The Docket

UCLA School of Law

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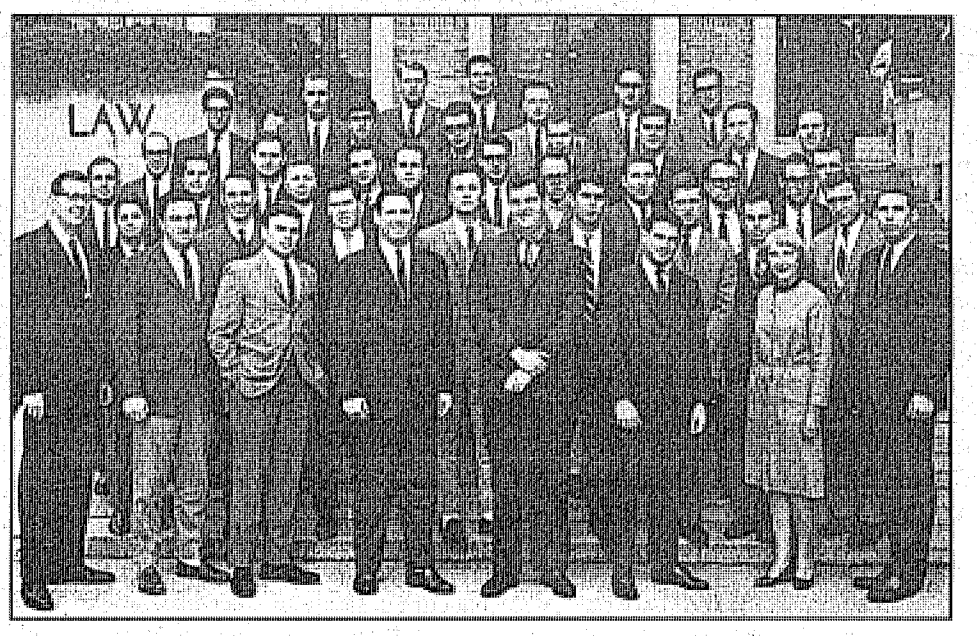
Ethnic Identity of Law Review Questioned

UCLAW Students Begin Dialogue: Who is Really On Law Review?

By Jane Goldschmidt, 2L and Lauren Teukolsky, 3L



In 1965, our Law Review staff was rather homogeneous. How much has changed?

Racial groups traditionally underepresented in the law school have been particularly underrepresented in the *UCLA Law Review* throughout its history. This dynamic has become even more pronounced as the number of students of color at UCLAW decline in the wake of Proposition 209. As members of the *UCLA Law Review*, we find this pattern troubling. Our hope is that this article will begin a conversation about the racial make-up of the law review, and about the value of racial diversity in scholarly projects. We think that this kind of conversation has been sorely missing in discussions about the post-209 status quo: we should be talking not only about how to make our law school *more diverse* given the current restrictions, but also about how we can help students of color thrive once they're here.

The lack of racial diversity on the law review is troubling in a number of respects. For one, traditionally underrepresented groups remain underrepresented, calling into question for us the process by which students are admitted into the organization. Currently, admission to the Law Review is based solely on an anonymous write-on competition. Precisely because the process is anonymous, we have no idea whether students of color are writing on in the first place. Informal surveying leads us to believe that students of color are discouraged from trying out for law review, and also that the perception of Law Review is of an elitist institution that is unwelcoming to the kind of student who is not already on it. Last spring, in a meeting between faculty and students regarding diversity in the school, many students expressed the feelings of isolation which result from frequently being the only student of a particular racial minority in a class or organization, and one of very few in the school. Perhaps many students of color do not want to heighten this experience by joining another extracurricular activity where they will be the only one, or one of only a few students of color. The fact that the present make-up of Law Review is so non-diversemay contribute to an atmosphere that reproduces this dynamic. We hope this article will be a first step towards encouraging students of color to look into Law Review, and also towards encouraging the Law Review to create a more welcome environment.

We are disheartened by the lack of diversity because we believe that it affects the quality of the product we produce, the quality of student interaction betwcen mem-

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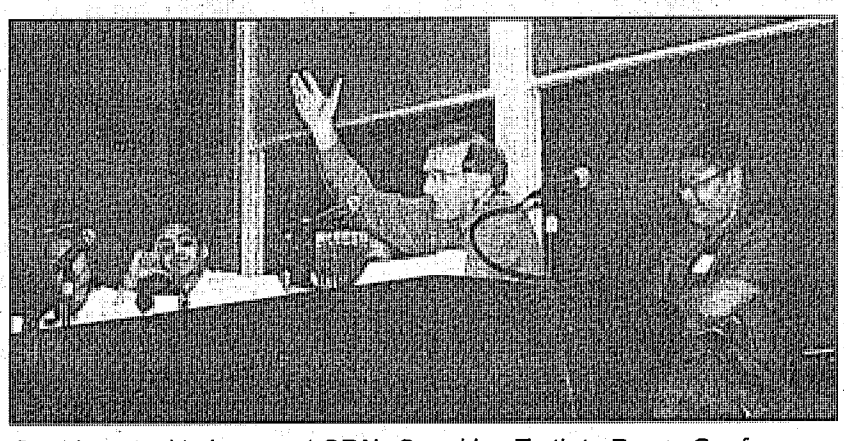
Over 400 Attend Student-Organized Conference

By Meghan Lang, 1L

On Saturday, September 25, 1999, the UCLA School of Law hosted Speaking Truth to Power (STTP), the first annual Conference on Progressive Law and Community Action Strategies presented by UCLAW's Coalition for Progressive Action (CPA). The conference, organized by law students Betty Chan, Andrew Elmore, Jane Goldschmidt, Derek Jones, Inés Kuperschmit, Paul Ryan, Stacy Tolchin and Alison Yager, played host to over 400 people including attorneys, activists, students and educators from over one hundred organizations.

STTP aimed to expand the relationship between grassroots organizations and the legal community. Organizers explored ways to bridge the gap between direct service and policy organizations by addressing the need to develop a unified social justice "front" of activists and attorneys who jointly combat systemic racism, classism, sexism and heterosexism. Organizers modeled STTP as an informative networking event, open to the entire Los Angeles community utilizing multi-perspective panels, group discussions and community outreach to educate participants. CPA encouraged attendance by charging admission on a sliding scale basis, and no one was turned away for lack of funds.

Andrew Elmore, organizer of the Workers' Justice panel, said that the day went smoother than expected, for a first try. "From my perspective, it is so rare for activists and advocates to take time out, acknowledge the larger picture and the steps we need to take, and to learn from each other the strategies we can use to achieve our goals. I really think that that happened at the Conference." Andrew emphasized that although the Conference was geared toward those already involved or interested in public interest work, the Conference had no formal connection to UCLAW's Public Interest Law and Policy program (PILP). "PILP graciously offered us funds to put this together because it saw the potential for this Conference to serve both law students and the community. But I want to stress that this Conference was completely student-initiated, student-planned, and student-run." Both PILP and non-PILP students planned and participated in the Conference.



Speakers tackle issues at CPA's Speaking Truth to Power Conference

The Conference, which lasted all day, was broken into three time slots, two morning events and one afternoon event. There were three different panels in each time slot. Panel topics ranged from social justice issues including the death penalty, immigrants' rights, sex workers' rights, environmental racism, economic justice and justice for workers in Los Angeles, to subjects such as progressive election reform, community development, and the war on drugs. Attendees engaged panelists in debates, raising difficult questions and making suggestions for ways to effect change. Between panels, attendees strolled among dozens of grassroots organization displays including Anarchist Black Cross, ACLU, International Wages for Housework Campaign, Radical Women, and the LA Coalition to Stop the Execution of Mumia Abu-Jamal.

Student members of UCLAW's Asian Pacific Islander Law Students Association, Black Law Students Association and La Raza Law Students Association prepared and sold lunch to raise funds for their organizations, and LA Hip-Hop artists El Nuevo Xol, known for their cutting edge political lyrics, provided the lunch time entertainment.

Over forty law school students volunteered at the event. Ashley Normand, a first year student, volunteered because of her interest in public policy work, "I enjoyed the conference," Normand said. "I wasn't sure what to expect, but it seemed like a good opportunity to get an overview of public interest work in the [Los Angeles]

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New E-Mail System Plagued with Problems

By David Holtzman, 3L

Despite the efforts of UCLAW computer staff, the new e-mail system GroupWise, installed over the summer and designed to take advantage of web-based e-mail access, has bedeviled users since its debut and continues to be unreliable.

Shortly before the deadline for this article, John DeGolyer, Director of Computer Information Systems, estimated that the main Internet connection for student e-mail had improved but was still only operating at 24 to 48 hour intervals "between crashes." In addition, software problems afflict the system and an unexplained problem prevents some students from using popular e-mail programs or alternative web-based e-mail services to access their messages.

Daytime crashes, DeGolyer explained, typically last for thirty minutes. Pagers automatically notify staff soon after the primary computer goes down, and troubleshooters generally respond within a few minutes. The computer itself, the "gateway" machine through which the entire e-mail system operates, takes 20 minutes to restart.

