

UCLA

The Docket

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# THE DOCKET

## UCLA SCHOOL OF LAW

Volume 43, Number 6

THE DOCKET

April 1995



Moot Court finalists (left to right) David Kowal, Brian McMillan, Sean Morris and Garth Hire.

### Pound Finalists Display Wit and Wisdom

by Robert Jystad

The intimidation factor loomed large at the Roscoe Pound Moot Court Finals. To your left, you saw video and to your right, the most frightening jury any litigator could contemplate: the faculty. Behind you, the law school's elite and several probably elite professionals clamored for seats. Even Johnnie Cochran would have taken a moment to gather himself.

But, with hardly a hitch, four sturdy advocates took charge of the podium to defend their sleazy beer company's free speech rights or to advance two conservative opportunists' right to torch the flags of male libido. The advocates, Sean Morris, David Kowal, Brian McMillan, and Garth Hire,

### Writing Contest: The Results Are In The envelope please ...

First Place, \$150:  
Todd E. Adler, *Diary of a Mad 1L*

Second Place, \$100:  
Josh Mendelsohn, *Law School and Reassurances*

Third Place, \$50:  
APILSA, *UCLA Diversity Program Makes Regional News*

Congratulations! \*

Thanks again to all the students who found time in the midst of killer schedules to submit some great features, editorials and humor pieces. Thanks also to Raquelle de la Rocha, our faculty sponsor and the person who shepherded the judging for the writing contest. Finally, thank you to the faculty who took the time to judge articles and who read and respond to our paper.

Good luck on finals, everyone. Have a great summer.

\* Winners can collect their checks at the Records Office.

To POUND on p.9



SBA elections force runoffs, including SBA Presidential candidates Carol Elias (left) and Leo Trujillo (right).

### Former UCLA Instructor Seeks Council Seat Bet Tzedek Public Service Lawyer Michael Feuer

Michael Feuer, Harvard Law School graduate, and one time instructor at UCLA Law School, hopes voters for the fifth district will elect him on June 6 to the Los Angeles City Council. Naturally, he considers the students at UCLA important in his campaign since all of UCLA falls within the fifth district.

In April, Feuer prevailed in a hotly contested run-off and now opposes Barbara Yaroslavsky in the final

election. Two candidates, Jeff Brain (Sherman Oaks business leader) and Robert Weintraub (former chairperson of the L.A. School Board) together garnered fewer votes than did Mike. Feuer earned a 40% share of the vote compared to Yaroslavsky's 27%.

Another prominent candidate, Deputy District Attorney Lea D'Agostino, did not qualify for the run off following a misunderstanding with the City Clerk's office.

To FEUER on p.9

To MEETING on p.9



## Town Hall Meetings Respond To Drop in Ranking

### Drop to 24th Raises Concern Among Students

By Gerardo Camacho

The *U.S. News and World Report's* infamous list of America's best law schools recently placed UCLA School of Law at number 24, down 8 from last year.

Confronting the problem head-on, the administration and concerned members of the student body called "town hall" meetings to explain the drop, as well as to collect student input on the school.

Dean Prager opened up the meeting for second- and third-year students by relaying a message from the recent ABA inspection team: "They told me to tell you it's B.S." That sentiment is corroborated by academics and legal professionals who both again ranked UCLA at 16.

Dean Eule addressed the ranking's many problems.

"First of all, the list is constantly and illogically volatile," Eule explained. "Schools cannot possibly go from being one of the best to just mediocre in one year, as the ranking often suggests."

Eule also pointed out an unfortunate combination of events that hurt UCLA's score: a \$1 million budget cut, coupled with an increase in student enrollment. Eule explained that UCLA is the only public law school in Southern Califor-

### Career Services Answers Assumed Role in Drop

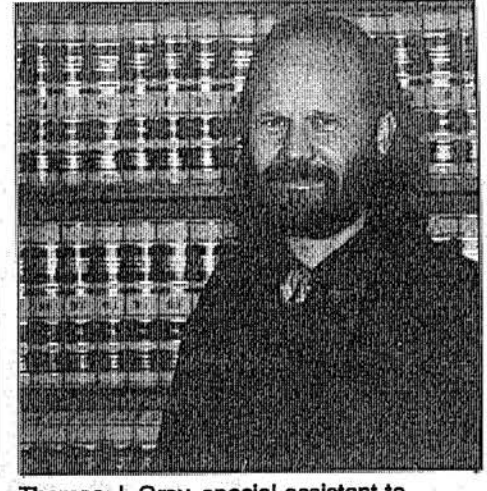
By Alexander Lee

On Monday, April 17th, the Administration held a second "town hall" meeting to discuss possible changes to the Office of Career Services. The Administration organized the meeting in response to the large number of complaints expressed at the first "Town Hall Meeting" regarding UCLA's recent drop in the *U.S. News* law school rankings. The panel included: Dean Susan Prager, Barbara Varat, Bill McGeary, John Power, and incoming Dean of Students Liz Cheadle.

Although only 20 students attended, the students raised a number of valuable suggestions and concerns. In response, Bill McGeary presented the students with a "Needs Analysis Report" (a copy is on file at the Records Office and the Office of Career Services), an internal assessment done by the Office of Career Services on how to better serve the school. Some of the major improvements are already in progress. However, many of the proposed improvements and valuable student suggestions are still open to debate and need support from the student body and the administration. Some of the more important improvements and proposed improvements discussed at the meeting include:

1. Data Reporting. UCLA's recent drop in placement success rank was largely attributed to

To CAREER on p.8



Thomas J. Gray, special assistant to Commissioner Cruz Reynoso

### Mystery Man Reveals Identity

To many people in the UCLA community, the man who occupies the small office on the second floor of the law school is something of a mystery. He looks like he might be a student, but his office on the second floor indicates a different status. The sign outside his door, which says, "U.S. Commission on Civil Rights — Thomas J. Gray — Special Assistant to Commissioner Cruz Reynoso", doesn't really clarify matters, and for

To MYSTERY on p.8

## News &amp; Notes

## ABA Proposes Standardized Consumer Info Reporting Proposal Likely to Affect U.S. News Ranking

Disturbed by the effect the *U.S. News* ranking is having on law schools, the American Bar Association, the American Association of Law Schools, the National Association for Law Placement, and the Law School Admissions Council have joined together to standardize reporting of "basic consumer information."

Under the Proposed Standard 215, "information shall be published in a fair and accurate manner reflective of actual practice." Basic consumer information includes, among others, admissions data, enrollment data, tuition data, facilities, library resources and placement rates.

The proposed standard would change the way *U.S. News* calculates its ranking because the magazine would be forced to rely on the ABA compilations. In other words, the ABA would collect the data, analyze it using its own methodology, and then submit the results to *U.S. News*, *Barrons*, and other interested publications.

The group has specifically targeted placement rates. Proposals for limiting errors of existing methodologies

include deducting graduates who are not looking for work before unemployment rates are calculated and measuring placement data collected nine months following graduation instead of six months, as *U.S. News* does. The latter change would help correct distortions created by firms that wait for bar results before they hire.

The table below, reflecting current data, compares UCLA's methodology with the magazine. *U.S. News* combines three categories to arrive at number of unemployed. The three categories include (1) 75% of unknowns, (2) students not pursuing employment, and (3) students pursuing employment who have not been successful. Category 1 is an arbitrary designation that penalizes schools with low reporting rates and Category 2 has no bearing on placement success.

The collaborative effort by the ABA, NALP, AALS and the LSAC should paint a more realistic portrait of placement than that created in *U.S. News*.

See ABA CHART on p.10

## PILF Congratulates Summer '95 Grant Recipients

**Cesar A. Alvarado** — Central American Resource Center (CARECEN): Direct Legal Services to the Immigrant Community.

**Irving S. Gomez** — La Raza Centro Legal: Direct Legal Services to the Latino Working Community.

**Thomas Sung Hong** — Korean Immigrant Workers Advocates (KIWA): Self-Guide Manual for Immigrant Workers and the Development of a Public Interest Law Practice.

**Jaime Guerrero** — Mexican American Legal Defense and Education Fund (MALDEF): Voting Rights Project.

**Jose Huizar** — Legal Aid Foundation of East Los Angeles: Community Economic Development Program.

**Salvador Mendoza** — Summer Internship with the United Farm Workers of America, AFL-CIO.

**Tanya Nathan** — ACLU: School Nutrition Programs Case, Metropolitan Transportation Authority Case, Anti-Homeless Sweeps Case.

**Loretta Ramirez** — Legal Services Program for San Gabriel-Pomona Valley.

**Cynthia M. Reed** — Lambda Legal Defense and Education Fund: Proposition 187, Political Asylum, and Same Gender Marriage Rights.

**Allana Regan** — The Alliance for Children's Rights.

See PILF on p.10

## Student Visits SC, Stanford Placement Offices Undercover

How do other law school placement offices help their students find jobs? Alex Lee decided it would be interesting to know and went to USC and to Stanford, posing as a law student from each of the schools.

"I said I was a 2L with a low GPA and had received only rejection letters."

The offices at both USC and Stanford were comfortable and the information well organized. But what struck Lee the most was how immedi-

ately helpful the personnel were. After looking over his "resume," they produced an updated list of firms and made specific suggestions like "Try this firm, it looks like it might be a good fit."

Alex's was particularly impressed with Stanford. Stanford students are given diskettes with pre-written cover letters and sample resumes. "They even had up-to-date binders showing how many Stanford alum worked at specific firms." Alex learned

See UNDERCOVER on p.10

## Open Letter to Students From OCS:

In response to student concerns about the placement operation, the Office of Career Services has conducted an internal needs analysis and submitted recommendations to the administration. We encourage interested students to pick up a copy of this memo at the information desk or the Career Services Office, review our recommendations and give us additional ideas for expanding services and resources.

One of the recommendations from students coming out of the recent Open Forum was a need for more career education programs. Accordingly, the Office of Career Services is interested in expanding the planned schedule of panels and presentations for the '95-'96 academic year with programs that meet the needs of our students. Please review the following schedule for Fall '95 and submit any suggestions for additional programs to the Career Services Office, 77 Dodd Hall, or Lynn Herman at the information desk in the law school.

— Bill McGearry

Next Fall's Program Calendar on page 12

## Debating CoFEE, Equal Opportunity, Affirmative Action

By Cynthia Reed, LL

A political war is being waged against affirmative action. Legislation has been proposed by the California Civil Rights Initiative to eliminate affirmative action in all state agencies. The UC Regents will be voting this summer on a proposal to eliminate affirmative action hiring and admission policies within the entire UC school system. On February 16, 1995, 15 Boalt Hall law students were assaulted through their mailboxes with a message that read: "Rejoice you crybaby niggers it's affirmative action month. When I see you in class it bugs the hell out of me be-

To CoFEE on p.10

## Grad Student Assn Authorizes Walkout

By Pablo Harris

On March 2, 1995, the UCLA Student Association of Graduate Employees (SAGE), which represents the research and teaching assistants working on campus, voted overwhelmingly to authorize a campus work stoppage at some point during the Spring quarter.

The strike authorization vote was made contingent upon two conditions; first, the SAGE negotiating committee must continue in its attempts to bargain with Chancellor Charles Young, and 1000 graduate student employees must sign a pledge promising to honor the SAGE picket line.

Given that it took less than two weeks to gather more than 800 signa-

To WALKOUT on p.10

# THE DOCKET

## UCLA SCHOOL OF LAW

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Visiting Professor Robert Peroni talks with members of the Women's Law Union

**Women's Law Union Speaker Series Takes on Tax**

**Visiting Professor Bob Peroni Discusses Child Care Credit**

Women's Law Union asked Visiting Professor Robert Peroni to discuss the child care credit in the federal tax system. As Peroni explained, the system historically treated the costs of caring for children as personal expenditures, like buying houses or cars. Furthermore, in analogizing parenting to marriage, opponents of subsidizing child care through the tax system argued that people choose to have children as they choose to marry. Marriage is not subsidized by the tax system, why should the tax system subsidize parenting, they assert.

Several factors influenced a change. First, society started to recognize a broadening scope of costs associated with parenting. For example, parents who stay home to care for a child cannot enter the workplace unless they hire someone to take their place. Second, the marriage analogy fell apart as lawmakers admitted that the existing rate structure in effect subsidized marriage. Lower rates applied to married couples than to single wage earners, although the benefit largely accrued to single-earner married households.

See PERONI on p.11

**SOME GOOD NEWS ABOUT UCLA Evident Absence of Common Gender Gap**

By Richard Sander, Professor of Law

Several recent studies at law schools across the nation have found that women students, on average, find the law school environment more hostile and stressful than do male students. Two months ago, Professor Lani Guinier and other colleagues at Penn Law school published a study documenting more concretely the gender-related differences in law school experiences and showing that women at Penn, as a group, received far lower grades than men and were substantially less likely to make law review

or receive a variety of other academic honors.

The Penn findings have attracted a lot of attention from the national media. Still more attention is likely this summer, when the Law School Admissions Council releases data that will show (according to early reports) that the "gender grade gap" exists at law schools nationwide.

As researchers attempt to understand what is driving this gender gap, UCLA Law School may prove to

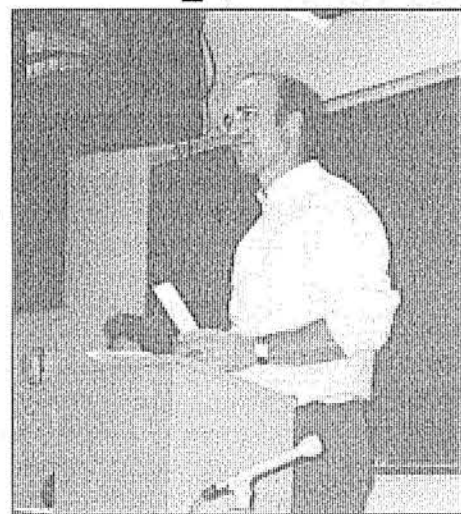
See GENDER on p.11

**Derian Joins Distinguished Rutter Award Recipients**

Steve Derian, who teaches trial advocacy with Al Moore but whom many students also know as our local Sports Law prof, received the 1995 Rutter Award for Excellence in Teaching. Presenting the award to Derian was William Rutter, "father" of the Gilbert Outlines series.

The Rutter Award is given for professors and lecturers who excel in teaching, as measured by student evaluations and creative contributions to teaching. Dean Prager and Professor Al Moore spoke endearingly of Derian, noting his excitement for teaching and the spirit of collaboration he engenders. A certainly notable fact is that in his first year of teaching, Derian received a perfect nine from his legal research and writing class. Dean Prager added several quotes from student evaluations including: "[Professor Derian] is worthy of immediate tenure and perhaps canonization."

