to my status as a client. To gain access, I had to prove myself.

Mr. Wallach's observations continue in next month's issue of **The Docket**.



1995 Nimmer Lecture delivered by Professor William W. Van Alstyne

SOLUTION
TO THE PUZZLE ON PAGE 4

CROSSWORD Crossword

A	N	T	I	C		S	T	I	F	F		A	D	O
P	I	A	N	O		M	I	N	O	R		L	A	X
E	L	L	A	M	E	A	N	T	A	E		E	V	E
	S	K	I	M	S		T	O	W	N	S	M	E	N
		R	A	T	S		W	A	C	K	O			
S	P	A		N	E	T	S		A	H	I	N	O	S
A	I	L		D	R	A	P	E	D		E	T	N	A
L	E	A	D	S		G	A	L		A	R	R	A	Y
A	C	M	E		A	R	E	A	D		E	L	S	
D	E	B	A	T	E		S	C	A	M		E	L	O
		E	L	I	S	A		T	R	I	S			
C	O	N	T	R	O	L	S		O	T	H	E	R	
A	R	T		A	L	A	M	A	N	T	A	R	A	Y
M	A	R		D	E	N	E	B		E	L	A	T	E
P	L	Y		E	S	S	E	S		D	E	T	E	R

0002

SOLUTION
TO LAST MONTH'S PUZZLE

CROSSWORD Crossword

F	I	A	M		T	E	A	R		C	O	R	A	L
O	L	E	O		O	G	L	E		O	N	I	C	E
P	I	E	R	G	R	O	U	P		N	O	T	E	S
S	A	V	E	U	P		M	E	L	T		E	S	T
	D	E	N	I	E	D		L	I	R	E			
		O	L	D	A	S		D	O	N	A	T	E	
O	B	S		D	O	C	K	H	O	L	I	D	A	Y
P	L	E	D			C	I	I			D	A	T	E
Q	U	A	Y	B	O	A	R	D	E	R		M	A	D
R	E	N	N	E	T		T	E	P	I	D			
		E	R	I	N		R	I	D	E	A	T		
B	A	T		A	S	E	A		G	O	A	D	E	D
A	L	O	F	T		W	H	A	R	F	F	A	R	E
S	I	D	L	E		E	M	M	A		E	L	S	E
S	T	O	O	D		R	E	A	M		N	E	E	D

0001

MIRANDA

from p.1

with the federal government, each continued on their similar career paths. In 1994, Professor Sklansky joined the UCLA Law School faculty while Professor Cassell also headed West, stopping at the University of Utah College of Law.

These old softball teammates were reunited here at UCLA to debate the merits of *Miranda v. Arizona*. Professor Cassell began the debate by arguing that *Miranda* has had a negative effect on crime-fighting efforts here in the United States. Much of Professor Cassell's opinion was based on statistics and regression analysis showing that confession rates and crime clearance rates had decreased dramatically in the few years following the *Miranda* decision and those rates have remained low in the post-Miranda world. Essentially, Professor Cassell argued that *Miranda* unnecessarily interfered with proper police investigation and interrogation causing more criminals to get away with their crimes. Professor Cassell proposes that the *Miranda* warning be replaced with video and audio taping of police interrogations. According to Cassell, this would actually be more effective at eliminating coercive police interrogations but would still allow police to effectively question suspects.

Cassell proposes that the Miranda warning be replaced with video and audio taping of police interrogations.

Sklansky argued ... it is impossible to tell from a recording whether something is coercive.

Professor Sklansky's view was obviously contrary to Professor Cassell's. While commending Professor Cassell for offering an alternative to the *Miranda* warnings, Professor Sklansky argued that video and audio taping should not replace *Miranda* but rather should supplement *Miranda*. Sklansky argued that simply recording all interrogations would be inadequate protection because it is impossible to tell from a video or audio recording whether something is coercive. Further, Professor Sklansky noted that most responsible law enforcement officials actually favor retaining *Miranda* because it provides an easy-to-follow, bright-line rule and that the police have actually learned to use *Miranda* to their benefit.