However, Information Systems does not provide around-the-clock monitoring and support, so response times at off-hours can be significantly longer. Even though

See **E-MAIL**, page 3

Letters

MOOT COURT BOARD CRITICIZED

Dear Editors:

Despite a rather convincing article that I read this summer characterizing the moot court experience as a waste of time, I decided to participate. It seemed like it would be a fun and rewarding experience. It was also a good opportunity to get additional experience in legal writing and to practice my oral advocacy skills.

When I signed up to take part, I never expected to come away from the whole experience with a bad taste in my mouth about the students who run the moot court program. Perhaps it is just one student giving the rest of the board a bad name. My limited experience with the moot court board had generally been positive up until a couple of days ago, when I innocently asked a question that apparently rubbed someone the wrong way.

I asked if the advocates could be given a different, better sample brief on which to base their own briefs. Never once did I say that the sample brief we were given was of poor quality. I meant "better" in the sense of more representative and analogous to the type of legal question we would be discussing in our own briefs. I also meant "better" in the sense of being representative of the formatting requirements of the brief. However, the person who received my question seemed to want to know what made me (a lowly advocate) think that the sample brief (which won an award) was not good.

Now, like I said before, I never said the brief was not good. All I said was that it was not a good example of the way the current brief is supposed to be structured. And that is not even the issue. I am writing to draw attention to the utterly rude and unprofessional manner in which my question and the questions of fellow moot court participants were answered.

Answering a question with a question, giving people rude and snippy answers, and stating that they do not have time to answer repeat questions has been characteristic of the high and mighty moot court board (or at least the person they have delegated to answer the e-mail questions). Perhaps they should appoint a different person to answer their questions. Perhaps someone a bit more professional, personable, and thick-skinned would be better suited for the job.

It is quite disheartening that the moot court experience, for me and for the half a dozen or so other participants I spoke to, has been tainted by the person or people who run the competition. In the future, I would suggest that the moot court board try and make the participants feel welcome instead of disparaging their comments and questions.

Yvette Neukian, 2L

UCLA IGNORES STUDENT SAFETY

Dear Editors:

I used to work in a prison. I have interviewed murderers, rapists, thieves, and other sundry character one-on-one. I am not easily intimidated, nor am I generally a fearful person. However, I am a female who has used the public transportation systems in Boston, San Diego and Los Angeles over the last six years. Consequently, I take due precautions while traveling about any city, one being wearing the "DFWMM" ("Don't F*ck With Me Mask"). I used the DFWMM with great success until I reached L.A. Apparently it has no meaning to Angelenos. I generally have at least one encounter a week with a drugged-out wacko who harasses me on my way home from the bus stop. And this is during DAYLIGHT hours, which underscores why riding the bus at NIGHT would be a foolish endeavor. However, that is exactly what I will have to do when daylight savings time rolls around. Like so many other UCLAW students, my parking appeal was denied because I have no "extenuating circumstances." Apparently, safety concerns are not very high on the list of extenuating circumstances.

I am troubled by UCLA's doublespeak. UCLA seems to recognize that there are legitimate safety concerns in and around campus. Witness, for example, UCLA's provision of the CSO escort service and the evening shuttle vans to the neighborhoods immediately west of campus, or the shuttle buses to and from UCLA-owned off-campus housing. Yet to hell with the rest of the student body that lives outside UCLA's backyard. Apparently once you're out of sight of the campus, UCLA does not care about the safety of students who use public transportation to commute to school. I'm wondering just what will it take to make UCLA sit up and take notice that they are placing the safety of its students at risk. The more I ride the bus, the more I feel that it is just a matter of time before my number is up.

Joanna Wolfe, 2L

WHERE IS THE DOCKET'S PICTORIAL ISSUE?

Dear Editors:

Last year *The Docket* published a photo layout with the names and pictures of the newest UCLAW students. We all really enjoyed that issue! It was great for getting to know our classmates, finding fellow alumni, and now that I have the perspective of a 2L, I'm sure it was just as enjoyable for second and third year students as well. The Administration recently published their version, a "Facebook" that was distributed only to first year students. The *Docket* version was better, because the entire law school could put new faces together with the names of new students. Part of building a community involves helping people get to know each other, and *The Docket* photo layout helped to do just that. In the future, I think you should continue publishing your photo issue.

Daphne Bishop, 2L

The Docket *asked the Administration in late August for the names and photos of new students for our annual new-student issue. We were initially told that no undergraduate information was available, and then we were told that the administration wished to publish a high-quality Facebook for use by professors in identifying students in class. The Administration's Facebook was scheduled for publication prior to our first issue, and it seemed redundant for us to publish our annual photo insert, especially without any undergraduate information. Unexpectedly, the Facebook was not ready until after our first issue. Moreover, our assumption that the Facebook would be distributed to all students was incorrect. Had we known either that the Facebook would not be available until after our first issue, or that the Administration was not planning to distribute it to the entire student body, we would have published our version. We agree that the Administration erred by not distributing the Facebook to all students. Indeed, your point about building a community is very well taken. We would encourage students to communicate any dissatisfaction to Dean Cheadle. – EDs*

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UCLA School of Law

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LAW REVIEW

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bers of the Law Review, and the quality of the relationship between Law Review members and the law school community in general. The quality of the Law Review is concretely tied to the participation of our entire community. As long as a gap in participation exists, law review members and non-members, as well as faculty, alumni and contributing scholars lose something.

Additionally, the lack of diversity is troubling because, like it or not, Law Review is a commodity for law students. A student who has Law Review on her resume gains instant credibility in her bid for jobs, fellowships, and clerkships. Like any social good, we would like to see the Law Review credential distributed in a way that helps people who have traditionally been (and continue to be) excluded from getting these things. Law Review is also a commodity for students because members have increased exposure to faculty members. Members of the Articles Department, for example, often ask faculty members for advice on articles and review faculty submissions for publication. Being close to professors is rewarding because they encourage and inspire us, and because we often depend on them to help us get jobs.

Solutions

The Law Review could make several changes that would increase its diversity. Lest anyone think that this is a groundbreaking proposition, most top Law Reviews explicitly take race and ethnicity into account in their admissions competitions. Of course, we are bound by law not to use these "preferences," so our proposals are aimed at opening up the Law Review more generally. Our hope is that this "opening up" process will send the message to students of color that we are serious about our commitment to full community participation, and also increasethe Law Review's racial and ethnic diversity. We also suggest some courses of action that will not directly increase diversity on the Law Review, but that will increase diversity in student scholarship generally.

First, we suggest that opening the comments process to the whole community

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Los Angeles Deserves a Little Respect

By Brady M. Bustany, 2L
Editor-in-Chief

"To be great is to be misunderstood."
- Ralph Waldo Emerson (1803–82)

The *National Geographic Travel Magazine* just announced its list of the "50 greatest places of a lifetime." The editors claim they spent well over a year "[w]hittling down the globe's greatest places" to come up with this list of "urban spaces, wild places, paradises found, country unbound, and world wonders" touted as the destinations no seasoned traveler should miss in his or her lifetime.

Their list of urban spaces includes: Barcelona, Hong Kong, Istanbul, Jerusalem, London, New York, Paris, Rio de Janeiro, San Francisco and Venice...BUT NOT LOS ANGELES!

What were these editors thinking?!

Having moved to LA from Michigan scarce more than fourteen months ago, I concede that I am but an infant in this Great City. However, after I arrived, it took only weeks (if not days) to realize that Los Angeles is the most magnificent metropolis on the planet. I'm not an extraordinarily accomplished traveler, but I've been fortunate enough to visit three of National Geographic's "top" urban spaces. Without question, none are in the same class as Los Angeles. In fact, they are little more than mediocre, one-dimensional reflections of this dynamic city.

This misguided magazine's website includes a "50 Places Poll" where visitors can vote for their own favorite place.

The link is: http://www.nationalgeographic.com/traveler/intro.html

Los Angeles is currently nominated as a top 50 travel destination, and I encourage you to cast your vote for LA! Some people might argue that we should keep the splendor of Los Angeles to ourselves, but if there's one thing we Angelinos are not, it's selfish. When something is this good, there is an undeniable obligation to spread the word.

Perhaps *National Geographic* felt forced to exclude Los Angeles out of a respect for the urban places that made the list. After all, they are so vastly inferior that it would seem, well, unfair to pit them against Los Angeles. Yet, no matter how envious we make other cities feel, we cannot shy from our duty to proclaim: WE LOVE LA!

Editor's Note: Brady M. Bustany, a disturbingly enthusiastic Los Angelino transplant, does not speak for the entire Editorial Board. Indeed, some of us understand that to be of sound mind, there is a limit to the fondness one can feel toward LA. Given this understanding, we hope Mr. Bustany gets the help he needs.