Derian not only joins other



Steve Derian, Rutter recipient "Rutter" faculty, but a highly distinguished subgroup of law professors who have received both the Rutter Award and the University-wide Luckman Teaching Award, including Steven Yeazell, David Binder, Gerry Lopez, and Kenneth Karst.

**JUSTICE IN MALAWI A Burglary, a Curse & a Trial**

By Marlo Sarmiento, 1L

Maxwell Phiri looked no more than 20 years old, but he would spend the next 5 years of his life performing hard labor in the Heart of Africa. I remember the vacant expression on his face as he stood, shackled at the wrists and ankles, as the magistrate pronounced sentence on him for burglary, theft, and sale of stolen goods.

The time was 1989—the place, a traditional court in the village of Chinteche, Malawi. I had come to the country two years earlier, fresh out of

college, ready to change the world as a Peace Corps Volunteer.

Little did I know that that world would have more of an effect on me than I had on it. Phiri's trial and the events that led up to it introduced me to the system of justice in a developing country and inspired my interest in human rights law.

In January 1989, thieves broke into the home of Tim Johnstone, a fellow Peace Corps Volunteer who taught

See MALAWI on p.9

**Lamont Comment Receives Benjamin Aaron Award**

By Michael Asimow

Chair, Aaron Award Selection Committee

Dennis Lamont has been selected as the winner of the Benjamin Aaron Award. This award is given annually to the graduating third-year student who wrote the best piece of legal scholarship published in any of UCLA Law School's eight law reviews. Lamont's comment is entitled "Negative Option Offers in Consumer Service Contracts: A Principled Reconciliation of Commerce and Consumer Protection." The comment will appear in the UCLA Law Review.

Lamont's comment concerns a powerful marketing tool: the use of offers to consumers that are accepted by silence. For example, a cable TV com-

pany might inform its customers that they will receive a new premium channel, at an additional cost, unless the customers take action to refuse the offer. The article discusses contract law and theory, as well as game theory, in arguing that consumers should not be bound by contracts arising out of such offers. Moreover, the article argues, the Federal Trade Commission should adopt a rule prohibiting this technique.

Benjamin Aaron, now retired, was a longtime UCLAW faculty member. He made funds available so that this annual \$500 award could be

To LAMONT on 10

**DRUG OR ALCOHOL PROBLEM?**

**ATTORNEYS — JUDGES LAW STUDENTS**

Support groups meet:

- Every Friday at 12<sup>15</sup>, 300 South Beverly Drive, Beverly Hills, 2nd Floor Conference Room and
- Wednesday at 7<sup>30</sup>, 765 West College (Aud.), Los Angeles.

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# PERIODICALS

The first 100 days of the 104th Congress have come and gone. Now the debate rages over whether this period of Congressional history succeeded or a failed.

On one level, there is little doubt that the first 100 days were an absolute success for Newt and his Republican colleagues in the House of Representatives. True to their word, the Republicans brought all ten provisions of their "Contract with America" to a vote. This was all the Contract required. It did not require that all ten provisions pass.

However, even if the Contract did require a passing vote for each of the provisions, the Republican's still

**Nine of the ten provisions of the Contract passed, most with overwhelming support from both Republicans and Democrats.**

would have done well. Nine of the ten provisions of the Contract passed, most with overwhelming support from both Republicans and Democrats. The only provision that did not pass was one which would provide for Congressional Term Limits. A majority of the House members voted for term limits but there was not the requisite two-thirds majority required for a Constitutional amendment. Despite the fact that nearly 70% of the American public was in favor of term limits, the Democrats (and some Republicans) in the House refused to do their jobs as "representatives" of the

## The Fulfillment of a Contract By Matthew Bixler

people. For this, they will have to answer to the people in the next election.

Perhaps another way to measure the success of the first 100 days of the 104th Congress is to compare it to previous Congresses. Upon arriving in Washington two years ago, the members of the 103rd Congress promptly voted themselves a two-week vacation.

Now I'm sure that your first day in a brand new Congress can be a bit taxing (no pun intended), but I hardly think it warrants a two week vacation.

However, this is typical of the mentality the Democratic controlled Congress had developed over the past 40 years. To many members, the institution of Congress was there solely for their personal, political gain. But on a glorious November day in 1994, the American people reminded the Democrats in Congress that they were nothing more than at-will employees.

In comparison, the current, Republican-controlled congress used the

first two weeks of their tenure to pass long overdue procedural reforms in the way the House does business, as well as a bill that requires members of Congress to abide by the same laws they impose on everyone else in America. Of course Dick Gephardt, the Democrat's minority leader in the House, now claims that these were actually old Democratic ideas. Yet somehow he fails to explain why the Democrats didn't pass these laws when they were in the majority. Perhaps 40 years just wasn't enough time to get around to such trivial matters.

In the end, however, the most important test of the success of the first 100 days of Republican rule in Congress will be the impact it has on the lives of all Americans. This is where conservatives and liberals (socialists) differ. Liberals believe that without the paternalistic hand of the federal government to protect us and

guide us we will certainly turn this country into an absolute hell hole where the greedy, wealthy few take advantage of the starving, disease-ridden masses. On the other hand, conservatives believe that giving people the freedom and the obligation to take responsibility for themselves will result in the best possible society. Conservatives do not claim that their policies will result in the equal distribution of economic, social, and spiritual prosperity. Such a system is not only impossible to achieve (see the late USSR), but is also completely undesirable.

History has taught us that society progresses the fastest when individuals are allowed to reap the benefits of their labors and required to shoulder the burdens for their mistakes. This lesson is at the very core of the Republicans' Contract with America. Thus, if

**The American people reminded the Democrats in Congress that they were nothing more than at-will employees.**

the Republican legislation is allowed to take effect, the success of the first 100 days will speak for itself in the form of a healthier, happier and stronger United States of America.



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Opinions

# Search for a Silver Lining

by Gerry Camacho

Rankings, be they the *U.S. News and World Report's* recent law school ranking or the forced curve here at UCLA, have a variety of flaws. They are prone to finding differentiations where there may not be any. They are biased in a number of ways (e.g. against rankees who have less financial or other support than other rankees). In addition, they are unable to take into account every important quality that their subjects may possess.

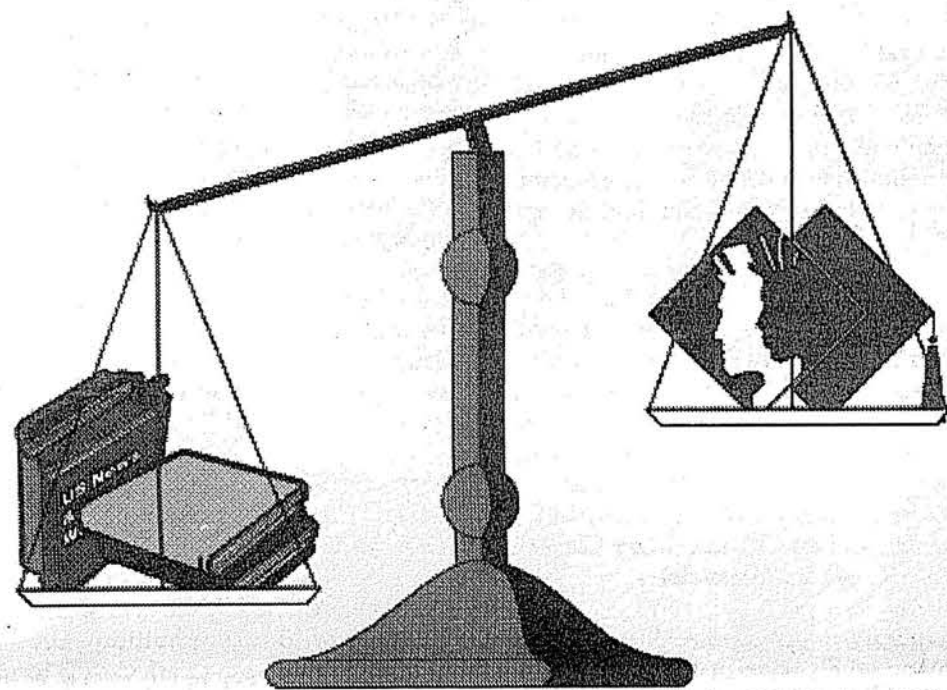
Nonetheless, our society relies on rankings because they are thought to encourage improvement. I would argue that this is not always the case.

For example, UCLA is now

considering relaxing its grading system to improve its own recent "grade." But wasn't UCLA's grading system unsound before the ranking? I wonder whether there would have been any question as to UCLA's grading system if UCLA had gone up in the ranking.

There is a point where rating systems do more harm than good. What if there are 50 law schools, or 500 students, that are equally great, but in different ways? Is this possible in our imperfect world? Not according to the rankings.

Maybe we should rank the rankings.



## The New Political Correctness

By Catherine Whiting

I am about to commit a most politically incorrect act: I am going to defend "politically correct" language. As now defined by the powers that be — Speaker Gingrich and speaker Rush Limbaugh, politically correct language, (and note that I am using the politically incorrect term for politically correct, which is politically correctly referred to as "P.C."), is somehow extreme, ultra-liberal, and just plain silly. "Vertically challenged" in lieu of "short" is cited by those who love to deride P.C., and whose linguistic preferences such as "feminazi," "tree huggers" and "left-wing socialists" are now the rage.

What these new language czars have not figured out yet is they are now politically correct. Since it is now fashionable to bash politically correct language, that makes the formerly politically correct politically incorrect, and the P.C. bashers are now the politically correct. Got it?

In the new politically correct dictionary, "unwed teenage mothers" become "welfare queens" and their children "bastards." AFDC, which accounts for approximately 5% of the budget becomes the major cause of the growing deficit, and "affirmative action" becomes the politically correct way to say that women and blacks have been given all the good jobs and that's why white men are unemployed. "Voluntary school prayer" is short for "Johnny can't read, or write, or do simple math, so let's all pray and that will make the schools better and our country stronger."

Unlike the bad old days when politically correct language tried to create social equality through linguistic equality, politically correct language

incorrect act: I am going to defend "politically correct" language. As now defined by the powers that be — Speaker Gingrich and speaker Rush Limbaugh, politically correct language, (and note that I am using the politically incorrect term for politically correct, which is politically correctly referred to as "P.C."), is somehow extreme, ultra-liberal, and just plain silly. "Vertically challenged" in lieu of "short" is cited by those who love to deride P.C., and whose linguistic preferences such as "feminazi," "tree huggers" and "left-wing socialists" are now the rage.

If affirmative action is the reason why you're out of a job, then you won't waste time getting mad at the corporations that have laid off millions of workers, or the government subsidies which encourage business to move some of those jobs overseas. Instead, you'll be angry at those whom you see as taking your spot. If AFDC is the major cause of the deficit, you won't wonder about the new plans to build 20 or 30 new stealth bombers at the cost of \$1 billion per, but instead will watch with disdain when a woman uses food stamps to buy groceries.

The new politically correct deride and exile the now politically incorrect not because it is silly, or liberal — but because it is powerful. The way we speak is part of the way we think. Orwell made the point in fiction, and Regan memorialized it in politics when he referred to nuclear missiles as "peace instruments." Speaker Gingrich knows that "McGovernites" is a term with little meaning or basis in fact, but a great deal of power. He knows the impact his accusation of "socialists" on editorial boards of major newspapers will far exceed its accuracy.

Somehow, "vertically challenged" doesn't seem all that bad by comparison.

Editorials

## Rankled About A Rank Ranking

As we heard at the town hall meeting, the *U.S. News and World Report* ranking is "volatile," meaning subject to rapid and unpredictable change. This year, as everybody knows, Hasting plunged from the low twenties to 45th. Last year, George Washington took the same dive. Now it is up again (ahead of UCLA). The University of Texas at Austin has also been subject to some pretty dramatic shifts.

We do not know if the administration has called the magazine, as other schools have done in the past. It may help its editors to know that, at least in our instance, listing 75% of nonrespondents as unemployed mischaracterizes the numbers.

George Washington University Law Center's poor ranking proved very valuable to the school, because it sensitized the school to programmatic and budgetary defects, whether or not they were highlighted in the ranking itself. For instance, when the school went to upgrade their computer systems to Pentiums (sort of assumes we don't do much math at law school), it chose to upgrade the student lab prior to upgrading the faculty systems. Trivial for sure, but something for the students, i.e. the consumers of legal education, to be pleased about.

UCLA is likewise responding and the school undoubtedly will be better for it. Hastings, according to rumor, is making its own mad rush to recapture a place near the top tier. But unsettling doubts lurk in the background about a system totally vulnerable to what is obviously a commercial gimmick. How is it that our feelings about ourselves as an institution are so tied up in "somebody else's problem," i.e., generating subscriptions and sales.

Despite the "benefits," including keeping administrations on their toes, we think the whole operation is bogus. We also think that legal education is not captive to the gimmick. To prove it, we issue a challenge to Dean Anthony Kronman at Yale Law School to engage in a little experiment. Dean Kronman, withhold your placement data from the magazine for two years. Our guess is that neither Yale's reputation nor the caliber of its students will drop.

Of course, we could be wrong. Imagine the celebration at Harvard.

## The Best Years Of Our Lives

Some of us develop emotional relationships with the schools we attend. Some students hated many a class and felt isolated from their classmates. But many also remember part or all of their high school or college years as "the best years of my life." Professional schools do not always engender that kind of reflection. This is no penny ante game. When a career is in the balance, neither levity nor loathing comes easily.

Perhaps students should look at their lives through the eyes of those who have travelled this road before. Lawyers who have practiced for a number of years can see law school from a different perspective.

The view from those who have graduated long ago should inspire us: life, in all of its happiness and tribulations is just beginning, and law school is but the very smallest part. But the vision of our future is frightening as well: good grades and a professor's approval are matters of no consequence compared to the real challenges in life.

Enjoy law school. You can be assured, it will be one of the least stressful times of your life.



Sports, page 8

# Entertainment

## Chutzpah and American Law

Book Reviews by Bruce Barnett

CHUTZPAH by Alan M. Dershowitz

REFLECTIONS WITHOUT MIRRORS by Louis Nizer

Dershowitz's book, *Chutzpah* (Little Brown & Company, 1991) quickly became a best seller. Why not? Years before the O.J. trial, nearly every attorney in America knew his name.

Even my parents knew his name. They considered his book a perfect gift when I told them I was going to law school at UCLA. But, thinking back, my parents thought all books written by wealthy Jewish lawyers made perfect gifts for me. When I was still in high school, they bought me Louis Nizer's classic tell-all, *MY LIFE IN COURT*.