LIBRARY

from p.2

ROM icon in the LawNet Windows menu.

TOP TEN REASONS WHY YOU WANT TO ACCESS LEXIS OR WESTLAW IN THE OGSM LABS

(1) The high speed laser printers are located there.

(2) Vendor Representatives and skilled student associates to assist you with your searching are available there at designated times (which should be posted on the Lab doors).

(3) The "hot line" telephones (to talk directly to expert representatives at headquarters) are located in these labs.

(4) These labs are open a bit later than the Law School Labs (to 11:00 P.M. M-Th, and until 11:00 P.M. on Sunday).

(5) There are help guides and topical literature available in these labs.

(6-10) Westlaw's lab is typical of film noire, a genre of which you may be especially fond.

RUTTER GROUP BOOKS NOW ON WESTLAW

Many attorneys swear by The Rutter Group California Practice books. These are extraordinarily helpful practice books that include very detailed "hands on" strategic guides to practice in various California topical areas. A number of the Rutter Group California Practice publications are now on Westlaw, including: *California Civil Procedure Before Trial; Federal Civil Procedure Before Trial; Landlord-Tenant; Alternative Dispute Resolution; Civil Appeals and Writs; Civil Trials and Evidence; Law Practice Management; Personal Injury.* What's especially interesting about the Westlaw version of these books is that you can print out blank forms. Type in SCOPE for details on how to use these databases.

REALTORS

from p.10

commercial or residential transaction, it would then be prudent to seek the advice of a specialist.

Properties may be sold 'as is' with no warranties expressed or implied. This caveat is exercised by various governmental agencies when disposing of their properties, particularly the Federal government. The seller may resort to this form of sale. However, the courts have held that if one knew about a serious shortcoming and did not declare it to the purchaser or their Realtor there could very well be exposure to financial liability. This could happen, for example, if the basement of a home flooded during the winter, but this was not disclosed to a buyer who was purchasing the home in the summer. Therefore, the 'as is' clause is not absolute.

Attorneys have been criticized from time to time for delaying a transaction. In many cases it is truly by neglect or their schedule and load is such as to cause a delay. One needs to remember the cardinal rule that **time is of the essence** in a real estate sales agreement. If you accept the responsibility for your client then a timely performance is mandatory. It is also important for lawyers to have the ability and charisma to cooperate effectively with the lawyer on the other side of the transaction. Being expeditious and positive is a good hallmark of a successful attorney. This applies to the Realtor as well.

Many times delays are caused by the appraisal of the property, necessary repairs, or credit requirements. Speaking of **repairs**, one needs to remember that their discovery usually occurs **after** the purchase price has been determined. The seller may have the choice of not continuing with the transaction if these repairs are required, or further negotiation may take place. Sometimes, a great deal of time is spent in arriving at a mutual agreement that is fair to both parties. The attorney should look into whether the repairs are beingmade by the owner or by a professional contractor who is licensed because a do it yourself job could leave the property in a questionable state.

The primary concerns of a lawyer involved in a real estate agreement are carrying out the intent of the party he represents, staying with the elements of the contract and providing good legal advice. Attorneys should be mindful about giving financial advice connected with the transaction if their expertise is limited in this area.

Time is of the essence in a real estate sales agreement. If you accept the responsibility for your client then a timely performance is mandatory.

It is usually the best policy to close the real estate transaction through a reputable escrow agent. Escrow agents serve as a neutral third party which carries out the instructions of the seller, purchaser, and lender. A lawyer may choose to close the transaction at their office, however the attorney representing the other party may wish to send instructions into an escrow on behalf of their client. Usually the sale agreement will cover this aspect by addressing it. Attorneys must understand debits and credits, prorates, typical lending fees, sundry charges which will appear on the closing statement, and the RESPA act. They need to know how to arrive at the bottom line.

Becoming a good real estate attorney is easily attainable. You need to know your numbers and you must have common sense. Be positive, work closely with your Realtor, and if you do not know the answer to something then be sure to ask a colleague or the escrow officer. Real estate services are innovative and enjoyable.