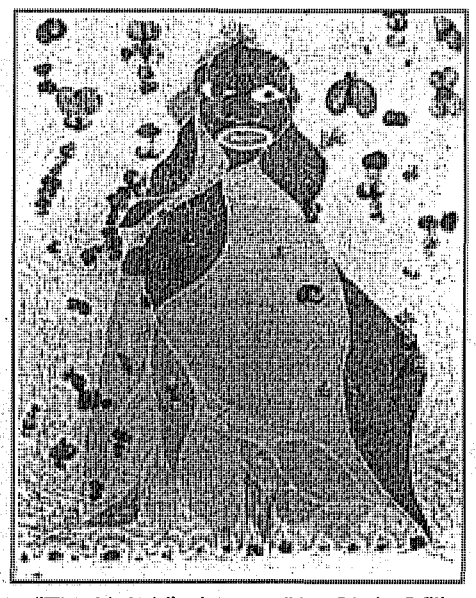
Staff Editorial

Giuliani Should Try Censoring Himself

"Avante-garde" is a term reserved for those on the cutting edge, those who make brash innovations in their work that no one before them has dared to try. If the word were used to describe politicians, then New York City Mayor Rudolph Giuliani would go down as perhaps one the most avante-garde figures of our time. After all, before last month who would have thought that a government official in the culture capital of the world would be crazy enough to wage war against an art exhibit?

Earlier this year, the Brooklyn Museum of Art planned to carry the show "Sensation: Young British Artists From the Saatchi Collection." The museum rents its building from the city, from which it also receives $7.2 million in annual funding. So when Giuliani got word that "Sensation" would feature dissected animals, portraits of child molesters, and a rendering of the Virgin Mary incorporating elephant dung and pornographic cut-outs, he got a tad upset. Booming that taxpayers should not have to pay for such "sick" stuff, he threatened to cut off the museum's funding if it went ahead with the exhibit. Despite the threats, "Sensation" opened on October 3, living up to its name. Since then, the two parties have butted heads in court, the museum suing on First Amendment grounds, and the city suing to evict the museum for violating a term of its lease (it has charged a $9 admission fee for the show without the mayor's approval).

Before Giuliani took such drastic measures to stifle these artists' expression, he should have given serious thought to stifling his own. His approach to this situation has been misguided on too many levels, and will only serve to hurt himself in the end.



"The Holy Virgin Mary" by Chris Ofili

From a legal perspective, the city's cases are quite feeble. In FCC v. League of Women Voters (1984), the Supreme Court ruled that an entity partially subsidized by the government may not be barred from using other funds to finance its editorial activity. In this case, city funding amounts to one third of the museum's budget, leaving an ample reserve of money it could segregate in order to finance "Sensation." Thus, Giuliani will have a tough time withholding money from the museum just because he is offended by *some* of the works it chooses to display. As for the eviction suit, on recent talk shows Giuliani smugly implied that his anti-art crusade has motivated enforcement of other content-neutral restrictions. A court probably will not consider his ulterior motives, but it is difficult to imagine that the museum will be evicted for such a small violation as charging admission fees without approval—especially when the city clearly has singled it out from all of its other tenants.

Politically, Giuliani's spat has been a rather stupid move as well. He has ambitions to run for outgoing Senator Patrick Moynihan's seat in Congress next year, and his opponent will most likely be Hillary Clinton. Now even in this early stage of the "race," Clinton faces a steep uphill battle: name recognition is not necessarily an asset for her anymore, the recent Puerto Rican clemency controversy was a PR nightmare, and above all, *she is not a New Yorker*. Even some Democrats have called her a carpetbagger. All of this had worked tremendously to Giuliani's advantage, and he would have done well just to sit back quietly for a few months and let Clinton stumble on her own. Instead he decided to fight windmills in New York's art community with rhetoric echoing Jesse Helms'—not a very "New York" thing to do—and he has suffered in the polls because of it.

Even after all of the briefs have been filed and the votes have been cast, Chris Ofili's "Holy Virgin Mary" will be hanging on a wall somewhere, and questions will remain: Is it obscene? Is it an "aggressive, vicious, disgusting attack on religion," as Giuliani describes it? Perhaps for some of us. In Western society, we have been conditioned to associate excrement and genetalia with some pretty nasty, unsavory ideas, and are alarmed to see them juxtaposed with a sacred image. But in other cultures, they are deeply associated with positive ideas such as life and fertility. At the very least, a few minutes in front of the painting may reward us by calling into question our personal values and cultural phobias (beyond that, critics have actually found the piece to be mediocre and derivative). Ironically, Mayor Giuliani's angry tirades have convinced hundreds of people to go have a look for themselves.

E-MAIL

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they are not paid for overtime, computer systems staff come to campus as late as midnight in response to crashes, according to DeGolyer.

Students are nevertheless dissatisfied with the service and support they have received from Information Systems, and the problems are not a mere inconvenience for people chatting with friends. For example, e-mail problems disrupted planning for the recent "Speaking Truth to Power" conference. 2L Paul Ryan, one of the organizers, wrote to DeGolyer and several Deans to complain. In an e-mail message, DeGolyer asserted that Information Systems personnel were as frustrated as Ryan was. "I was, like, I don't think so," Ryan recalls.

1L Stephen Obenski said of Information Systems, "Everybody's having problems, but they don't seem to recognize that everybody's having problems." Many others wonder if the administration is treating the problems as seriously as they should.

Obenski is nevertheless helping staff work on the issue. "I'm sending [student computing chief Florencio Umel] a log of every time I have problems with not getting through ... because they want to know whether the times that I'm not able to get my mail are when the server goes down. So obviously that means they know the server is going down periodically, but maybe they don't realize how often it's going down.... It's extremely frustrating."

Ryan Fox, 1L, would like improved communication between Information Systems staff and students about the status of the servers. "I go in there and I ask if things

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POINT/COUNTERPOINT

In Capital Punishment, Race Does Matter

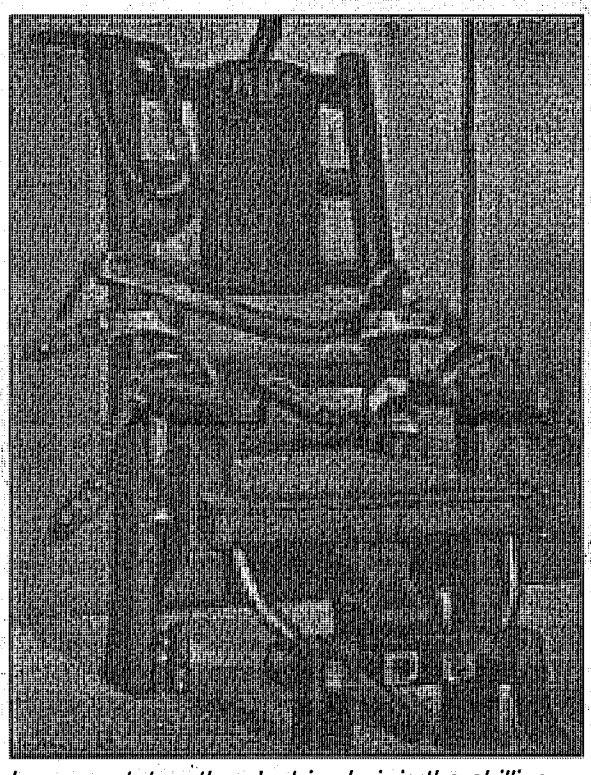
By Paul Ryan, 2L

"One of you two is gonna hang for this. Since you're the nigger, you're elected." How's that for blind justice? Do these sound like the words of a racist redneck? They are. The racist redneck also happens to be a Texas police officer involved in the arrest, trial and sentencing of Clarence Brandley. Brandley is an African-American man who was wrongfully charged with the murder of a white high school girl, was convicted of the crime and sentenced to death on account of his race, served ten years on death row, and was then exonerated of all charges and released from prison. The story is detailed by N. Davies in White Lies: Rape, Murder, and Justice Texas-Style (1991).

Justice is NOT blind. This nation's history is a history of violent racism. Hundreds of years of slavery were followed by thousands of lynchings under the post-Civil War Jim Crow laws. Native American populations are nearly exterminated. Asian populations have been brutalized, exploited and imprisoned in the land of the free. All people of color have been targeted by the systemic racism of our legal and political institutions. But racism in the 21st Century has a new, more difficult-to-recognize face. In the age of PC (or "politically correct") protocol, racists are conditioned to believe that racism is fine as long as it's not explicitly talked about. In our PC world the harm is in the words. If the words aren't spoken, then everything's fine, right? Wrong! Racism has gone underground—but it's alive and kickin'. Occasionally a racist word slips, but more often racist beliefs are translated into public policy which is race-neutral on its face but undeniably racist in its application. The administration of capital punishment is one such policy area.

In the words of Supreme Court Justice Harry Blackmun, "Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die." Callins v. Collins (1994). For this reason, the American Bar Association, along with more than 100 other community organizations, has called for a complete moratorium on executions until problems of systemic racism can be adequately addressed. In 1996, the International Commission of Jurists visited the United States to research the application of the death penalty and stated in its report that, "the administration of capital punishment in the United States continues to be discriminatory and unjust—and hence 'arbitrary'—, and thus not in consonance with . . . [the UN] Political Covenant and . . . the Race Convention." In the late 1980s Congress asked the General Accounting Office (GAO) to review all empirical studies on race and the death penalty up to that time. The GAO reviewed 28 studies and concluded in its 1990 report that, "In 82% of the studies, race of victim was found to influence the likelihood of being charged with capital murder, i.e., *those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.*" (emphasis added).