It makes me wonder why I started off in medical school. They never bought me any books written by famous physicians. Not even Frank Slaughter. Maybe they thought Dr. Seuss was a physician. But I digress ...

What impressed me right off the bat about Dershowitz's work was that a book bearing a Yiddish title could be so great a hit. But "chutzpah" actually shows up Webster's New World Dictionary many years before Dershowitz' book.

I don't suppose UCLAW Professor Eugene Volokh was very surprised by the title. Volokh discovered that chutzpah, in its various spellings, has appeared in no less than 112 reported published cases. In his essay "Lawsuit, Shmawsuit," Volokh reports the first use of chutzpah nearly 25 years ago, in the Georgia Court of Appeals. See 103 Yale Law Journal 463, citing *William v. State*,

190 S.E.2d 785, 785 (Ga. Ct. App. 1972) (describing the "chutzpah" of breaking into a sheriff's office to steal guns).

Dershowitz defines chutzpah for those who do not grasp its meaning from the above example. Chutzpah "means unmitigated gall, nerve, upityness, arrogance, hypocritical demanding. It is truly in the eye of the beholder." Is Dershowitz not describing the way every attorney sees his adversary? Do not all lawyers then have chutzpah?

Indeed, being an effective attorney often demands a degree of arrogance and hypocritical demanding. Can anyone find a better example of chutzpah than evidenced by O.J. Simpson's defense attorney's. Perhaps their arrogance in attacking the Los Angeles police is exceeded only by the posture of the boys who, after murdering their parents, beg the mercy of the court because they are orphans. That's chutzpah!

Remarkably, Dershowitz argues that American Jews, their reputation for forthrightness notwithstanding, should exhibit more chutzpah, not less. As a tragic example, Dershowitz writes about the American Jewish response to Hitler's death camps. Dershowitz reminds his readers:

Felix Frankfurter was not alone in remaining silent about Hitler's atrocities. The other major Jewish leaders

To CHUTZPAH on p.12

## THE HORRORS OF LAW REVIEW

By Steve Chahine

It has often been considered a personal tragedy for a man to be eulogized as being "but a footnote in the book of life". But if true, what mammoth amount of pity must we reserve for the footnote checker? Behold: Law Review.

Each spring, the blossoming cycle of life in nature is harmonized by the unrelenting drive to emerge from the primordial legal pond onto the sunbeaten shore in hopes of evolving jurisprudential vertebrae. This evolutionary drive compels many 1Ls to Write-On. (Not to be confused with the 70's slang term, "Right-On!")

Eager participants wait anxiously by their mailboxes the Friday before Spring Vacation as their mentors, in a single day, stuff 500 pages of material in each box; a feat no student group, not even Bar/Bri, could hope to accomplish over the course of an academic year. Fortunately, this grand ream comes hermetically sealed in plastic wrap allowing it to be treated as one really thick flyer.

But like any pond, some fish will always take the bait. Wormed hook in mouth, they venture back to their hovels for nine arduous days of toil and trouble. Vertebrae, you see, do not come

easily.

A cursory glance at the Write-On Cover Sheet explains the requirements: In Part 1, you have to write a 10-page "Comment" with 15 pages of footnotes, and, in Part 2, you complete a cite checking-assignment. Let us first turn our attention to Part 1. First of all, there is no such thing as a 10 page comment.

"Hi! Nice shoes."

"I like pesto sauce."

These are comments. A 10-page treatise on FCC cable regulations as they relate to first amendment rights is more aptly phrased as "a waste of my precious time." Granted, to have the Cover Sheet read, "Write a 10-page waste of your precious time" may threaten to discourage the wide-eyed hopefuls, but I believe we would all be somewhat surprised at what little effect this semantic modification would actually have on participation.

In any case, what kind of document requires more pages of footnotes than actual text? It seems to be the custom that you answer the question in the first 10 pages and then answer it again in the footnotes, but this time in smaller

See HORRORS on p.12

## Asimow & Bergman Bring REEL JUSTICE To Public

Students fortunate enough to take courses offered by Professors Michael Asimow or Paul Bergman already know these two lawyers have a keen sense of humor which integrates Law School and the real world around them. Since the real world of Los Angeles includes films and film art, it comes as no surprise that Asimow and Bergman are about to publish a book about lawyers and justice in American movies.

*Reel Justice*, as their book is naturally titled, contains vignettes of over 60 films, all of which have legal themes. Included in the collection are such well known movie classics as *Inherit the Wind* and *To Kill a Mockingbird*.

UCLAW students had an op-

portunity this past year to see these films on campus as part of a law film festival. Unfortunately, the turnout for these showings was disappointing, possibly because the films were shown in the early evening.

But Asimow and Bergman are undaunted by the UCLAW students lukewarm reception to law in the world of film. They expect that a large reading public will find their reviews of better and lesser known law-films interesting. On the other hand, neither Asimow nor Bergman have indicated they expect to leave their day jobs any time soon for careers as movie reviewers.

Michael Asimow has given permission to print this excerpt, in advance of the *Reel Justice* release:

### They Won't Forget

**Synopsis:** Southerners don't care much for Yankees. A northern business school teacher on trial for murder is in very deep trouble.

Warner (Mervyn LeRoy). 1937. Black and white. Running time: 94 minutes. Written by Robert Rossen, Aben Kandel. Novel: "Death in the Deep South" by Ward Greene. Directed by Mervyn LeRoy.

Starring: Claude Rains (Andy Griffin), Edward Norris (Robert Hale), Allyn Joslyn (William Brock), Elisha Cook, Jr. (Joe Turner), Clinton Rosemond (Tump Redwine), Lana Turner (Mary Clay), Gloria Dickson (Sybil Hale)

 (3 gavels)

#### The Story

We're in Flodden, a small southern town in the 1920's. Creaky civil war veterans are preparing to march in the annual Confederate Memorial Day parade. They vow that "they won't forget" the sacrifices made by the Confederacy.

The adorable Mary Clay, a student at Buxton Business College, has a date with her sweetheart, Joe Turner, to watch the parade. Mary returns to school to pick up her vanity. Later, Tump Redwine, a black janitor, finds Mary's murdered body in the basement.

Robert Hale, Mary's shorthand teacher, is in the building grading papers at the time Mary is killed. Hale is a northerner who recently moved to Flodden. Mr. Buxton, the crusty old dean, and Tump Redwine, are there as well.

The press, led by the cynical Bill Brock, goes wild. To ambitious DA Andy Griffin, this is the perfect case to carry him all the way to the U. S. Senate. Griffin can play Dial-a-Defendant, choosing the one who is most unpopular. The hands down winner is Hale, a hated Yankee who should have been watching the parade. Redwine finishes a distant second, since nobody would pay much attention to convicting a black. Buxton comes in last—his social connections protect him.

Reporters invade Hale's apartment, rifle the drawers, and make off with his pictures. A sweet old scribe tricks Hale's loyal wife Sybil into giving an unwise interview in which she admits that Robert never felt welcome in Flodden. To the locals, this is like spitting on the statue of Robert E. Lee. Mary's redneck brothers make it clear that if Griffin won't prosecute Hale,

To REEL on p.14

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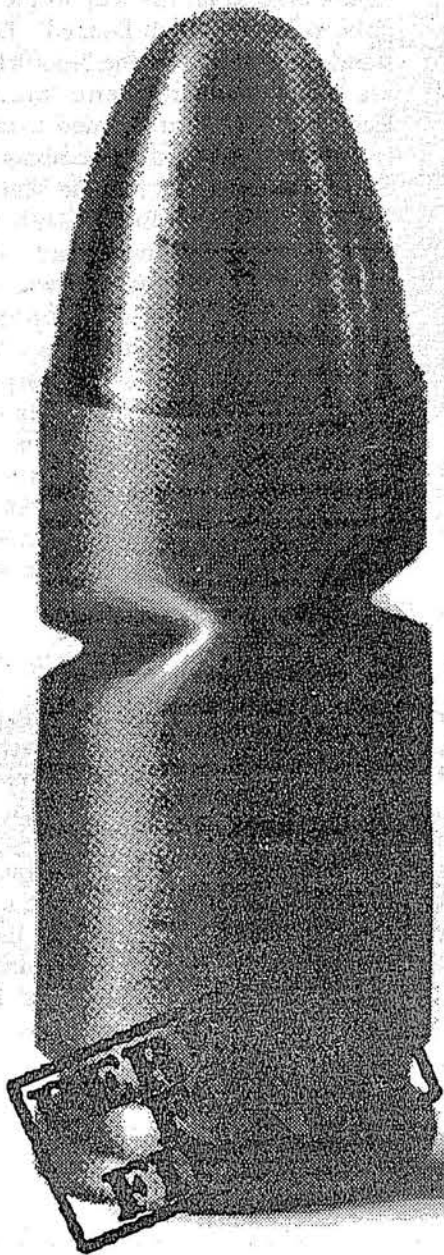
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# Sports



## SALARY CAP: DE JURE or DE FACTO

By Donna Davis  
Sports Law Editor

The uneasy peace of the strike settlement was a win-win situation. The Fans got a baseball season, the players got the old system with arbitration-no salary cap, the owners got real players to start the delayed season.

Contrary to popular belief, win-win situations have hidden costs, depending on who gets to "win" first. In this case, the owners get the first win. Although there is not a league imposed salary cap, each team can adjust its roster payroll as it sees fit to accommodate its financial situation. Everyone knows that all of the teams lost millions in revenue. Consequently, to compensate for this big loss, the small market teams have been having garage sales for players with

expensive salaries — who no longer seem to fit in their plans for the future.

These owners seem to be banking on the fans being so happy to have "real" professional baseball that these fans won't mind the lineup changes. Who can remember the starting line up from August, 1994 anyway? This pinstriped, tobacco chewing player may be different from that pinstriped tobacco chewing player, but from the bleachers they all look alike.

Players won newfound freedom in the free market. However, many of them lost "value" overnight — rapid deflation. Cy Young winners were going for a sigh; rightfielders were getting left out; leftfielders were

## CERT. DENIED WINS BRIAN K. FAIR BASKETBALL TOURNAMENT

On Saturday, April 8 the UCLA Sports Law Federation held the 4th annual Brian K. Fair Basketball Tournament. The tournament drew over sixty law school students and at least two alumni. Due to a powerful aftershock that ended last year's Tournament early, there was no returning champion this year. However, the Daddy Macs, fresh off their flag-football championship were looking to become two-sport stars. But their title hopes were crushed after losing in the double

elimination tournament to the two teams that eventually met in the finals: Cert. Denied and the Reefers. The upstart Reefers, comprised of first year students, fought their way through the grueling loser's bracket all the way to the finals only to lose to Cert. Denied. Led by stand-out Todd Litfin and 3-point bombers Glenn Rothstein and, alumnus, Kenny Himes, Cert. Denied overpowered the Reefers. Other members of the championship team include Matt Taylor, Troy Benson, Brian Center, and Aaron Friedland. Noticeably absent from this year's tournament was superstar Abe Edelman who reportedly locked himself inside the computer lab and was unable to attend. Barpassers sponsored the event, supplying drinks and paying for the referees. The Tournament's namesake, Brian K. Fair, was a popular career placement advisor before moving on to private practice. Maybe the school should get Mr. Fair back to work here.

leaving to become actors; pitchers were folding their tents — the game may remain the same, but the team's players changed.

Then, there is that replacement ball bonanza — some of those guys had real potential, and you can sign them for the league minimum. Consider it great scouting — the next star of the future. The blank lineup card will be used on a daily basis to pencil in the latest personnel. The rotisserie league goes big time.

If you should catch baseball fever — seek medical attention soon. Since the umpires are not happy with their contracts, they may call a "strike" of their own.

### MYSTERY from p.1

some it might even add to the confusion. To paraphrase Admiral James Stockdale, H. Ross Perot's 1992 vice-presidential running mate, "Who is he and what is he doing here?"

Tom graduated from UCLA in May of 1993, the same month Cruz Reynoso found out that he had been appointed to the U.S. Commission on Civil Rights. The next week, after Professor Reynoso was told that he could have a full-time staffer on the Commission payroll to assist him with Commission business, Tom was offered the job. Naturally, he accepted on the spot.

Tom is the first to admit that even 3 years ago he never thought he would be working with someone like Cruz Reynoso. Instead, he anticipated returning to Northern California and either joining a very small firm or simply hanging out his own shingle in a small town. But life is fluid, and since graduation Tom has found himself in a variety of interesting, if unexpected, settings.

For example, in his first month on the job he made his first trip to Washington, D.C. where he found himself participating in a meeting with Webster Hubbell of Rose Law Firm fame. At the time, Hubbell was the number three person at the Department of Justice. At the conclusion of that meeting, he was shaking hands and talking with Janet Reno. Several months later, he accompanied Professor Reynoso, who had been appointed Vice Chair of the Commission, and the Commission Chairperson to the White House, where he argued strategy with one of President's Clinton's counsel on some Commission matters. And twice this year, his boss has asked him to attend meetings with Gilbert Casellas, the Chairman of the EEOC. It's doubtful that many of UCLA's other graduates can simply pick up the phone and talk to the people Tom can.

But if you ask him, Tom will tell you that the high point of his service (other than arguing with the President's

counsel) was debating Ron Prince at the University of Michigan on March 8, 1995. Michigan's Political Science Department has an annual debate which focuses on a specific "hot topic", and this year's topic was Proposition 187. The proponent for 187 was Ron Prince, the Orange County accountant who was the instigator of the proposal; Tom was picked to speak in opposition.

"I was really pleased to have been chosen, because apart from being unequivocally opposed to 187, I had seen Prince speak a few months before. He had made all sorts of outrageous claims and assertions about immigrants, the undocumented, how they fraudulently receive social services, and are generally a burden to the taxpayer. I was really bothered by his presentation of all these assertions as "facts", when he didn't have any sources for any of them and when I knew that they were almost all untrue or incorrect. I saw speaking at Michigan as an opportunity to confront him on his statements, and I prepared accordingly."

Judging from Prince's reaction at the debate, Tom's preparations were more than sufficient. After obtaining a transcript of the Prince's prior remarks, he contacted a high-ranking official of the Los Angeles Unified School District about statements Prince had made relating to education. He then called Mr. Eddie Tanaka, the Director of the Department of Public Social Services (DPSS) for Los Angeles County, and discussed Prince's statements relating to welfare and Medi-Cal. Tanaka then put Tom in touch with Mr. Bill McFadden, the director of the division which handles those programs. Tom explained what he needed from DPSS, and McFadden was only too willing to cooperate.