Numerous studies on race and capital punishment have been conducted since the GAO report. A 1998 report by attorney Richard Dieter, of the Death Penalty Information Center (DPIC) (http://www.essential.org/dpic), strongly reconfirms widespread assertions that the death penalty is racist and unjust in its application. Dieter's report is based on numerous recent, highly sophisticated studies. In one study, law professor David Baldus and statistician George Woodworth conducted a study of race and the death penalty in Philadelphia, PA. The researchers employed the methodology most often used in medical studies to determine aggravating factors in heart disease, lung cancer, etc. In order to determine whether race is a decisive factor, the researchers examined the outcomes in cases of very similar severity with defendants of similar criminal backgrounds. The conclusion of the study was clear: the odds of receiving a death sentence (for a nearly identical crime) are 3.9% higher if the defendant is black. The data also revealed that, when it comes to the administration of capital punishment, being a black defendant serves as a more significant aggravating factor than murdering a victim with multiple stab wounds, or murdering in the commission of another felony.



In some states, the electric chair is the chilling fate that awaits inmates on death row.

Another study in Dieter's report, conducted by Professor Jeffrey Pokorak, found that the key decision-makers in death cases around the country are nearly exclusively white men. Of the chief District Attorneys in counties using the death penalty in the US, nearly 98% are white and only 1% are African American. The ramifications of this reality are too obvious to comment on.

If the racism of capital punishment doesn't dissuade you from supporting it, perhaps the economic costs of capital punishment will. According to a separate DPIC report, the death penalty costs North Carolina $2.16 million per execution over the costs of a non-death penalty murder case with a sentence of imprisonment for life. On a national basis, these figures translate to an extra cost of over $900 million dollars

See **ANTI-DEATH**, page **8**

An Eye for an Eye: Why We Need the Death Penalty

By Ryan Rutledge, 1L

On September 23, 1999, Lawrence Russell Brewer was sentenced to die. Those who oppose the death penalty would have the State of Texas commute Brewer's sentence. A careful analysis of the Brewer case, in combination with appropriate philosophical arguments and relevant precedent, will demonstrate why the death penalty is both permissible and necessary.

Brewer is a bad, bad man. He is a career criminal and a former leader of a racist gang affiliated with the Ku Klux Klan. He has spent most of his adult life in prison, and thus received several opportunities for rehabilitation. But rehabilitation didn't work.

In 1998, James Byrd Junior was in the wrong place at the wrong time. Brewer and two other white supremacists targeted Byrd, a black man with whom they had no prior relationship, for perhaps the worst hate crime of our time. They severely beat Byrd, chained him by the ankles to the back of their truck, and dragged him three miles to his death. In the course of this heinous attack, Byrd was decapitated.

The facts of this case are not in dispute. The only question is whether we should have capital punishment in the United States so that we may execute people like Lawrence Brewer.

There are two primary goals of punishment commonly cited in the debate over the death penalty: deterrence and retribution.

Opponents of the death penalty loudly proclaim that the fear of being put to death does not deter crime. They even provide some evidence of this counter-intuitive assertion. However, this claim is transparently false.

For a punishment to be an effective deterrent, two factors must be considered: the gravity of the punishment and the likelihood of it being imposed. The death penalty is the most serious punishment in our criminal justice system, but it has not been an effective deterrent because it is too infrequently applied.

When few people who commit crimes that warrant the death penalty are executed, there is little reason to fear it. In the last 25 years, thousands of felons have been sentenced to death. Only a fraction of these have actually been executed. In 1995, Newsweek reported that the number one cause of death for inmates on death row was not lethal injection or the electric chair, but "natural causes."

Under these circumstances, it is not surprising that the death penalty has provided little in the way of deterrence. Recently, more sentences have been carried out, however, giving hope that deterrence will become a much larger factor in the future.

However, even if it is conceded that the death penalty does not now deter much crime—which has by no means been proven—capital punishment should still be utilized for the sake of retribution.

In asking yourself which goal, deterrence or retribution, is the more important, consider the following hypothetical situation. Suppose that medical science could render a dangerous criminal completely harmless so that he could be released into society. Suppose further that we could successfully pretend to execute him before he was released to achieve the full deterrent effect. In this situation, should he be released into society without any punishment? If you are like most people, you will answer this question with a resounding "No." The purpose of punishment is retribution.

Conversely, consider a situation in which an act of terrorism is committed but the terrorist cannot be identified. If we are solely concerned with deterrence, we should punish an innocent person to give the appearance that wrongdoing will not go unpunished. Again, few people would support this proposition. Retribution is a sufficient reason for punishment; deterrence is not.

Accepting retribution as the preeminent reason for punishment, ask yourself whether Lawrence Brewer deserves to be executed. Does the punishment fit the crime? Hardly. Brewer will die by lethal injection; Byrd was brutally decapitated while being dragged behind an automobile. Eighth Amendment prohibitions on cruel and unusual punishment afford more protection to Brewer than Brewer gave to Byrd. If the punishment in this case is unjust, that's only because it's better than Brewer deserves.

Brewer has brought his death sentence on himself and deserves to die for the sake of retribution. However, there is another important consideration which requires that Brewer be executed. As the Supreme Court noted in Gregg v. Georgia when it overruled its prior bar on executions, "[C]apital punishment is an expression of society's moral outrage at particularly offensive conduct." Brewer's crime was of the worst possible kind, and requires the strongest condemnation. Life in prison is not an adequate censure. Brewer must be punished to the

See **PRO-DEATH**, page **8**

E-MAIL

From page 3

are working, and they say, 'Oh, yes, they're up. Things are working fine.' I don't know this because I'm still having problems, and I don't know if it's on my end or if it's on theirs."

Fox also wishes Information Systems would "publish something that would tell us, ... 'When you have a problem, here are some steps that you can take before you have to worry about coming to us.'" Fox points out that he has "looked at their website, and they have some setup information ... but at least one of those pages talks about Pegasus Mail, which is [now obsolete]. So obviously they need to update the website."

DeGolyer and his staff are frustrated partly because they bought the e-mail software and hardware from industry leaders and thus had high expectations that it would work reliably. The system runs Novell software on Dell computers with Cisco Systems routers (automated network "switchboards"). Novell is the world leader in network software, and Cisco sells more routers than any other company. At the time this article was authored, Information Systems had a service request with Novell open for over two weeks, and staff were speaking with Novell technicians every other day to troubleshoot the problems. In addition, DeGolyer noted, Cisco rebuilt the routers after Information Systems detected an error with some of the hardware.

The new system is designed around software called GroupWise. According to DeGolyer, it offers several advantages over the old Pegasus system. First of all, Pegasus was "less than reliable." In addition, GroupWise can be integrated with so-called "workgroup" software. Workgroup functions include calendar features, which can help students schedule meetings around their classes and other times they are unavailable. Finally, while Pegasus offered students two ways to access their e-mail – access in the Computer Lab and via e-mail programs on their home or laptop computers – GroupWise offers a third: World-Wide Web-based e-mail access.

The new web-based access in GroupWise provides rudimentary features to users anywhere who can access the web via a browser such as Netscape or Internet Explorer. The web interface gives students access to the same messages stored on their server space accessible from the Computer Lab.

However, the web interface is limited in several troubling ways. For example, users can only move or delete one message at a time which can take a long time for students with older, slower computers.. In addition, the windows in the web interface for typing and addressing messages are extremely small, which makes composing messages a chore. Currently, the interface also has a relatively short "timeout." If a user spends more than 10 minutes writing a message or entering addresses in the tiny "To:" box, clicking the "Send" button permanently deletes the message and returns the user to the logon screen.

On Thursday, August 27, John DeGolyer sent all students an e-mail message after fielding several student complaints. At the time, Information Systems thought everything was working fine and wrote "We believe that all the difficulties you are having relate only to those who try to access GroupWise via a browser."

DeGolyer's optimistic message offered frustrated users some hope. "We are fine-tuning the new e-mail servers and replacing a router by Sunday night [August 30, 1999]. Because the problem is intermittent and related to the user load on the system, you may have greater success using a browser at different times of the day."

However, complaints about unreliability of web-based and home e-mail access at all times of the day and night persist even now, two months later. Many believe it is time for the law school administration to step up their efforts to find a permanent solution. With more professors turning to the web as a teaching tool, including soliciting assignments via e-mail, unreliable access is much more than an inconvenience.

DeGolyer advises students experiencing e-mail problems to contact a consultant in the Computer Lab by visiting in person or by calling (310) 825-2818. Sometimes the problem will be with the configuration of the student's computer, or with an ill-defined "corrupt message" problem that sometimes can be fixed by moving the student's incoming messages to and from the virtual "trash." If not, there is little the consultants can do except empathize with frustrated users, and some consultants are better at this than others. DeGolyer continues to assert that "once [the system gets] stabilized and everybody gets set up ... everything will work fine. It's often like this when you bring up a new system" for so many users.

At least one of the problems could have been avoided, however. When the new system started, everyone's password became "password," a change that Information Systems chose not to announce, presumably for security reasons. So, for ten days before classes began, 2Ls and 3Ls could not get e-mail sent to their Law School addresses until they came to campus or called for help on accessing their accounts. This disruption in communications came at a time many students were traveling or arranging their return to school.

When asked why the change was made when students were off-campus, DeGolyer replied, "We cut-over to new systems in the summer so that we have a couple of weeks of running time on the systems and try to have a chance to stabilize the systems before the students get here." He also noted that "300 new users" come in every fall.