When the debate started, Prince spoke first. Not surprisingly, he repeated all of his prior statements about the undocumented: how they are

a financial burden to the taxpayer, how they fraudulently receive services they aren't entitled to, etc. Many of the people in attendance heckled Prince as he attempted to speak, and Tom eventually took the microphone and asked them to hold their comments. "I've been looking forward to this for some time", Tom said, "and I came all the way from California for the opportunity to correct Mr. Prince's erroneous statements. But if you don't let him make them in the first place, I can't really comment on them, can I?" The crowd took the point to heart, and from

then on allowed Prince to speak.

As promised, Tom wasted no time in addressing Prince's misstatements. He first explained to the audience that he had seen Prince speak in December of '94, that he had a transcript of those comments, that Prince had repeated those same charges to the current audience, and that he couldn't help but note that neither time did Prince provide any citation to authority. He then told them that he had selected a few of Prince's assertions and had asked the people who ran the various programs Prince had referred to for their com-

See MYSTERY on p.11

### NEEDS from p.1

poor data reporting. The *U.S. News* methodology treated nonreporting students as unemployed and UCLA's low student reporting painted an inaccurate picture of our placement success. The Dean and the Offices of Career Services intend to improve the collection and reporting of data by using incentives for students to report and engaging in more informational surveys.

2. Resources. The administration wants to upgrade the Office of Career Services resources directories, job resource guides, and provide better organization and access to the materials for students. Most importantly, the Dean is attempting to allocate funds for the purchase of computer systems. With the new technology, the Office would create an E-Mail network with student job listings, newsletters and other event and employment information, in addition to providing a means for improving communication with the legal employment community.

3. Information. The "needs analysis" report and student suggestions both focused on a need for improved informational services. Misinformation and lack of information were two of the problems that students com-

plained of most often. The addition of on line data banks will provide statistics on UCLA alumni/ae placement, breakdowns by geographic distribution and practice area, and target firms that participate in hiring 1Ls. Furthermore, an experienced full-time professional placement coordinator will be added to the staff to help with student questions and concerns. The administration is also considering earlier access to Career Services for 1Ls and extended hours for all students.

4. Special Programs. This particular area was stressed by the administration as one where a concerted effort by faculty, students, and staff need to work together in effecting change. Some of the more workable ideas included post-graduate employment programs, 2L and 3L mentor programs, and the creation of a super committee composed of faculty, students, and staff to work exclusively on placement issues.

In summary, the students have expressed their concerns and the administration is making a concerted effort to respond very quickly. What happens over the next year concerning the Office of Placement Services depends on student participation and administrative cooperation.

## POUND from p.1.

showed great poise, periodic brilliance, and show-stopping humor.

The best line came from Garth Hire, who jumped all over the strangest ritual of the day. When asked to spell his last name, Hire said, before three very prominent judges, "H-I-R-E, as in me." You had to be there.

The judges, the honorable Sandra Brown Armstrong, District Judge from Cal. N.D., the honorable Pasco M. Bowman from the Eighth Circuit Court of Appeals, and the honorable J. Spencer Letts, District Judge from Cal. C.D., asked straightforward questions most of the time. But they reserved a few dillies, for example:

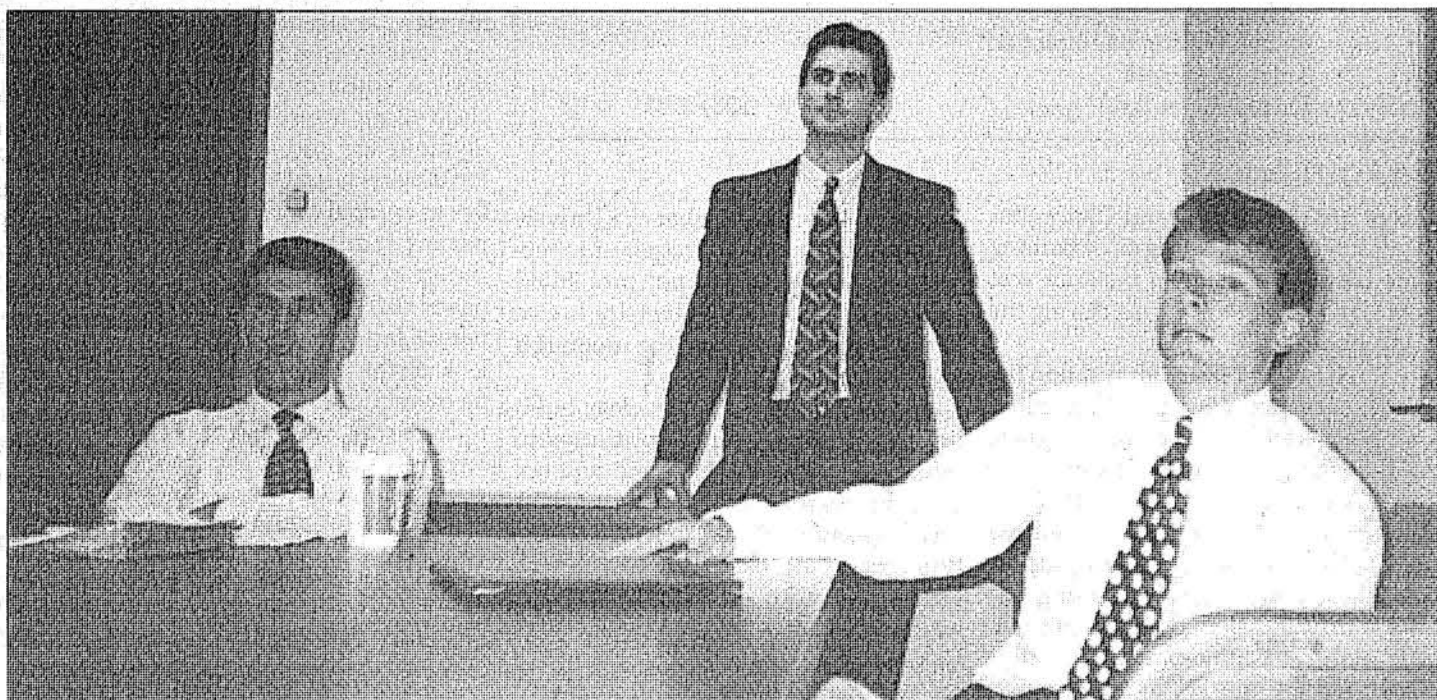
"Lawyers are paid to help their clients comply with the law, and you are saying you don't know?"

"Why create a standard that would allow every claim to escape summary judgment and get to the jury?"

"Why have jurors argue over something that can't really be answered?"

On the spot and in the spotlight, advocates held their own and at times shined. Special mention must go to Brian McMillan. His professionalism will take this sharp team very far when they head to regionals and, a very good bet, beyond.

Right: Stacey Glover who, with Jason Axe (not shown), is a briefwriter for the national team  
Below: Moot Court finalists before their performance



## MEETING from p.1

nia, whereas Northern California has three public law schools. Therefore, UCLA is pressured to enroll larger classes. Given that the "faculty resources" ranking, one of several subrankings used to compile the final ranking, is calculated with money available per student, UCLA suffers a disadvantage.

Eule added, "The report also gives no consideration to the amount of money available to public institutions, which is less than private institutions."

The methodology used to determine the placement ranking also hurt UCLA. (See "ABA Proposes Reporting Standard, p. 2.") According to Dean Eule, that particular subranking turns out to be very important for the overall ranking. "The employment category of the listing is so competitive, and the numbers so compressed, that a very small difference in percentage not employed can mean a very large drop in the ranking," Eule explained.

The ranking, with all of its problems, did bring students and administration together to discuss some important issues. "The treatment I receive at the career placement office is terrible," one student announced, "it's worse than going to the DMV." Several students applauded and Dean Prager assured them that any problems with the placement office would be addressed.

Other student concerns were raised as well, such as UCLA's confusing and arguably unfair grading system and the unsightly rooms used for on-campus interviews.

Overall, the ranking and the meetings it provoked successfully opened several lines of communication among students, the administration, and the faculty.

## FEUER from p.1

## L.A. Times Endorses Feuer Over Incumbent's Wife

Yaroslavsky, wife of the former councilman who represented the area for nearly 20 years, amassed enormous financial resources and the endorsement of Mayor Richard Riordan. Nevertheless, Feuer proved more popular at the polls. Feuer was undoubtedly greatly helped by the strong Los Angeles Times endorsement, citing his outstanding leadership as executive director of Bet Tzedek Legal Services.

## Bet Tzedek and UCLA

But dozens of UCLA Law students already know Feuer from their work as externs at Bet Tzedek (Hebrew for "House of Justice"). For years, UCLA students in their first and second years have gained valuable legal experience through Bet Tzedek (offices in Fairfax and North Hollywood). A reflection of Feuer's commitment to excellence is the intensive training, and close supervision each law student has received during externship at Bet Tzedek. During Feuer's tenure, the Bet Tzedek budget doubled to \$3 million dollars. A new computer system and library in 1995 will even further improve the quality of law students' experiences at Bet Tzedek.

## Politics and Public Service

Public service law has proved dynamic and rewarding for Mike Feuer. On June 6, 1995, Feuer may even credit public service law for providing a critical boost in his evolving political career.

UCLA students interested in participating in his campaign should call 310 247 0395 and ask for Diane.

## MALAWI from p.3

at Chinteche Secondary School. Tim had invited a group of other volunteers, including me, to visit that weekend, having lured us with stories of white sand beaches, grilled fish, mangoes, and hippo-free swimming in Lake Malawi. After returning from a fun-filled day, we found Tim's house ransacked.

For most of us it was the first time that we had been victims of a crime. Each of us reacted differently.

Beth Ford shrugged off her missing GoreTex windbreaker and various other pieces of clothing. Mike Javernick, who lost a sleeping bag, backpack, and his favorite Swiss Army knife (one of those with a zillion attachments) cursed the unseen thieves, their mothers, fathers, and country. This incident was the last straw for Mike, who returned to Colorado soon afterwards in time for some spring skiing. Mike's roommate, Rob, had his Sports Walkman with solar-powered clock stolen, but seemed more concerned about the Bob Dylan tape that was inside it.

Tim was the most calm of all of us, despite the fact that the thieves had broken into his place and made off with most of his clothes, tape player, cassette collection, and even pots, pans, and utensils.

The thieves had gotten hold of my sleeping bag, toiletry kit, and rain gear, but I was mostly mad because they had also taken my daily journal, some exposed film, and a tape recording I had made of a Chewa female initiation ceremony.

We sent a messenger to summon the district police ten miles away. They arrived two hours later and had us itemize and give a monetary value for everything that was missing. When we came up with a figure of 3,000 kwacha (a little over \$1,000 or, from an-

other perspective, five times the country's per capita income), the officer in charge winced. He promised us that he would devote his full efforts to getting our stuff back. We left that weekend doubtful that we would ever see our things again.

What followed was an amusing but Kafkaesque affair of Third World justice.

The police's suspicions immediately turned to a man from a local village whom Tim had hired to help with laundry and housecleaning. The day after the break-in, the police interrogated the man and searched his entire village. The man related to Tim how the police had beaten him for information. When they came up with nothing, they searched other villages. Although almost everyone had heard about the burglary, no one seemed to have any information about it.

A colleague at Tim's school suggested that we ask a traditional healer to put a curse on the thieves. Tim and I were a bit skeptical, but we yielded to our curiosity and desperation.

We set out about two weeks later for some high hills overlooking Lake Malawi. Accompanied by a guide, we followed an oxcart track that gave way to a footpath after two miles. From there the path led upward into the jungle. The path followed the contours of the land, occasionally punctuated by a small stream or fallen tree, and ended at a clearing on a ridge.

In the middle of the clearing was a compound, surrounded by tangles of thick branches that served as a fence. We entered the compound to find a large thatched structure flanked by some smaller huts used for sleeping and cooking.

The main structure was dark inside. When my eyes adjusted from the tropical sun, I noticed about thirty vil-

See MALAWI on p.11

ABA CHART from p.2

| Updated Information on Employment Status, Class of 1994 |               |
|---|---------------|
| Class of 1994   | 293           |
| Unknown   | 9             |
| Reported  | 284           |
| Reported - Not Seeking                                  | 12            |
| Reported - Seeking                                      | 272           |
| Reported - Seeking (Employed)                           | 253           |
| Reported - Seeking (Unemployed)                         | 19            |
| Employment Rate   | 93% (253/272) |

| Given Updated Information<br>What the U.S. News Methodology Would Report |               |
|--|---------------|
| Total  | 293           |
| Total Unemployed   | 37.75         |
| (a) 75% of unknown (9 x 75%)   | 6.75          |
| (b) Not seeking  | 12            |
| (c) Seeking unemployed   | 19            |
| Total Employed   | 253           |
| Employment Rate  | 87% (253/293) |

WALKOUT from p.2

tures of SAGE workers, and Chancellor Young have shown no signs of coming to the bargaining table, a walkout will likely take place at some time during the Spring quarter.

At issue in the confrontation between Chancellor Young and the union is the University's refusal to recognize SAGE as the bargaining representative of UCLA's teaching and research assistants. In May of 1994 SAGE submitted union authorization cards from a majority of these employees, but Young has refused to acknowledge the union's majority status. Young claims that he is prohibited by the Higher Education Employees Relations Act (HEERA) from recognizing and bargaining with a union which represents research and teaching assistants.

The Public Employees Relations Board (PERB), the agency responsible for adjudicating claims involving public employee unions and the State Agencies which employ them, recently issued a decision holding that teaching and research assistants are not employees within the meaning of HEERA. The ef-

fect of this decision is that the University of California is not required to recognize SAGE, but it is not prohibited from doing so. The University is free to voluntarily recognize the union if it so chooses.

In spite of PERB's clear holding, Chancellor Young continues to refuse to recognize SAGE and will not make his reasons for this stance public. SAGE recently offered to hold an election among all teaching and research assistants in an effort to prove the nearly universal support enjoyed by the union but Young refused to respond to the union's offer.

Prior efforts to pressure Young into recognizing SAGE have included "Teach-Out" in which the teaching assistants held classes and office hours outdoors as well as numerous letters to Young and University regents. These efforts have fallen on deaf ears leading to the authorization of a walkout committee raising the possibility that employees would walk off the job sometime during the Spring quarter.

[Editors: The walkout took place Wednesday and Thursday April 26-27.]

CoFEE from p.2

cause you're taking the seats of someone qualified."

In mid-February, two dozen law students came together to discuss the crusade against affirmative action. At that first meeting we informed each other of political developments and spoke passionately about our personal experiences. Some had publicly responded to Alan Favish, a lone attorney at war with UCLA's admission policy and convinced that qualified "whites and Asians" were being disfavored over "unqualified" Blacks and Latinos. Others had overheard or been subjected to law school locker room talk from classmates who feel that affirmative action is no longer necessary and deprives qualified white (and/or male) students from rightful admission to this law school. I will personally never forget discovering racist graffiti in our own Darling library, which read: University of Chinese and Latin Americans.

From that meeting, consensus emerged that we needed to organize in order to educate ourselves on affirmative action, take responsibility for a policy that is equally the child of law and politics, and have a strong and effective voice in the national debate. An ad hoc group, the Coalition for Educational Equity (CoFEE), was born. CoFEE represents a broad cross-section of the law school. Its members are also active in student organizations, such as APILSA,

BLSA, La Raza, LBGA and the Women's Law Union. CoFEE is still open to all interested students with concern, ideas, and —most of all— energy.

CoFEE's main accomplishment was organizing the Symposium on Affirmative Action, held on April 27, 1995. The Symposium successfully brought together students, faculty, administrators, community leaders, elected officials, labor leaders, and legal practitioners. A leadership luncheon facilitated communication between community leaders. The panel discussion analyzed the legal and social foundations of affirmative action and proposed new strategies for protecting equal opportunity and access. Panelists included: State Senator Richard Polanco, Chair of the CA Latino Legislative Caucus; Elizabeth Schroeder of the ACLU; Kathryn Imahara of the Asian Pacific American Legal Center; Ophelia McFadden of SEIU Local 434; and UCLA's own Professor Cruz Reynoso. The day ended with an informal reception where students approached panelists to continue the debate.

CoFEE members successfully ran on an SBA slate committed to bringing these issues to a wider audience. And CoFEE plans to continue organizing in the fall of 1995, especially around the CCRI legislation and other national policy battles. So look out for posted meeting times and join us.

REFORM from p.2

School of Law, teaching such courses as poverty law and health law. Prior to his UCLA professorship, he had a distinguished tenure at Wisconsin Law School. He has served in various capacities on the National Academy of Sciences and chaired a Wisconsin Governor's task force on welfare. He has spent most of his professional life involved in the topic of welfare and just completed a book on welfare reform (due out this August). The words "knowledgeable" and "articulate" well describe both panelists.

Speaking to an attentive audience of over 55 people, Professor Wilson laid out his ideas on the subject. The core problem in welfare reform, in his view, is out-of-wedlock births. He supports this with a battery of statistics. A study of white male students showed an approximate doubling of delinquency and anti-social behavior for subjects raised in single parent families as compared to those raised in two parent families. Poverty was also shown to be a contributing factor. Statistics also show more and more single parent families start from out-of-wedlock births. The size of cash welfare payments does not seem to drive the welfare rolls; the size of the payments have remained stagnant for the past 20 years (admittedly, these studies did not account for non-cash welfare benefits). Statistics show out-of-wedlock births have increased dramatically as a percentage of total births since 1960, both in the U.S., and around the world.

How do we reduce out-of-wedlock births? Professor Wilson stated "we don't know." Despite a spate of experiments in welfare programs, the results have been ambiguous. One study in New Jersey did show an 18% drop in birth rate for women who had AFDC benefits reduced when they had another child while on AFDC. Another study involving a negative income tax to poor families in Denver showed a positive correlation between an increase in tax benefits paid under the program and an increase in divorces.

Professor Wilson favors welfare which will help people going through a troubled stretch of their lives but which won't allow them to remain on its rolls for long periods of time. He said we add to the problem of poverty by hindering people from getting married when they have children. One helpful program may be a program of resocialization for reconstituted families, where young, married women can live with others for a period to socialize the child and mother.

Professor Handler pointed to differences in President Clinton's Work and Responsibility Act and the Republican package. Clinton's plan calls for education and training and 2 years on the welfare rolls, then private sector work in a subsidized job. Professor Handler pointed out that the Republican package denies aid for children conceived on welfare or where paternity cannot be established. He also pointed out that welfare payments constitute a small percentage of the budget — quite small compared with medicare, medicaid, and social security payments.

Professor Handler argued that much of the rhetoric operates from mistaken assumptions. He states that the problem of family values is a problem of poverty. He points out that the total population of people on welfare equals about half the population figure below the poverty line. Because wages and opportunities have declined, comparing wages and opportunities with welfare is no longer a credible idea. He

PILF from p.2

Kelly Rozmus — Public Counsel: Homeless Youth Project

Carmen Santana — San Fernando Valley Neighborhood Legal Services: Housing Development Unit Project.

Samuel Rivera Santana — Mexican American Legal Defense and Education Fund: Proposition 187 Immigrants' Rights Project.

Saul Sarabia — ACLU: *Greorio T. v. Wilson* and *Voting Rights Coalition v. Wilson*

A. Mina Tran — ACLU: organize volunteer attorneys to represent indigent defendants in gang-related nuisance actions.

Rebecca Wheeler — San Francisco Neighborhood Legal Assistance Foundation.

*PILF would like to thank Julia Mass for doing an excellent job organizing the grant selection process. We would also like to thank all the professors, students, and alumni who gave so much of their time to this difficult process of choosing the grant recipients.*

UNDERCOVER from p.2

that Stanford students attend both an initial interview meeting and follow-up meetings with placement officers to strategize about getting a job.

Alex is working with our Placement Center and drawing on his experiences to assist UCLAW with changes it is in the midst of making. See his article on page 1.

LAMONT from p.3

awarded for the best piece of student legal scholarship by a graduating law student. The selection was made by a faculty committee (consisting of Professors Asimow, Grady, and Schwartz) that reviewed all student work published or to be published this year in any of the school's law reviews.

states that the idea that there are enough jobs paying a living wage for all of the unemployed poor is a myth. Most welfare recipients are adults with small families who are either working or caring for young children (?) He states that all the rhetoric is just symbolic politics — we are blaming the victims.

Professor Handler sees several mitigating statistics: he notes that the average size of families on AFDC has declined from 4 people to just under 3. Also, the out-of-wedlock birth rate is approximately the same today as it was in the 1950's (the difference being that most of those bearing children married their partners in the 1950's). Regarding generational dependency, he states that 80% of the children of welfare recipients are not welfare recipients now that they are adults — however, this is 7 times higher than people who weren't on welfare as children. He concludes that the stereotypes of people on welfare simply don't match reality.

Looking to solutions, Professor Handler recognizes that the child-out-of-wedlock issue is very important and he doesn't necessarily believe that giving money is the answer to the problems of welfare. He does favor focusing on hardcore dependency. He believes that giving earned income tax credits is good, and raising the minimum wage will help alleviate the problems.

## MALAWI from p.3

lagers sitting on two rows of wooden benches, ten deep. The floor, like the ground outside, was of packed clay, swept meticulously in Malawian fashion.

A healing was already underway and no one seemed to pay any attention to us when we entered. The healer looked in his mid-twenties, wearing a grass skirt and a white smock with an International Red Cross emblem on the front. The contrast was amusing. He sat in a large high-back chair. Occasionally he would say something, but mostly he would point at items for his young shirtless assistants to bring him.

We waited as he dispensed with several cases before us. One man complained of his impotency and was given a brown liquid to drink. A woman who kept clutching her arm was told to rub an ointment on it and place it in a sling.

When our turn came, the assistants had us sit on two low stools. The healer pretended not to know what our problem was. He tried to impress us by bowing his head for a few minutes, seemingly deep in thought, after which he proclaimed that we were there to find some *wakhuba*, thieves. The crowd broke out in collective whispers.

The healer unfolded what appeared to be a leaf that contained a brown powder, some of which he snorted through each nostril. After a few minutes, he began shuddering and entered into a trance. His assistants began beating goatskin drums, first slowly, then methodically faster. All the while the healer jerked his body in response to the staccato of the drums.

He mumbled some things, fell to the ground, and thrashed about on the floor. Finally, he lay still, exhausted. The assistants helped him back to the high-back chair, where he rested.

The curse was complete, his assistants proclaimed. We would get our things back, and the *wakhuba* would face justice. The assistants ushered us out of the structure into the abruptness of daylight.

I turned to Tim, who looked just as surprised as I was. As we walked back to his house, we agreed that the afternoon's experiences were definitely worth the ten kwacha that we paid the healer, even if we never got our stuff back.

About a month later, the police contacted me with news that someone had confessed to the burglary. Unfortunately, they could not find any of the goods. By then I didn't really care how things turned out. My thoughts turned at the time to attending an annual Peace Corps conference at Cape Maclear, a resort on the shores of Lake Malawi.

As I waited to board the overnight ferry to Cape Maclear, I noticed something unusual in line ahead of me. There, among the other Malawians with baskets of food and sundries, stood a neatly-dressed young Malawian listening to music from a Sony Walkman. When I looked closer, I saw that the Walkman had a solar-powered clock.

I immediately remembered that Rob's Walkman was of the same kind, and, my interest piqued, I confronted the young Malawian. He claimed to have bought it for 100 kwacha through the mail from Japan. When I countered that the Walkman went for three times that amount and that the government's foreign exchange restrictions would have prevented him from ordering items from abroad, he panicked.

He tried running away, but I yelled *wakhuba!* The crowd immediately gave chase, eventually catching him. In the Malawian form of justice, they beat him until he was bloody. It was such a strange sight to see a crowd of families and passers-by transform into vigilantes over one word, *wakhuba*.

After the crowd finished, they brought him to the police station, bleeding, moaning, and bruised. Children ran alongside chanting, "*Osalile, wabha wekha.*" "Don't cry, stealing is lonely."

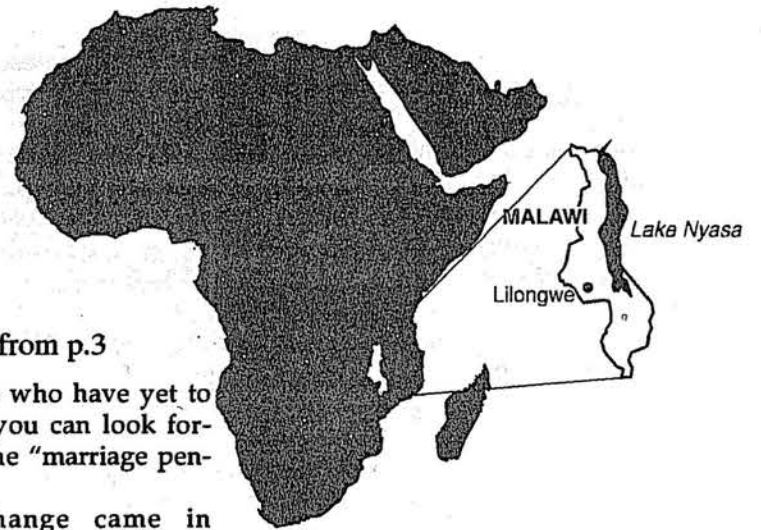
In Malawi, a *wakhuba* faces two gauntlets, on the street, and another in the prosecution and inevitable conviction in court. Malawi, like many former British colonies in Africa, guarantees the right to counsel in criminal trials. The reality, however, is that most defendants do not have any money to hire counsel. Moreover, there is no public defender system in place. Malawi, one of the ten poorest countries in the world, simply had more pressing priorities than preserving the rights of criminal defendants.

At the trial, I learned the *wakhuba's* name: Maxwell Phiri. To Michael Javernick, he was a thorn and one of many reasons to leave this cursed country. To the crowd that beat Phiri, he was an accepted outlet for aggression in a culture and society that stressed order. To the government, he was an embarrassment. To the prosecutor, he was deserving of the maximum sentence because he had stolen from Americans. In the end, the magistrate confirmed what many people had believed: Maxwell Phiri was a thief who would get his just desserts.

Surprisingly, we got most of our stuff back soon after the trial. I have often wondered, however, about the person who had allegedly confessed to the police right before the vigilante incident. The police apparently released him after Phiri confessed that he was the sole perpetrator. Would the first confessor have been convicted if Phiri had not been caught?

I left Malawi in 1990. In the time that I have been away, Hastings Kamuzu Banda, Africa's longest standing dictator, gave way to international pressure and allowed U.N. monitored elections to take place. Last year, Banda stepped down to allow the first democratically-elected government to run the country. One of the first tasks of Bakili Muluzi, the new president, was to release all political prisoners and correct other human rights abuses.

I hope to return there someday to see the changes.



## PERONI from p.3

(For those who have yet to take tax, you can look forward to the "marriage penalty.")

Change came in 1954. Congress passed a limited child care deduction, modestly liberalized in the early 1970s, but it soon recognized that a deduction-based subsidy provides greater relative benefits to the rich. So, in 1976, the deduction was changed to a tax credit that is capped at \$1440 (for families with 2 or more children and an income of \$10,000 or less). The cap has not been adjusted for inflation or any other type of increase in the cost of child care.

Peroni went on to talk more generally about tax reform and the recent legislative process. Today, congressional debate tends to be at the mercy of "spin doctors" or boils down into shouting matches in which neither the public nor Congress learns any-

thing. "We need the kind of debate that is conducive to education and deliberation," he says.

*Professor Peroni comes to us from George Washington University National Law Center where he pokes a great deal of fun at Capitol Hill. He has appeared on CBS and a few other news shows, but he does not really like the publicity. He likes to teach and it shows. "UCLA is a fantastic law school in all respects and I have had a great time this semester," he told The Docket. But, for a variety of personal and professional reasons, Professor Peroni returns to GW in the fall. We will miss him.*

## MYSTERY from p.8

ments on those statements.

After initially addressing and correcting some of Prince's misstatements on education, Tom pulled out a letter from McFadden. Each paragraph of the letter opened with a Prince quote, which was followed by a correction, a citation to the appropriate regulation, and a copy of the regulation. As Tom read each misstatement and each correction, he would turn to Prince and say, "So, statement number one (or two, three, four, five, etc.) is wrong." At the end of the letter, he turned to Prince, who was seated at the left side of the podium, and said, "This letter from Mr. Bill McFadden, the head of the AFDC and Medi-Cal divisions of the Los Angeles County DPSS, says that EVERYTHING you said was wrong or incorrect." Reaching into his briefcase and pulling out a folder, he continued, "When Mr. McFadden sent me this letter, I made two copies. I made one for my files, but I also made one for you, so that the next time you are asked to speak on this subject, you'll know what you're talking about." With that comment, he handed Prince a copy of McFadden's letter. Prince merely sat there, looking stoned and somewhat confused, as the audience erupted in laughter and applause.

Those who know him would consider this "vintage Tom": direct and to the point, but not incapable of displaying a touch of humor. Those who don't know him, however, might be surprised at the complexity of the man.