Given an opportunity to do things differently, Florencio Umel suggested instituting "a pilot program for users who were here over the summer, maybe 50 or so students, so that we could have gotten their opinions about the new system." DeGolyer would have "put even more effort into an improved communications strategy." For next year, he said, "I would like to get a confirmed decision by December 15th for [major] changes and then run a longer pilot time in the spring so that we know how the system will change, and then we can notify people before they leave the school."

As an alternative to GroupWise, the school could have bought every student an Internet account from a private service provider, which would have cost about $15 per student per month (or $180,000 per year), DeGolyer said. However, such accounts do not provide for workgroup computing. The school also considered providing students with the same system the faculty uses (Microsoft Exchange), but that would have cost two to three times as much as GroupWise. Keeping or upgrading the Pegasus system was ruled out because of its own reliability problems. Pegasus Mail software is available free, however, courtesy of New Zealand programmer and developer David Harris.

Although e-mail may seem an indispensable accompaniment to higher education and membership in a campus community, the cost of the current system is mounting, both in terms of school expenditures and students' wasted time. DeGolyer notes that the school has "pulled in top-notch consultants and other resources to help us work through [the] technical issues." Meanwhile, eight weeks into the semester, students who rely on the campus computing environment can do little more than deal with the frustration as best they can.

Editor's Note: On October 8, 1999, all law students received a letter and questionnaire about the problems with e-mail from Associate Dean Robert D. Goldstein. It is unfortunate that the administration took so long to address the problems with student e-mail. David Holtzman, along with those students who expressed their concerns to the administration in writing, deserve a great deal of credit for prompting this administrative response. Indeed, David openly and explicitly researched this story for publication in The Docket *for several weeks prior to Dean Goldstein's October 8 letter. Thanks for your hard work, David.*

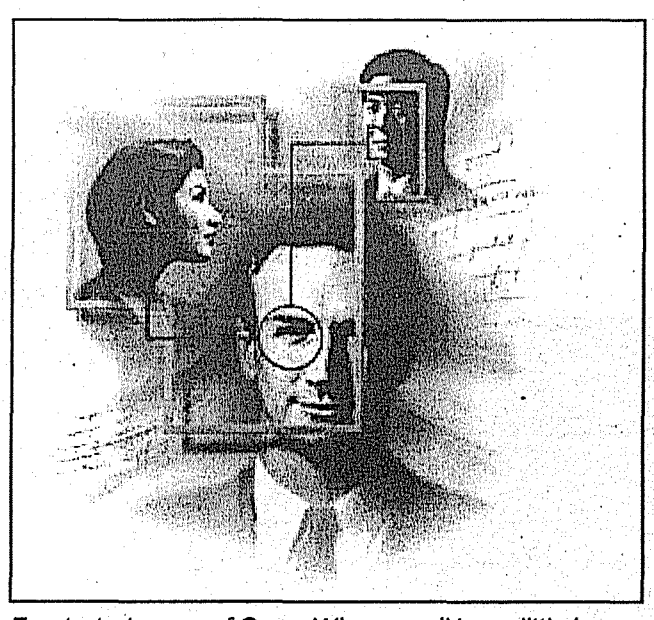
Students should pay careful attention to the last paragraph of Dean Goldstein's letter before discarding his letter as another piece of mailbox rubbish: "[The administration] will assume that no response to [the] questionnaire from you is an indication that this week and last you were relatively satisfied with your computer experience at UCLA."

Tech-Talk: How the New E-mail System Works

By David Holtzman, 3L

When it works, GroupWise offers three ways to get e-mail:

1. Students can use "Post Office Protocol" programs to deliver (or "POP") their e-mail to a home or laptop computer. "POPping" gets a UCLAW student's incoming mail from the "Post Office" computer in the Law Library basement and puts it (or a copy of it) on the student's own computer. POPping allows students to read messages and write replies off-line, without tying up their phone lines. Eudora, Microsoft Outlook, Pegasus Mail, and Netscape Messenger are some of the programs that can POP mail. The UCLAW POP server is pop.law.ucla.edu.



Frustrated users of GroupWise e-mail have little in common with this happy, well-connected trio.

2. Students can also access their mail through the "local client." This is the GroupWise program available on workstations in the Computer Lab. The local client allows users to store messages in a virtual filing cabinet. The GroupWise local client provides some features, such as automatic forwarding, that were not available with the old Pegasus Mail system.

3. This year, GroupWise allows the use of a new way to send and receive messages: a World-Wide Web interface on the World Wide Web. The web interface gives access to the same virtual filing cabinet as the local client. A student using the web interface can create and use new file folders that will be available for use with the local client when the student returns to the Computer Lab. The web interface is at http://webmail.law.ucla.edu.

While many students are new to web-based e-mail, some are familiar with it thanks to free (read: the user sees advertisements in exchange for) e-mail services like those offered byYahoo!, Netscape, and (Microsoft) Hotmail. Users can POP e-mail to these accounts much like they can to their home computers. Numerous students used these services to read law school e-mail on their home or work computers over the summer.

The free services offer some functional advantages over the GroupWise web interface as well. For instance, a user can move or delete several messages at once, with the single click of a button. Also, with the free services, users have much more time to compose messages before losing their work to a system "timeout."

Troubleshooting

UCLAW has a separate computer for each of the three ways to access e-mail. The separate computers all access a main "Post Office" computer, where the e-mail itself is stored. Sometimes all of the computers are working. However, each of them has gone down repeatedly during the past two months, and Information Systems is working on finding a solution. (See the accompanying e-mail system article.)

Some students are experiencing a phantom problem blocking POP access to their e-mail. Although the exact cause of this problem has not been identified, it is thought that an occasional "corrupt message" (think of an e-mail message that has been damaged like a scratched record or CD) causes the POP process to terminate. The good news is that there seems to be a fix. Wilson Cheung, the head Lab Consultant, is generally able to unblock POP access by moving mail messages to and from the local client's virtual "trash" container. Despite his hard work on the problem, however, Cheung has not yet figured out a way to identify corrupt messages or how to prevent the problem altogether.

A Madness to the Method: What Would Socrates Say?

By Meredith A. Cole, 1L

When I started classes as a first year law student at UCLA, I heard the term "pedagogy" more often than the term "law." I'll even admit that I had to look it up because I kept confusing it with "hegemony," but, frankly, in a 1L classroom, what's the difference?

However, when you learn that your professor's pedagogical preference is the Socratic method, pedagogy's meaning gets permanently pressed onto your brain, often resulting in heart palpitations and perspiring palms. I'm not big on generalities, but I would venture to say that Socratic method horror stories are a relatively universal phenomenon –interviewers during 2L OCIP notwithstanding (I'm told), law school alums will nod knowingly and sympathetically when you discuss your horror stories and often offer stories of their own. Even my father, my fearless, 30-year-practicing-attorney-father, still recounts his harrowing IL experiences (including a Moot Court horror story that will keep me away from that trap of terror).

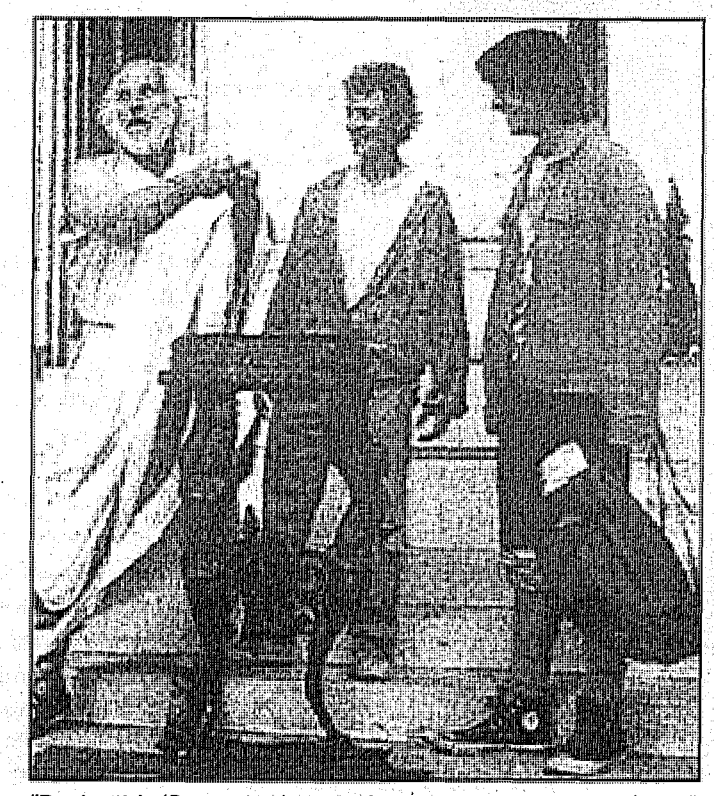
Not all of my professors employ the Socratic method in class; a few of them combine lecturing and volunteering quite effectively. However, the ones that do employ the Socratic method are devastatingly masterful. I don't want to name any names, but think of a popular marsupial from Down Under and drop a couple syllables.

As far as I can tell, my informal research during the first six weeks of class reveals four variations that wrack the nerves of 1Ls:

1. "I didn't hear the question." (In the marsupial's class, not hearing a question does not protect anyone. Usually it means that your neighbor is required to repeat the question, thus spreading the fear.)