His status as Professor Reynoso's assistant and his ability to wear a suit under the necessary circumstances notwithstanding, most would recognize him as UCLA's own bearded, booted, "biker." Indeed, Tom admits that he is as comfortable in that world as he is at the White House or on Capitol Hill. All things considered, he agrees he would probably rather be riding one of his Harley's through the mountains than rubbing elbows with a U.S. Senator.

When one finds out that he used to own and operate an automotive machine shop in his pre-law school days, and that the garage under his apartment is filled with tools, machinery, welders, and Harley parts — well, the biker persona makes sense. In fact, for the past several months he's spent his admittedly scant spare time restoring a 1962 "hog" he bought last summer. He does all of his own mechanical and electrical work, and can paint as well. In fact, he's also building a "fast" bike which he's going to give a traditional "flames" paint job to. Definitely, this isn't your typical lawyer. And when you find out that he's a licensed California general contractor, your confusion just might deepen.

But his complexity really comes out if you find yourself in the second floor hall above the records office late at night, wondering where the sounds of classical music or the blues is coming from. Answer: Tom's office. And if you stick your head in the open door, you'll see him working at his computer, researching some civil rights topic, and maybe sipping a fine California cabernet or a cup of espresso from the espresso machine he's installed in his office. Go figure.

Tom's experiences prove that law school is not merely a one-way trip into law firms or research assignments of dubious value. He is happy to tell any UCLA student what he knows about life during or after law school. Don't be shy — provided that he's rubbing elbows with someone in Washington, you can say "hello" to him in the halls, or reach him at 206-3653.

## GENDER from p.3

be an especially important clue. Based on a careful analysis of 2,823 students from the classes of 1986 through 1994, I can confidently conclude that there is no gender grade gap at UCLA. Our anonymous database of past students — which enables us to control for a number of background characteristics — shows a very small gender gap (about 1/3 of a point) among first-year students during the mid-1980s; but even that difference disappeared by the late 1980s

and has not since reappeared. In other areas of academic competition — such as Law Review and Moot Court — women at UCLA seem to be underrepresented relative to their numbers and grade performance, but we have no definitive interpretation as yet.

It is always easier to uncover the causes of a phenomenon when its intensity varies from place to place, so the marked contrast in results between Penn and UCLA should help us to iden-

tify possible hypotheses. Still, it is particularly odd that the dramatic disparities in GPAs at Penn are completely absent at UCLA. It would seem that the differences between the two law schools are not differences of degree, but differences in kind.

Readers interested in this topic who have suggestions for avenues of research are welcome to contact either Kris Knaplund or myself. We are interested in your reactions.

**HORRORS** from p.6

type, using numbered paragraphs and a lot of abbreviations.<sup>1</sup>

Besides, who reads the footnotes anyway?<sup>2</sup> Rule of thumb: The amount of footnotes in a text is inversely proportional to the amount of reading you have to do. When drudging through a case, nothing is so euphoric as coming across a page with 3 lines of text, allowing you to skip the entire page of footnotes beneath it — like licking the delicious chocolate frosting off a cupcake and throwing away the dry sponge cake beneath it. But mine are simple pleasures.

Footnotes are simply a way for law professors to acknowledge each other's work. The equivalent of a high-five in sports. (Well, closer to a pat on the butt.) But after a while it develops a certain incestuous quality<sup>3</sup> where subsequent articles are simply the product of the inbreeding of two other very related articles. Anyone who's ever seen an authentic rendition of Dueling Banjos can attest to the inevitable dangers of such activity.

Furthermore, footnotes can be very unsightly,<sup>4</sup> inane,<sup>5</sup> irrelevant,<sup>6</sup> as well as cluttering, especially when they are in close<sup>7</sup> proximity<sup>8</sup> to<sup>9</sup> each<sup>10</sup> other, leading one to believe the author is totally incapable of forming an original thought of his own.<sup>11</sup> They also break one's chain of thought<sup>12</sup> by<sup>13</sup> creating what amounts to a game of vertical ping-pong from the top of the page<sup>14</sup> back to the top of the page<sup>15</sup> and so on<sup>16</sup> and so on.<sup>17</sup> (It's best to save Latin for the footnotes.)<sup>18</sup>

And the purpose of this exercise, if futility can be said to have a purpose, is to see whether or not you can write. Not that you'll ever do any writing on law review, but you never know when the person assigned to draft next year's Cover Sheet is suddenly taken ill.

Part two is like a trip to Europe. Everything is written in a foreign language and there are "Oh so many cites to see". The object: to make sure there are no mistakes in the text no one reads. This differs slightly from part one where you are asked to actually write the text no one reads.

Being a cite-checker is much like being the interior decorator for the Braille Institute. Who's really gonna know? But despite this, they slave away at the periods and commas to perfect the article that peaks the interest of the few that stumble across one of the 500 copies on their way to rest in vintage condition in the library basements of all the law schools in the land alongside the hundreds of other untouched law reviews whose articles peaked the interests of those very same few who stumbled across them whose checkers slaved away at the commas and the periods. But they say God is in the details.

So in the final analysis the question remains: Why join Law Review? Here are the top 5 answers from an informal survey.

1. "It teaches you how to write really well." For example: Several other courts have held that payment of administrative rent should be made immedi-

ately, unless the trustee establishes good cause for delaying payment.<sup>45</sup>

<sup>45</sup> Diekhaus, note 43 supra at 972. See also In re Musikahn Corp., 57 B.R. 942,945 (Bankr. E.D.N.Y. 1986)(directing debtor to pay administrative rent within fifteen days of court order); In re TDC Dev. Corp., 73 B.R. 135, 137 (Bankr. N.D.Tex. 1987). But see In re Orvco, Inc., 95 B.R. 724, 728 (Bankr.App.Pan. 9th Cir. 1989).

Yeah. You and Shakespeare.<sup>19</sup>

2. "It's exciting to be on the cutting edge of legal theories and developments." Even more exciting than World Cup Soccer and major league baseball combined.

3. Cite checking teaches you skills and prepares you for a lucrative career as a telephone book proofreader for PacBell.

4. It's rewarding to have your footnote checking prowess acknowledged by the author of the article. And if that wasn't a big enough honor, this acknowledgement is located in the pole position of footnotes, the very first one. Here's a riddle: If a commendation falls in the woods and there's no one around to read it, does it make a sound?

5. "It looks great on your resume." Bingo! Nothing will prick an interviewer's ears<sup>20</sup> higher than to hear you utter your divine affiliation with such an esteemed organization. There is no doubt about it, it does look great on a resume. Of course you can reach the same result by using that really thick creme colored resume paper. To use both would be overkill, so the choice is yours.

<sup>1</sup> Requir'd 10 pg. txt. plus an add'tnl 15 pp. of fn.

<sup>2</sup> Well, who else but you?

<sup>3</sup> See Steve Chahine, *The Horror of Law Review*, 14 Docket UCLAW, p.4 (1994).

<sup>4</sup> Bill Clinton and Roseanne in running shorts leaving a McDonald's.

<sup>5</sup> It's 78 degrees Fahrenheit outside.

<sup>6</sup> I'm tired.

<sup>7</sup> See footnotes 8-10.

<sup>8</sup> See footnotes 7,9,10.

<sup>9</sup> See footnotes 7,8,10.

<sup>10</sup> See footnote 7-9.

<sup>11</sup> See Johann Peterson, *The Inability to Form an Original Thought of Your Own*, 2nd Edition, New York, Bantam Press, 1983.

<sup>12</sup> See how footnote 3 is imbedded in middle of a phrase, forcing you to reread the entire sentence before continuing with the article again?

<sup>13</sup> See what I mean?

<sup>14</sup> to the bottom of the page,

<sup>15</sup> "and they told two friends"

<sup>16</sup> and so on,

<sup>17</sup> Etc. etc.

<sup>18</sup> See footnote 17.

<sup>19</sup> Note: If you felt even the slightest urge to check the previous cite for accuracy then you are a prime Law Review candidate.

<sup>20</sup> In retrospect, prudence cautions against placing these words in such close proximity.

From p.2

**Office of Career Services, Fall 1995 Program Calendar:**

Aug. 21 Presentation: "Orientation to the Fall On-Campus Interview Program (OCIP)"

Sept. 8 Presentation: "Careers with the U.S. Dept. of Justice"

Sept. 12 Presentation: "The Legal Employment Interview." Strategies to assist the student in effectively preparing for and presenting him/herself in the legal employment interview.

Sept. 14 Presentation: "View From the Other Side." Interviewing perspectives from the employment community.

Sept. 26 Presentation: "Civic Education Project, Teaching Opportunities at Central and Eastern Universities"

Sept. 28 Panel and Reception: "Careers in Public Interest Law"

Oct. 10 Presentation: "Careers with the California State Attorney General"

Oct. 12 Presentation: "Job Search Alternatives to the OCIP"

Oct. 17 First Year Job Search Workshop

Oct. 24 Panel: "Careers in the Law, Public and Private Sector Options"

Nov. 7 Presentation: "How to Turn that Summer Job into a Permanent Offer"

Nov. 9 Presentation: "Career Opportunities with the Los Angeles District Attorney"

Nov.16 Presentation: "Career Opportunities with the Los Angeles Public Defender"

**CHUTZPAH** from 6

— even those in official leadership roles — continued their cautious approach.

Rabbi Stephen S. Wise was the acknowledged leader among the Jewish rabbinate. And Joseph M. Proskauer, a former judge and prominent lawyer, was the most important lay leader, heading the American Jewish Committee. Neither was willing to confront the silent and apparently unconcerned Franklin D. Roosevelt about the ongoing Jewish tragedy in Europe...

Justice Louis Brandeis, who was generally quite assertive on Jewish issues, advised Wise that "it would make a bad impression on Roosevelt ...to trouble him with our, in a sense, lesser problems."

Chutzpah at 294.

Dershowitz finds disturbing the attitude of fellow Jews who deny their "Jewishness." He revels in his Jewish heritage, even against the restrained, arguably anti-semitic foundations of Harvard Law School. His book *Chutzpah* is a testament to the ancient adage, "to thine own self be true."

My only criticism of Dershowitz's book is its failure to acknowledge that plenty of folks, besides Dershowitz, are possessed of plenty of chutzpah. Most notably, Louis Nizer had no trouble speaking up, both as Jew and as an attorney. In his autobiography, *REFLECTION WITHOUT MIRRORS* (Doubleday & Company, 1978), Nizer describes an attitude in refusing to settle which very much resembles chutzpah.

Court trials, being contests, depend upon will, courage, or determination, call it what you wish ... In every trial there is a moment, sometimes many, when sheer will must see us through ... Absent the determination to see it through, the unanticipated revelations can be fatal. There is a rush to surrender, usually in the form of settlement — that graceful disguise of defeat.

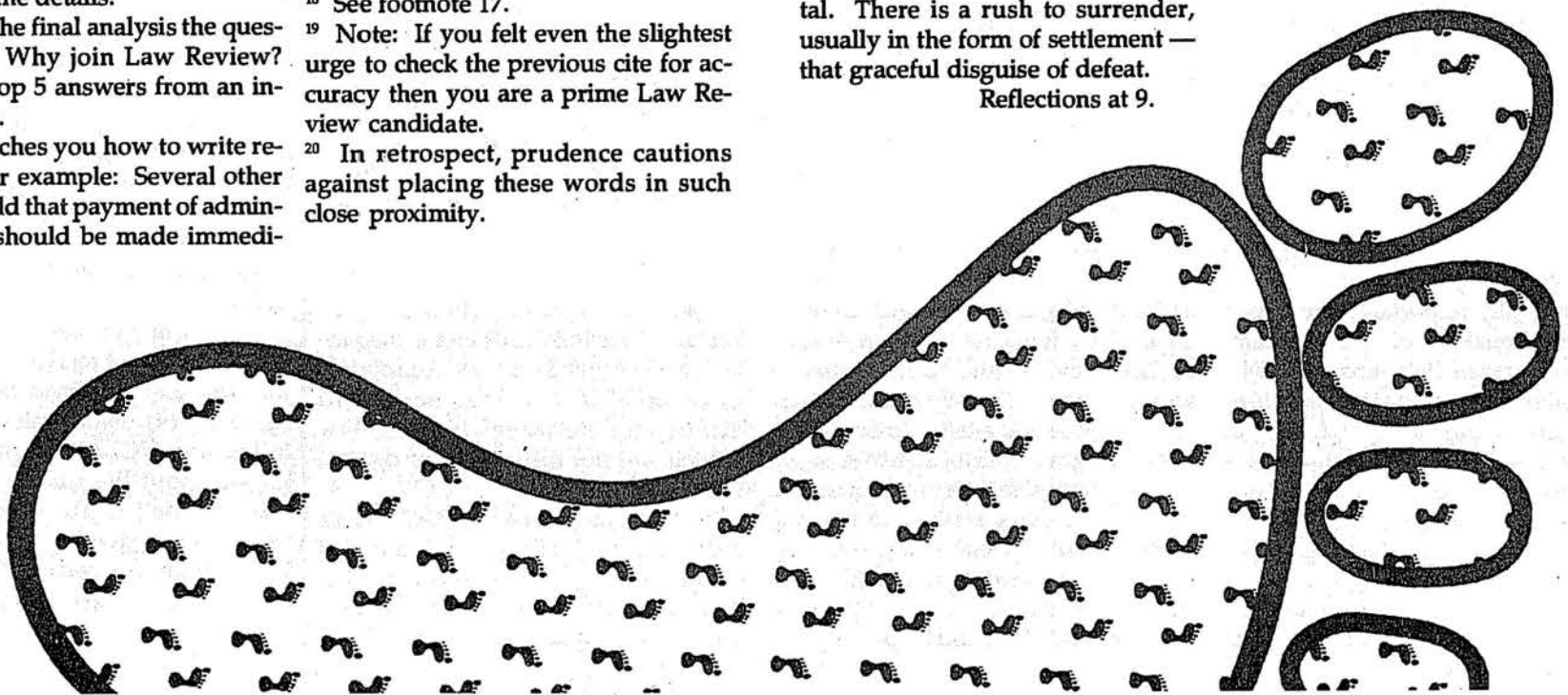
Reflections at 9.

Reading Reflections brings one into the private chambers of countless famous men and women who befriended and consulted Louis Nizer. He was on intimate terms with the United States presidents, innumerable movie stars, and the first astronauts. Tales of his courtroom exploits filled three books before he wrote his autobiography. This book contains yet many more exciting examples of courtroom drama.

More importantly, Reflections allows the reader access to Nizer's wise counsel. Nizer's advice includes tips on cross examination, composure in the courtroom, and his disinclination to bring suit for every wrong. Reflections is replete with lessons in psychology and history, as well as law: "Few people can go through life without making an enemy. The process of achievement is abrasive. To excel is to rise above others reaching for the same pinnacle." Reflections at 355.

Louis Nizer rose far above his colleagues, and was not afraid to acknowledge his own achievements. He was an artist, musician, composer, and masterful story teller as well as one of the century's greatest attorneys. But Nizer praised the greatness of all those who loved people and performed good deeds. No one sounds more surprised by Nizer's experiences than Nizer himself does:

There are few men important enough to recount their lives. Almost everyone however, has some experience worth telling ... No man's horizon is limited by his profession. A full and turbulent life, and this I have led, sweeps one into the presence of great men and women, famous men and women who are not great, and sometimes great events. Nizer tells us that we are all entitled to reach for the sky! What chutzpah!



# Open Letter to Students ON REFORMING THE GRADING SYSTEM

*From: The Student Bar Association and Student  
Representatives on the Curriculum Committee - 4/19/95  
Responses May Be Directed To: SBA@law4.law.ucla.edu*

The grading system at UCLA appears to be changing. How it changes depends on many factors. Unless you become actively involved in the process, however, the new system may not adequately reflect students' needs or expectations. You need to communicate with faculty and student representatives and let them know what you think is right or wrong about our grading system. To assist your efforts, we thought we would give you some basic information about what is happening right now and what our options are for the future.

**Why is this happening now?** There is no doubt that our recent ranking in the *U.S. News & World Report* survey on law schools has focused substantial attention both on the employment opportunities available to our students and UCLA's standing in the greater law school community. However, investigations into the grading system actually began in January at the behest of Dean Prager. Concerns have grown that our grading system fails to accurately communicate the abilities of our students in a tight legal market. As many of you know, the current numerical system has been in place for close to twenty years.

**What is being done to change our system?** The Curriculum Committee is investigating ways to reform our current system. The committee has gathered information about the grading systems used at other top law schools and has met with Bill McGeary from the placement office to discuss the ways in which employers are using the information generated under our current system. Additionally, the chair of the committee, Professor Gary Schwartz, is polling faculty about their grading practices and the distribution of grades before UCLA's mandatory curve is imposed. The committee's goal is to prepare an official report that will be available to faculty and students. Once different views have been debated, the faculty will vote (probably next fall) on whether or not to adopt a new system. You probably know that the faculty controls the ultimate decision on this issue. Thus, it is up to you to discuss this issue with your professors and to convince them to vote for a system that will be best for everyone. Get a group of students together, take a professor to lunch, and tell him or her your views on grade reform. Communication is necessary so that the faculty will understand students' perspectives when they vote on

this important issue.

**What is the general trend in grade reform?** The momentum behind grade reform is not isolated to UCLA. According to an article published in the *Journal of Legal Education*, over the past 5 years, 44 schools in a 120 school nationwide survey modified their grading systems. Of these 44, 18 replaced numerical grade designations with letter grades. The remaining 26 either adopted a curve for the first time or altered their existing curves. Three schools shifted their curves upward to higher grades. One school lowered its curve. Overall, 96 of the 120 schools reported using letter grades and 79 reported employing some kind of curve, a minority of which are mandatory.

**Who are the students on the committee and what do they think?** Michael Yang (1L), Robert Jystad (2L), and Gretchen Bruggeman (2L) are currently members of the Curriculum Committee. These students are in favor of reforming UCLA's grading system. The current thinking is that UCLA needs (1) a more coherent system that is easily understandable to employers; (2) a more general system that accurately conveys students' achievements without pretending that it can distinguish precisely among 35 different categories of performance; (3) a more general system that forces employers to

look beyond objective qualities such as GPA, to more subjective indicators of a student's lawyering ability; and (4) a system that is in line with that of other law schools who acknowledge the outstanding quality of their students and place them on a scale accordingly. Please share your views with Michael, Robert, or Gretchen as the "current thinking" on this issue is open to your input. The SBA has also set up an E-mail account to catalogue student perspectives on change. Please send your thoughts to: SBA@law4.law.ucla.edu

**What are some of the options?** (These are not listed in any particular order and are not indicative of Committee deliberations.)

**Grade Designations**

¥ Boost everyone's GPA 5 points in order to shift into standard numerical grade categories where 70-79=C, etc. (Some are concerned that this alternative would negatively impact students who are subject to the old system. Additionally, this type of change might be difficult to explain to employers.)

¥ Follow USC and narrow the range of numerical grades available. (Benefit unclear.)

¥ Change to a 4.0 numerical system where a B=3.0. (This system has the benefit of being more intelligible to

employers than our current system where the number 78 is supposed to communicate that a student has a B average. However, like our current system, it distinguishes among students by several decimal places.)

¥ Change to a letter system with pluses and minuses and report GPA as numbers on a 4.0 scale. (This is a classic system that has the benefit of being understandable to employers, but it does not address a perceived problem of allowing firms to make purely objective comparisons based on numerical GPAs.)

¥ Change to a letter system with pluses and minuses, but report GPA as a letter average on transcripts (or elect to leave GPA off of the transcript altogether). E.g., B-average, B+ average, etc. (This system has the benefit of expressing a range of outcomes while at the same time sending a more general and less quantifiable message to employers. Of course employers could always convert the grades to a 4.0 scale on their own, but we would not be doing it for them.)

¥ Change to a letter system without pluses or minus or some type of High Honors, Honors, Pass, etc. (Boalt currently has this type of system. Interestingly, UCLA used to have a system just like this, with general designations of Honors, High Pass, and Pass. According to Dean Varat, students were unhappy with the lack of distinction under this system and the mandatory curve of 10-20-70.)

**The Curve**

The most important question here is whether the curve should reflect a standard bell curve or a variation thereof. It may help you to know how other schools apply a curve. What follows is a list prepared for the Curriculum Committee. The schools on the list are organized according to where their mean or median designation is placed on the grading scale. Note that some schools use two curves: a mean (average) or median (center of the pack) curve and a percentage curve to avoid clumping. After all, a B mean can be reached by giving everyone Bs. Schools with a B mean system can prevent this clumping phenomenon by laying a percentage curve over the top. Not all do. In any event, what follows should give you a sense of the options.

| <u>B mean or median</u>       |  | Total As and Bs: |
|-------------------------------|--|------------------|
| Texas                         | 25-50-25   | 75%              |
| Virginia                      | 15-70-15 3.0 mean                                    | 85%              |
| Cornell                       | overall average 3.0 (faculty can bunch)              | —                |
| GW                            | 20-25 A; 40-65 B; 15-35 C; mean 2.8-3.1              | 60%-90%          |
| <u>Above B mean or median</u> |  |                  |
| Chicago                       | 77 median (high B)                                   | —                |
| Northwestern                  | 20-55-25   | 75%              |
| Michigan                      | 25-65-10 (B+)  | 90%              |
| NYU                           | 15-77-8  | 92%              |
| Georgetown                    | 25-70-5 (B+)   | 95%              |
| Stanford                      | 3.2 mean   | —                |
| Duke                          | 3.1 mean   | —                |
| Harvard                       | 24-70-6 (B+)   | 94%              |
| <u>Others</u>                 |  |                  |
| USC                           | 78 mean (with 4 passing categories)                  | —                |
| Loyola                        | 78 mean (C+)   | —                |
| Penn                          | 20-40-40 (changing, maybe to 33-33-33)               | 60%              |
| Boalt                         | 10-30-60 (HH-H-P not directly translatable to A-B-C) | —                |
| Columbia                      | 15-30-55 (E-VG-G-P, changing to A-B-C)               | —                |
| <u>UCLA</u>                   | <u>20-40-40</u>                                      | <u>60%</u>       |

REEL from p.6

they'll deal with him themselves. This may qualify them to run for the Senate against Griffin.

The northern press gets wind of this tasty story and they hire a hotshot detective (Pindar) to investigate the case and a prominent attorney (Michael Gleason) to defend Hale. This outside interference just makes the citizenry angrier. Expecting "Southern hospitality" instead of "Southern hospitals," they arrive in town and are promptly set upon by mobs. In particular, Gleason seems intimidated, since his performance in court is pathetic.

The trial consists of Griffin's arm-waving oratory in his opening and closing statements with presentation of questionable circumstantial evidence in between. There is an interesting Battle of the Mothers, with Clay's and Hale's mothers trying to out-anguish each other at critical moments.

Imogene Mayfield, Mary's friend, testifies that Mary had a huge crush on Hale, but admits that she never saw Hale make any advances to Mary or even talk to her outside of class. On redirect, Griffith asks Mayfield to identify the bloody outfit that Mary was wearing when she was killed. This elicits the predictable howl of anguish from Mother Clay.

Joe Turner, Mary's boyfriend, came looking for her and ran into Hale, who was leaving the building at 3:00. He told Turner that none of the girls were there and barred Turner from the building. There was a spot of blood on Hale's coat. Hale claims that the blood came from a shaving cut, but the barber denies that he cut Hale. Worst of all, Hale was making plans to quit his job and leave town when he was arrested.

Turnp Redwine testifies that he saw Hale at 1:00 and again at 3:00 and heard some suspicious noises from Hale's classroom before that. On cross, Redwine retracts the testimony about the noise and claims he slept the whole time. He is petrified, and says over and over "I didn't do it."

Hale is permitted to make a statement to the jury denying that he killed anyone and is not cross examined. Gleason's closing is short and lame. Staring into the stony eyes of the jury, he points out that any of the witnesses could have done it and the real witnesses against his client were hatred, fear and prejudice.

In the jury room, one juror holds

out briefly against guilt but is swept away by the others and the guilty verdict is inevitable. The state supreme court affirms. Governor Manson's political career is on the line. He courageously commutes Hale's death sentence to life imprisonment. A mob, led by Mary's brothers, stops the train carrying Hale to prison, pulls Hale off, and lynches him.

It looks like Griffin's a shoo-in for the Senate now. Sybil tells Griffin and Brock that they will have to live with Hale's death for the rest of their life. After she leaves, Brock says: "Now that it's over, Andy, I wonder if he really did it." Griffin gazes out the window and murmurs, "I wonder."

Legal Analysis

Hale's conviction was based on an accumulation of circumstantial evidence. But there's nothing wrong with that. (See Outtake "It's Nothing But a Bunch of Circumstantial Evidence," p. —) The inferences arising from circumstantial evidence can point very convincingly to guilt. Many times, circumstantial evidence can be more reliable than direct, eye-witness evidence.

What were the items of evidence that convicted Hale:

a. He acted suspiciously toward Joe Turner at 3:00 at Buxton Business College. But if he didn't kill Mary,

he wouldn't have known she was in the building and his behavior toward Turner was perfectly natural.

b. Hale was planning to leave town in a hurry. This is pretty damaging. But he and Sybil had been unhappy in Flodden and Buxton had humiliated Hale in front of his students on the day of the parade. This gave him reason to quit.

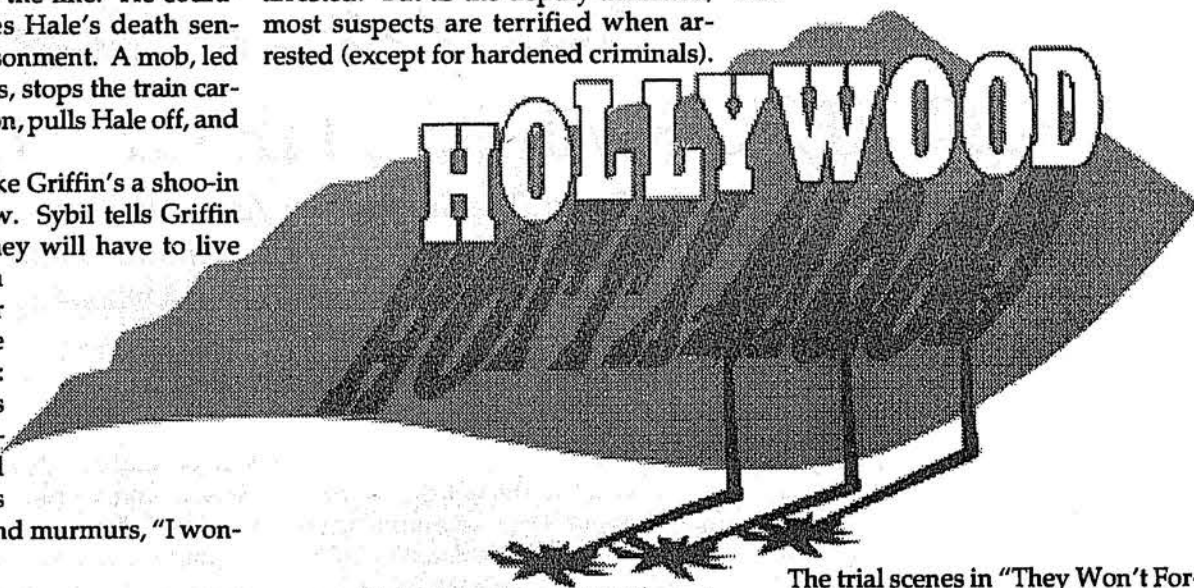
c. There was a blood spot on Hale's coat. But this could have come from a shaving cut, and the barber who denied cutting him wasn't entirely credible. Most important, the jury heard no scientific testimony matching

the spot to Mary's blood type.

d. Mary Clay had a crush on Hale. So what?

e. Hale was trembling when arrested. But as the deputy admitted, most suspects are terrified when arrested (except for hardened criminals).

Griffin's way too politically astute to do any such thing. And even if it did, the chances of convicting anybody would be less than the proverbial snowflake in Hades.



This collection of bits and pieces of evidence was not nearly sufficient to meet the prosecution's burden of proof beyond a reasonable doubt. It suggests Hale might be the killer, but it's nowhere near enough to prove that he was. It could have been Redwine (whose changeable testimony is rather suspicious), or Buxton or anybody else who might have followed Mary Clay back into the building.

As Gleason points out, the real witnesses against Hale were the bitterness toward Yankees left over from the Civil War. Apparently, this was even more poisonous than the hatred of blacks; Redwine was indeed lucky that

The trial scenes in "They Won't Forget" are solidly authentic. It's difficult to explain, however, why Hale was allowed to make a statement to the jury without being cross-examined. Griffin went a bit far in his oratorical denunciation of Hale, because he appealed to the jurors' emotions rather than to the evidence. Probably such histrionics were within the bounds of acceptable courtroom behavior for the time and place. Also the introduction of Mary's dress during Imogene's redirect exam was improper; redirect examination is limited to whatever matters came up on cross examination.