2. "I heard every word of the question, but was that English?" (This typically entails some stammering and stuttering and throwing out a few words like "reasonable," "fair play," or the old standard "Well, it depends....")

3. "I heard the question, I understood the question, but I can't get my mouth to articulate my thoughts" (This is perhaps the most frustrating and common experience among IL's.)



"Dude, this 'So-crates' guy asks way too many questions!"

4. "I heard the question, I understood the question, my mouth is articulating just fine, but I've just realized that everything I said is completely and utterly wrong." (This is not as common, but it is equally swift and devastating.)

As I noted above, the standard symptoms are a rapidly beating heart and sweaty palms. In addition to those standards, my symptom of choice is the "white noise" ringing in my ears, blocking any external (between the professor and me) or internal (among my ears, brain and mouth) flow of information. When I experience variation #2, I can only dumbly repeat the question hoping that mere repetition will somehow attach meaning to seemingly incomprehensible words.

However, in addition to any negative physical or emotional side effects, there are obvious benefits to the Socratic method. Of course, the basic idea is fear, the "Great Motivator" which successfully "inspires" us to prepare for class. The classroom also becomes a forum in which to practice the "art of articulation": learning to think quickly and express ideas clearly and succinctly. There are also several less obvious benefits.

1. In addition to motivating students to prepare for class, the fear-factor builds

See **METHOD**, page **8**

Better Than Watching HBO: OCIP Interviews

By John Targowski, 1L

There is no study distraction more interesting and downright entertaining than eavesdropping on 2 and 3Ls in their hunt for summer jobs through the on-campus interviewing program (OCIP). Sitting in the courtyard with casebook in hand, I'm brought into a new world watching these theatrical displays. A world filled with its own peculiar set of rules. And a world, thanks to the current job market for UCLAW students, that usually has a Hollywood ending. While I may inhabit this strange world next year, for now I revel in spectatorship and offer my fellow 1Ls a glimpse of the fun yet to come.

The act commences with the handshake. Firm for men, less so for women, and nothing in either extreme. Although I did notice one woman squeeze her interviewer's hand like she was waging a war on masculinity, and one fellow who shook hands as if his were missing. Then the resume comes out of one of those black leather-like UCLA Law portfolios, available for around $21 at LuValle, which seems like utterly too much protection for what, in essence, is just a sheet of paper. After some fabricated pleasantries and canned facial expressions, the parties are seated and the sweating begins.

When interviewing, law students display one of two categories of behavior: a confidence that masks a genuine aura of self-appreciation that probably comes from too much exposure to the Westwood "spankmel'msocool" mentality, or confidence masking a fear of living life without the German sports sedan in a house on the beach that too many of us aspire to after to rectify our three years of law school slavery. (For my public interest brethren, the

See **OCIP**, page **10**

Jesus is Corrupt: My Night in Lawyering Skills Hell

A Saga Guaranteed to Make You Feel Better About Your Upcoming Graded Memo

By Lisa Lenker, 2L
Editor

I came to law school filled with hubris over my capacity as a writer and editor: after all, I had served as the editor-in-chief of an academic journal, edited two books by major publishers, and authored a lengthy dissertation. So I approached the whole prospect of writing a lawyering skills paper as a silly little exercise of jumping through rhetorical hoops and mastering an inelegant, ugly paper format known by a faintly obscene-sounding acronym. How difficult could that be? Needless to say, that particular question was answered in the form of a mammoth comeuppance during my stint as a 1L.

The night before our graded memo was due, I was busily completing and polishing up my draft, which serenely floated in the highly fragmented hard-drive of my Mac Centris 610. (I had no floppies to back up the memo, but I didn't think this warranted my doing something so drastic as going out and actually buying some.) Perhaps the gods wanted to quash my over-confidence. Perhaps something in the planets slowly came into an evil alignment. Perhaps sh*t simply happens, and this time I was randomly targeted as the law school recipient of the week. But a series of supernaturally horrible things ensued.

As I was working on my draft, I became increasingly chilled in my apartment, which is essentially a corrugated metal Sears equipment shed (called a "guest house" in Westwood) with windows cut into it. My guest house is wired to support not much more current than that drawn by your standard-issue Suzie Homemaker oven. But my fingers were stiffening up with the cold, and word processing was becoming difficult, so I flipped on the portable heater graciously furnished by my landlord. Toward the end of my revisions, I flipped on another light to brighten the gloaming interior of my hovel. There were electrical sparks. All went black. A shadowy, premonitory feeling filled my heart.

I waded outside (it was raining) through several inches of water that collected outside my door, and found the fuse box. After managing to step in not one but two mounds of underwater dog poo (courtesy of my landlord's dogs), I made it back to my hut, where it was basically dry if not warm. Electrical current restored, my computer was on, but behaving oddly in an unidentifiable way; I attributed this to some weirdness with the current flow. It appeared that I had lost no data, so I felt lucky and pleased with myself. Because my cats — Mulder and Romaine — were making a ruckus, I decided to take a break and attend to their needs.

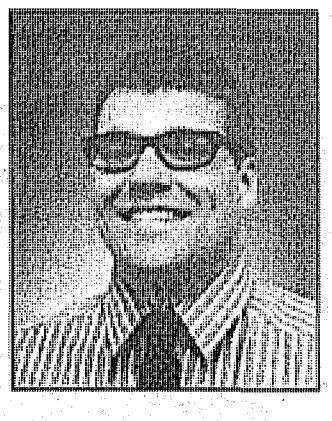
I figured the cats were hungry, and I opened a big can of Ralph's brand cat food. Before I came to law school, my cats had only the top of the line everything: they drank bottled water, Science Diet wet and dry food, and were given fresh abalone, crab meat, salmon and tuna by my doting friends. Now they get LA tap water, and the cheapest cat food from whatever convenience store is open latest at night. Mulder dug into the mound of Ralph's by-products with gusto, as did Romaine. Then a strange expression passed over Mulder's face. I went back to my paper.

Perhaps twenty minutes later I realized that one of my rule proofs made no sense; at that point, Mulder began to scream — really scream — and produced an amazing flume of projectile diarrhea, the likes of which I have never seen (which is saying something because I am from a family that raises farm animals). Howling, Mulder ran around my hut, spewing excrement everywhere. Then he leaped into my lap, shivering, and put his forepaws around either side of my neck in a sort of desperate headlock. (I think if he could speak he might have had a thing or two to say about Ralph's cat food, implied merchantability, and so forth.) Mulder and I were covered in cat crap, as were my linens, carpets, tables, casebooks, research paperwork, computer, lawyering skills paper draft and the very walls surrounding this sordid scene. Possibly inappropriately blaming Ralph's for my situation, knowing that I needed to rework a rule proof, that the evening was growing late, and that I was covered in cat sh*t all combined to make me feel very unhappy. I tried to clean up my apartment, then I took a shower (and took Mulder into the shower with me to de-poo him, at the same time). Fifty or so scratches later, we emerged, mutually irritated and high strung. I wadded

See **MEMO**, page **11**

A Simple Suggestion for All of the Activists... Play Ball!

By Sam Fortenbaugh, 2L
Editor



I hate to admit it, but I have to be honest. For the last three weeks, I've cared more about the New York Mets making the play-offs than I care about social issues like poverty, women's rights and Indian Sovereignty —combined. Let's face it, when the last game of the season is tied up in the bottom of the ninth, how can anything else possibly matter? My hopes, dreams and very identity hang in the balance. I scrutinize every facial gesture by the pitchers, hold my breath when a batter swings, and wait anxiously for the umpire to call the balls and strikes.

Yet sometimes, when the game is interrupted for one of those mind-numbing Ford Explorer commercials, the immediacy of the moment is broken. I begin to wonder if my priorities are somewhat skewed. That instead of feeling the tension as Benitez pitches out of a 9th inning jam, I should be worried about people not having enough food. That when I feel the excitement of Mike Piazza coming to the plate in the bottom of the ninth, bases loaded, score tied one-all, I should feel that same thrill when women's groups organize themselves behind some gender issue. And when the Pirates' pitcher threw the wild pitch that allowed the Mets to score the winning run and clinch a tie for the last wildcard playoff spot, I should've been that happy when voters passed Prop 5, giving California's Indian tribes the freedom to set up lucrative gambling operations.

After enduring the Ford commercial for ten seconds and watching a well-fed white two-year-old get strapped into a car seat that costs more than Nike pays its sweatshop employees each week, I start to question my belief system. Is there something wrong with me? Am I one of those passive-reactive-selfish-social-activist-types that's really part of the problem? Because of my lack of concern and verbal support, am I the real reason there are so many social ills? I began to think that if I could just turn off my TV, get up from my couch, and go out into the world to advocate for the rights of oppressed groups everywhere, the world would start moving in the right direction. Like a droplet from a snowcapped mountain joins a trickle to form a stream, then a river, and finally a torrent flood sweeping the land clean of all injustice. I could be that droplet!

Then I think, "No, why blame myself. It's all these public interest lawyers that are the problem." If they could just make these social issues as interesting as the Mets pennant race, they'd have me glued to the TV. No, better — glued to the sidewalk with my picket sign. Even though I can't hit a home run like Mark McGwire, I still want to be part of the game. So if I could be the Mark McGwire of social reform, I'd be there in a second —buckling up my Birkenstocks and trimming my goatee. But these public interest lawyers are too concerned with the public and not enough with the fans. It's no wonder activism has never been called the "national past time." It's boring, if not just plain depressing.

These activists need to make their issues more compelling. Remember, there's a little "Act" in every "Activist." But I don't think movies or plays are the answer. *Schindler's List* was a great film, but it didn't change anyone's mind in Idaho. Salma Hayek, as beautiful as she is, couldn't stop the Republicans from passing Prop 187. And when *Hoop Dreams* was released, everyone's concern about the inner city poor only lasted a few months.

However, *Hoop Dreams* was on the right track. If activists really want people to continuously support their causes, they should make their issues more of an annual happening, like sports. Sports analogies work for business and civil procedure. There's always someone quarterbacking the company and to avoid summary judgment you got to get out of your own end zone. Well, I think it's about time these activists stepped up to the plate.

Maybe they could form a sports league for each social problem. The "NHL" will no longer stand for the National Hockey League but the National Homeless League. They could devise a point system based on change pandered for, cans collected and soup kitchens visited. There could be weekly — no, daily — updates in the standings. As winter draws near, the heated homeless competition for play-off spots would reach a crescendo. I'd tune in every day to see if the Boston Beggars were gaining ground on the Vancouver Vagabonds. And I'd want to support my team with donations and voting for changes in state, local and federal laws. Anything to put my team on top.

That's what these public interest lawyers can do. Give homeless people a level playing field. Then, true ability in poverty would be rewarded and no one would make excuses for hidden pitfalls. That's why that legal proviso appears at the end of every Ford Explorer commercial. When I see the fine print, I know the commercial is almost over and the game is about to come back on.

You know, it feels good being an activist. I like doing my part. I thought; I examined; and boy do I hope Ventura doesn't hit into another double-play.

METHOD

From page 7

camaraderie among classmates. So far, I've avoided the battle analogy, but it's easy to think of us as a bunkered-down platoon trying to survive a barrage of questions ceaselessly hurled in our direction. And when one of our confederates falls, we silently salute her bravery for taking the shot from which we were spared.

2. The Socratic method also forces students to think critically about what others say. Rather than having an omniscient professor lecture at us, a well-constructed Socratic class compels students to challenge each other's answers, especially if the professor revels in leading students down a wrong path to see if anyone disputes the line of reasoning.

3. On an etiquette note, the Socratic method avoids those awkward pauses encountered in the volunteer method classes when the professor asks a difficult question and no one raises her hand. The question just hangs in the air until a brave soul ventures an answer or until someone asks, "Can you repeat the question?" just to break the silence.

4. On a personal level, the Socratic method has made a much more involved class speaker out of me. Yes, I get even more out of class when I volunteer, but on a strategic level, it is an effective defensive maneuver. I figure I'm less likely to be subject to a surprise question if I blab away on my own for a bit.

Oops. At the risk of tipping off Professor Marsupial, I probably shouldn't print this last part....

UCLA School of Law Financial Aid Office

Money Management 1999

The Law School Financial Aid Office extends a special invitation to second year law students to attend *Money Management 1999:* a specialty session designed to focus on managing and stretching summer employment earnings. The Specialty Session will kick off promptly at 3:00 p.m. with a wardrobing specialist from Nordstrom.

Money Management 1999 will take place on Thursday, October 28, 1999 at the law school. Students who wish to attend are asked to RSVP to finaid@mail.law.ucla.edu no later than Friday, October 15, 1999.

3:00p.m.	Tips for Successful Dressing	Wendy Laurence-Williams, Regional Director-Personal Touch Department- Nordstrom
3:20 p.m.	Goal Setting for Summer Earnings	John Abbott, Law School Financial Aid Office
3:40 p.m.	Unveiling the Myth about the Bar Study Loan	Veronica Wilson, Law School Financial Aid Office
4:00 p.m.	Social Hour	Law School Courtyard

ANTI-DEATH

From page 5

spent since 1976 on the death penalty. The death penalty costs California $90 million annually beyond the ordinary costs of the justice system—$78 million of that total in incurred at the trial level. If crime prevention is the primary goal of the criminal justice system, wouldn't this money be better spent on education and job creation?

Racism affects the administration of capital punishment from the arrest on the street through the entire legal process: the decision to seek the death penalty by the white DA, the selection of the white jury, the poor legal representation available to defendants of lower economic status at trial, the virtual unavailability of legal representation at the appellate level—the list goes on an on. Despite overwhelming evidence of systemic racism, the Supreme Court has refused to address the issue, holding in McClesky v. Kemp (1987) that the defendant had to show that he was personally discriminated against in the course of the prosecution. Showing a disturbing pattern of systemic racial disparities over a long period of time was held insufficient to prove bias in his case. Considering the PC protocol, it's highly unlikely that the smoking gun will be found in any capital punishment case.

Statistical evidence of systemic racial discrimination has been admitted in Civil Rights Act employment discrimination claims and Voting Rights Act claims as well. As anti-racists, we have an obligation to support federal and state legislation that would allow the admission of disparate impact statistical evidence in capital defense cases, similar to the 1994 Racial Justice Act which Congress failed to enact. As anti-racists, we have an obligation to oppose capital punishment. As anti-racists, we have an obligation to address all racism in the criminal justice system and society at large. Are you anti-racist?

PRO-DEATH

From page 5

full extent of the law: execution.

And make no mistake, capital punishment is compatible with our system of law. Thirty-eight states presently authorize the death sentence by statute. The only question is whether this is constitutional. It is. The Eight Amendment was never intended to prohibit execution. Moreover, the Supreme Court has not interpreted it to do so. Whether one views the Constitution as having its original meaning or as a living document which reflects current norms, the death penalty presents no constitutional problem. It was not cruel and unusual two centuries ago and it is not cruel and unusual now.

Opponents of the death penalty, when their other arguments fail for logical incompatibility with the goals of our criminal justice system, resort to idle emotional pleas that take some form of "civilized societies don't execute people." What they mean is that there would be no execution in an ideal society, to which I would agree. But in a society where a man can be decapitated while chained to the back of a pickup for no reason but the color of his skin, we need the death penalty.

Charlie Chaplin: A Hollywood Legend Remembered

By Bijan Esfandiari, 1L

Many students at UCLAW intend to pursue the vaunted career of a high-flying, deal-making, glitteratti-dating entertainment lawyer. Yet relatively few of us know much about the rich and fascinating history of the Los Angeles film industry. Sure, we've all seen every *Seinfeld* episode twice and hum at the theme songs to at least 27 other television sitcoms, but who among us knows the story of Hollywood's first true power player, Charlie Chaplin?

During the 1920's, one pundit quipped that more people had seen the films of Charlie Chaplin than had heard the words of Christ. During a three-decade career, Chaplin made over 80 films – all but four of which were silent. While most in our generation have heard of Sir Chaplin, few have actually seen one of his films. I attribute this sad fact to the general prejudice against silent movies.

Perhaps Chaplin is best remembered for his creation of the iconic character, the "Tramp." In fact, almost all of Chaplin's silent films revolved around this beloved persona. The tramp with his toothbrush moustache, baggy trousers, bamboo cane and jaunty walk is certainly one of film's most venerable symbols. He represented the working poor. He was a vagabond, an outcast among outcasts, who despite being the little guy, always seemed to win one for the common folk. The character became a universal icon whose "silent" humor spoke to people of all nations and walks of life. Moreover, the Tramp's comedy transcended age limits, appealing equally well to a five-year old as to a seventy-five-year old. Through the Tramp, Chaplin lampooned contemporary culture, especially the upper class, those in authority and the modern industrial state. He generated humor by kicking a police officer or by creating mayhem in an assembly line.

It is interesting to note the similarities and differences between the real Chaplin and his character, the Tramp. Whereas the Tramp was a vagabond who didn't care about work and perfection, Chaplin himself was a quality-obsessed workaholic. In his pursuit of perfection, he shot over 90,000 feet of film for *The Immigrant*, yet he released only 1500 of them. Chaplin not only starred in his films, but he also directed, produced, edited and even scored most of them. And to counter the monopoly of the big movie studios, he co-founded the distribution company United Artists. Chaplin was truly a complete filmmaker.

Although his films were meant to create laughter, they also clearly criticized social ills. Chaplin, who as a British subject refused to become an American citizen, expressed provocative views on the American notions of liberty and equality in his 1917 short film *The Immigrant*. In a now famous segment, we see the text, "The arrival in the land of Liberty," followed by a quick shot of the Statue of Liberty. The next scene shows the Tramp and his fellow immigrants cordoned by ropes and guarded by a surly immigration officer. The scene makes a mockery of freedom and liberty by portraying immigrants crowded together in conditions not fit for cattle.

With the introduction of sound in 1927, Chaplin began to falter. He was completely against the new "talkies." In 1931, when everyone else was producing sound motion pictures, Chaplin released *City Lights* – a thoroughly silent picture. Because most theaters wanted nothing to do with a "star of yesterday," Chaplin was forced to buy and lease his own movie houses to screen the film. And yet his silent *City Lights* became the highest-grossing film of 1931. Chaplin, however, would never again prevail against the talkies.