Such quibbles aside, "They Won't Forget" does a superb job of putting southern justice on trial. Up against a witch's brew of anti-Yankee prejudice, the DA's political ambition, the craving of the Clay boys for revenge, and yellow journalism at its yellowest, Hale had no chance. Zero.

Trial briefs

"They

a Yankee was around to take the fall. The press did a great job of whipping up the chauvinistic hysteria. And the jurors were probably intimidated by the Clay brothers and the other local rednecks who hadn't heard about due process.

Indeed, there was heavy-duty intimidation in the jury room. One juror was slipped a note saying "vote guilty if you feel like living." If this came to light, the verdict would be overturned.

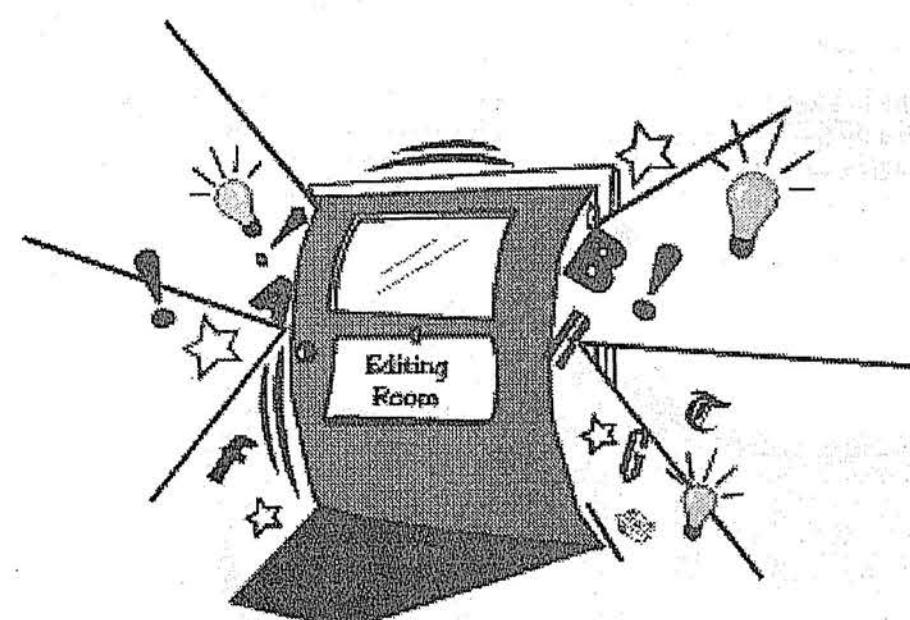
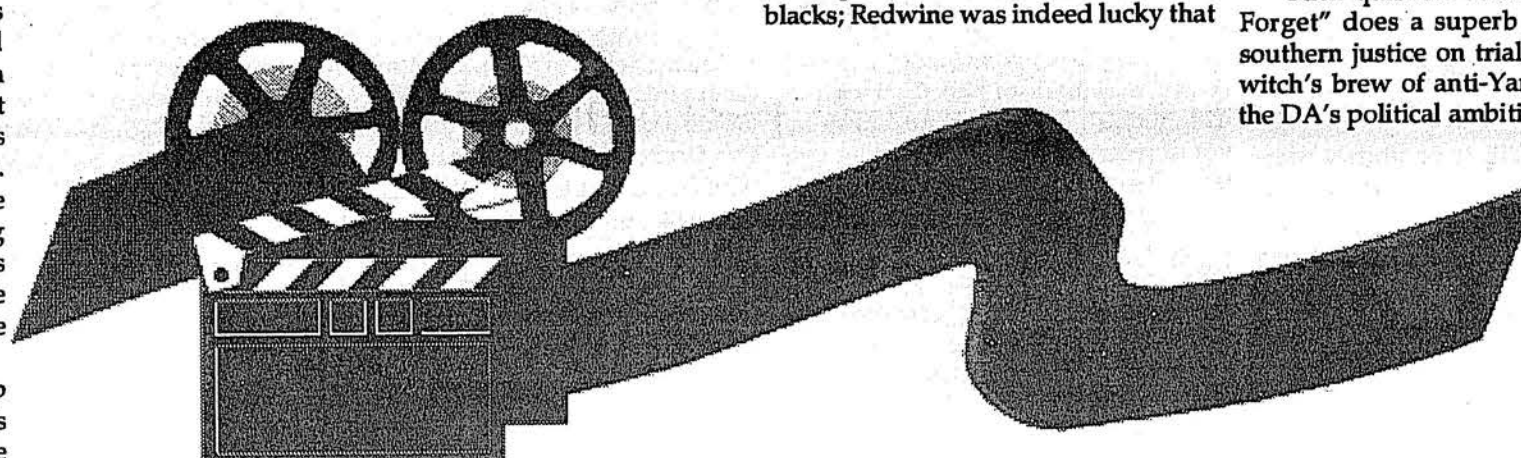
Under present-day constitutional standards, the court would be required to take measures to counteract the overpowering pretrial publicity. There's just no way that a fair jury could have been picked in Flodden. This was a kangaroo court that would have convicted a kangaroo from the North. If Gleason had not been brain dead, he would have requested a change of venue to some other town in the state, as far away from Flodden as possible. Although the locals in the new venue would probably have heard about the case, their passion would have been less intense than the hometown crowd. As we point out in our review of "Fury," the lynch mob was an ever-present reality in the American justice system, especially in the South. Although Griffin promises Sybil Hale that he plans to prosecute the leaders of the mob, we know that this will never happen.

Won't Forget" is based on a tragic case occurring in Georgia in 1915. Ward Greene, on whose novel the movie is based, was a reporter who covered the case. Leo M. Frank, a Jew from New York, came to Atlanta to manage a pencil factory. He was tried and convicted for the murder of Mary Phagan, an employee of the company. As in the movie, the evidence against Frank was entirely circumstantial and not very strong. A black man was also a suspect.

The ambitious DA and a racist newspaper publisher decided to prosecute Frank, because "we can lynch a nigger anytime but when do we get a chance to hang a Yankee Jew?" Governor Slater courageously commuted Frank's sentence, for which he was hounded out of the state. Frank was then lynched. It is said that the black man later confessed to the crime. Evidently Hollywood could handle a story based on prejudice against Yankees, but wasn't ready for hard-core anti-Semitism.

In one scene in "They Won't Forget," Mary Clay walks down the street, looking absolutely sensational in her sweater. Lana Turner's career took off as the result of this scene.

they.won't 2/14/95. Ref: Jay Robert Nash and Stanley Ralph Ross, "The Motion Picture Guide 1927-1983" (Cinebooks 1987).



# UCLAW Chambers

UCLAW organizations, activities and events

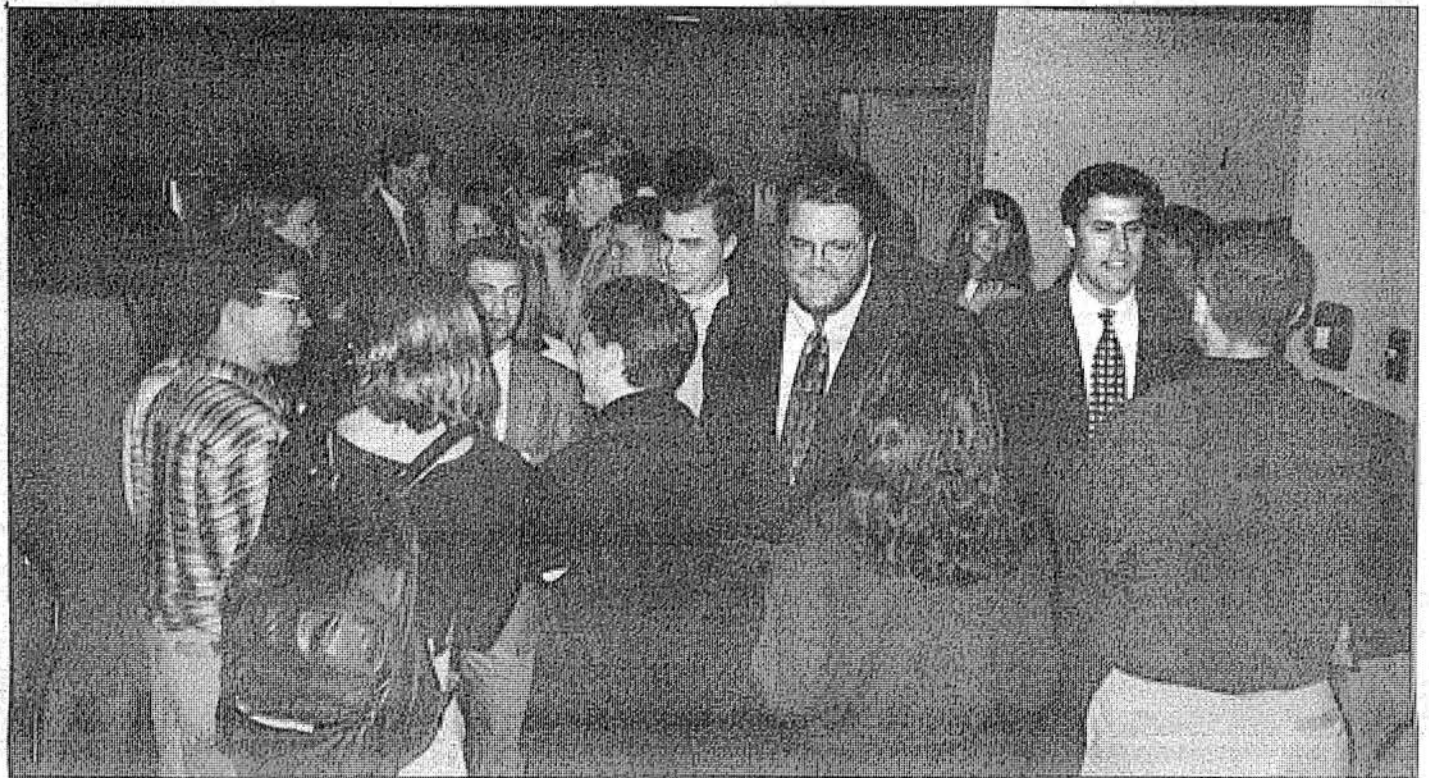
## THE ENTERTAINMENT LAW REVIEW

recently published our second issue in February. We recently selected a new Board of Editors and have begun planning our next issue, due out in October. Interested in becoming a staff member?

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Announcements of future events may be submitted to **THE DOCKET** (at the Records Office) or to Carl Garcia, 2L.

PHONE: 310/825-9437



Afterglow; party following the moot court competition

*Good luck on finals ...*

*... have a great summer.*

**THE DOCKET**



John Wiley talks to admittees of the Class of 1998 at a recent campus reception



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### SCHEDULE OF CLASSES

#### Orange County • LIVE/VIDEO LECTURES

|  |   |  |   |  |
|--|---|--|---|--|
| <p><b>Monday, April 24, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>CONSTITUTIONAL LAW II</b><br/>(Procedure, Due Process, State Action, Thirteenth/Fifteenth Amendment, First Amendment Rights: Speech, Association, Press, Religion)</p> | <p><b>Wednesday, April 26, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>EVIDENCE II</b><br/>(Hearsay, Privileges)</p>  | <p><b>Thursday, April 27, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>CRIMINAL LAW</b></p>   | <p><b>Friday, April 28, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>CONTRACTS II-U.C.C.</b><br/>(Assignments/Delegations, Third Party Beneficiaries, Conditions, Breach, Remedies)</p>  | <p><b>Friday, April 28, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>CRIMINAL PROCEDURE</b><br/>Video: Room 106</p>   |
| <p><b>Saturday, April 29, 1995</b><br/>5:30 pm to 9:30 pm<br/><b>REAL PROPERTY II</b><br/>(Sale of Land, Recording Act, Easements, Profits &amp; Licenses, Covenants, Equitable Servitudes, Eminent Domain)</p>                        | <p><b>Saturday, April 29, 1995</b><br/>5:30 pm to 9:30 pm<br/><b>REAL PROPERTY I</b><br/>(Concurrent Interests, Future Interests, Adverse Possession, Class Gifts, Landlord/Tenant)<br/>Video: Room 106</p> | <p><b>Sunday, April 30, 1995</b><br/>1:00 pm to 5:00 pm<br/><b>CONTRACTS I-U.C.C.</b><br/>(Formation, Defenses, Third Party Beneficiaries, Breach, Remedies)</p>   | <p><b>Sunday, April 30, 1995</b><br/>1:00 pm to 5:00 pm<br/><b>CIVIL PROCEDURE I</b><br/>(Jurisdiction, Venue, Choice of Law, Pleadings, Joinder, Class Actions)<br/>Video: Room 106</p>  | <p><b>Sunday, April 30, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>TORTS I</b><br/>(Intentional Torts, Defenses, Negligence-Causation Emphasis, Defenses)</p> |
| <p><b>Sunday, April 30, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>EVIDENCE I</b><br/>(Relevancy, Opinion, Character, Impeachment, Best Evidence, Types of Evidence, Burdens/Presumptions, Judicial Notice)<br/>Video: Room 106</p>       | <p><b>Monday, May 1, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>REMEDIES II</b><br/>(Damages, Rescission, Restitution, Reformation, Specific Performance)<br/>Video: Room 205</p>                              | <p><b>Tuesday, May 2, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>CIVIL PROCEDURE II</b><br/>(Class Actions, Discovery, Summary Judgment, Attacks on the Verdict, Appeal, Collateral Estoppel, Res Judicata)</p> | <p><b>Wednesday, May 3, 1995</b><br/>6:30 pm to 10:30 pm<br/><b>TORTS II</b><br/>(Negligence Defenses, Strict Liability, Vicarious Liability, Products Liability, Nuisance, Misrepresentation, Business Torts, Defamation, Invasion of Privacy)</p> |  |

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Mr. Fleming's experience includes the Lecturing of Pre-Law School Prep Seminars and First, Second and Third Year Law School Final Reviews. He is the Organizer and Lecturer of the Baby Bar Review Seminar and the Founder and Lecturer of the Legal Examination Writing Workshop. Both are seminars involving intensive exam writing techniques designed to train the law student to write the superior answer. He is the Founder and Lecturer of Long/Short Term Bar Review. In addition, Professor Fleming is the Publisher of the Performance Examination Writing Manual, the Author of the First Year Essay Examination Writing Workbook, the Second Year Essay Examination Writing Workbook, and the Third Year Essay Examination Writing Workbook. These are available in Legal Bookstores throughout the United States.

Mr. Fleming has taught as an Assistant Professor of the adjunct faculty at Western State University in Fullerton and is currently a Professor at the University of West Los Angeles School of Law where he has taught for the past twelve years.

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