In the 1940's, his celebrity dipped further when his scandalous relationships with teenage women began to haunt him. His political views, and in particular his movie *The Great Dictator* (a film attacking fascism and Hitler) were not well received by a communist-fearing America. Eventually, Chaplin was denied reentry into the States because of his supposed communist affiliation. Chaplin, whose movies helped transform Hollywood into a global motion picture capitol, was kicked out of America. "Nothing fails like success," said the bitter, enormously successful Chaplin.

Clearly, Chaplin created an abiding legacy of film during his lengthy career. Yet with the current disinterest in silent movies, one wonders how long his legacy will survive. While living as a child in Iran during the early 80's, I became a fan of Chaplin. His films were shown occasionally on Iranian television and they continue to air to this day. As a six-year-old child in Iran, I unfortunately knew more of Chaplin's legacy than most American adults do.

If you are interested in renting Chaplin's best work, I recommend: *The Pawn Shop* (1916), *The Kid* (1921), *The Immigrant* (1917), *The Gold Rush* (1925), *City Lights* (1931), and his partial talkie, *The Great Dictator* (1940). Oh, and you'll find them in the "Classics" section, right where they belong.

Chaplin's brand of comedy has withstood the test of time, drawing just as much laughter today as it did 80 years ago.

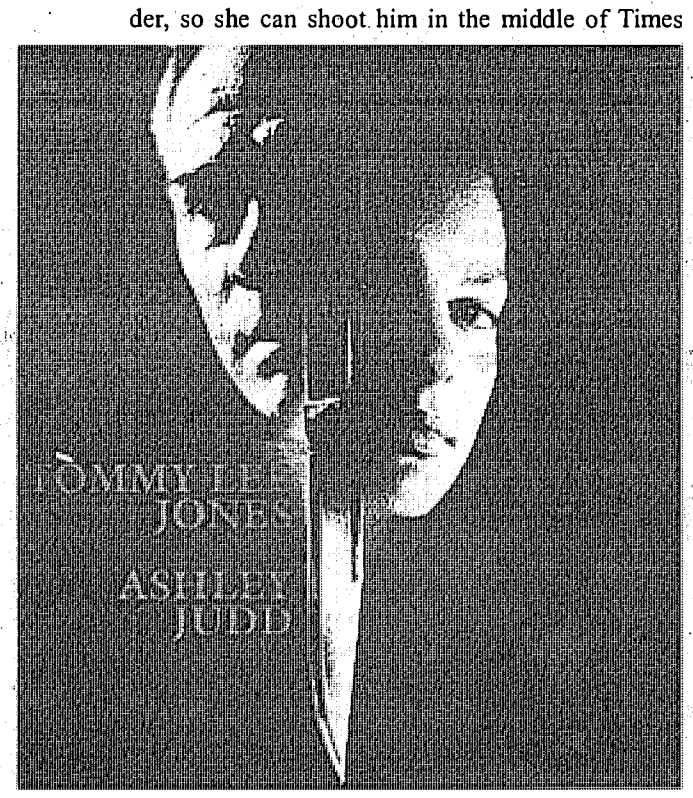
Final Verdict Delivered on *Double Jeopardy*

By Lee Crawford, 2L

Citation: *Double Jeopardy*, 9 Paramount 14 (1999)

Procedural Posture: Convicted of murder in trial by jury. Written from memory of *The Fugitive* and *Not Without My Daughter*.

Facts: Libby is charged with murder after her husband mysteriously disappears from the sailboat where the two were alone, leaving a fateful bloody knife and a lot of blood. Inexplicably represented by her family tax attorney, Libby is convicted. In prison she accidentally learns her husband is in fact still alive and appears to have framed her and stolen her son in the process. Prison Pal, a former attorney also convicted of murder, advises Libby that she shouldn't waste time seeking an appeal or getting an investigator to uncover the new identity of her sneaky husband. Instead, the wise and all-knowing Prison Pal advises Libby that she should stalk and kill the husband. After all, she's already been convicted for Nick's murder, so she can shoot him in the middle of Times Square and no one could touch her.



Issue #1: Whether a woman who was previously convicted and served her seemingly short sentence for murder of her husband (who wasn't really dead), can then actually murder him in the middle of Times Square without risk of new criminal charges under the double jeopardy clause.

Holding #1: That would be a big "no." But who cares? *Double Jeopardy* is not legal doctrine —it's a blatant misreading of the Fifth Amendment. It's a catchy title and makes for an interesting premise that can sustain a trailer (but apparently not a 90-minute movie). The filmmakers avoided tricky moral issues (which could have been interesting) by dropping the vengeance premise in favor of the very stale "I want to find my child" modus operandi. The key to box office success is apparently developing the vindication plot only long enough to get to the shots of the dewy inmate working out. The audience will never anticipate that the heroine actually undertakes the fitness routine not to power her way out of jail and spring her wrath on her victim, but only to look hot in the Armani evening gown (that surprisingly has found its way into all the trailers- wonder why?). After all, sexy evening gowns are vital in Hollywood's version of a custody battle.

Issue #2: Whether Paramount was negligent in not consulting one of the many attorney-turned-screenwriters floating around Hollywood (or even someone in the general counsel's office) when it crafted this legally incorrect and boring beyond belief "thriller"?

Holding #2: Perhaps this is the movie-critic equivalent of judicial legislating, but the filmmakers could have done better than this, even considering the faulty premise. The double jeopardy gimmick is admittedly attractive. Even given the legal problems with the inspiration, the screenwriter had plenty of material with which to write a good, time-killing thriller. Instead, he turned in a scenic quest freighted with the familiar father-figure with a tragedy in his past and the mercilessly evil villain. Most exasperating is the heroine's failure to do the obvious — like hide — or at least try to reveal her husband's criminal fraud.

Web's Best Entertainment Sites Out-Scoop the Rest

By Michael Ventimiglia, 1L

We live in the Age of Information. At our fingertips – literally – the Internet is our gateway to the collected musings of hundreds of thousands of minds on millions of topics and ideas from all over the world. We can join in the search for life in outer space, discuss philosophical enigmas that have baffled human minds since the ancients, and marvel at medical innovations. Or, we can find out what's hip in Hollywood.

Sure, the latest scientific breakthroughs are interesting and all, but what I really want to know is what the late twenty-something Lara Flynn Boyle was doing with early sixty-something Jack Nicholson at the Emmys. Is the new film *Fight Club* worth fighting thongs of Brad Pitt fans to see? Or how about *Star Wars-Episode Two*? It's never too early to start thinking about that.

Cyberspace was meant for the gossip mill. Information travels instantaneously, perfectly suited for up-to-the-minute updates. It's practically anonymous, enticing insiders to spill the beans even on the most top secret projects. And best of all, it's totally free.

On the Internet, there is a three-tier system of Hollywood gossip. The top echelon consists of hard-core entertainment-news, press releases, and studio earnings info, which is front page of the *Los Angeles Times*' Calendar-section type stuff. The next echelon is celebrity gossip – who went where with whom wearing what. Finally, there's the underground gossip echelon – the real scoop. Underground tidbits that appear on Monday can end up on the higher echelons by Thursday.

While thousands of web sites exist for gossip, here are the archetypal sites at each level. Pay them a visit and you'll be completely "in the know."

For pure news, Entertainment Weekly Online at http://www.ew.com is as good as it gets. Every Monday it has the weekend grosses. By Tuesday it has the week's television ratings. The latest celebrity news like Charlie Sheen's court hearings, Pamela Lee's latest cosmetic crisis, and more is always available and thoroughly covered. Moreover, there is a direct link to Reuters Entertainment News Wire service. Read the wire and you'll stay a day or two ahead of the *Los Angeles Times*' Morning Report. Oh, and of course EW Online has a full battery of movie, television, music, and book reviews to help you spend your precious (government subsidized) entertainment dollar wisely.

To satisfy your secret lust for trashy, backbiting celebrity gossip, E! Online at http://www.eonline.com can't be beat. The network that issues paychecks to Joan Rivers gives cursory space to some hard entertainment news, but for the most part, this site is as surly as the cast of *Friends* on a bad hair day. If you want to hear how Matt and Winona (Damon and Ryder) shacked up, who had the ugliest dress at the Emmys (host Jenna Elfman's patchwork thingy), or which celebrities are part of the "Mile High Club" (Bill Cosby !?!), this is the place. And just think, no one has to know you were there.

Underground gossip mills exploded last year with the hype surrounding *The Phantom Menace*. By far, the most reliable of these below-the-radar rumor mills has to be Harry Knowles' http://www.aint-it-cool-news.com. Boasting an elaborate web of informants deeply entrenched in all the major studios (especially Disney and Lucasfilms), Harry regularly scoops the most established news sources. Unlike most underground sites, which seem overly focused on Japanese anime, *Star Wars*, or the current *Lord of the Rings* production, Ain't-It-Cool-News does a good job of diversifying Harry's information. Movie reviews can often be found here weeks before they run in legitimate newspapers, and casting news is often months ahead of official press releases.

Before visiting AICN, however, be sure to keep a few things in mind. Many stories are prefaced with the word "spoilers." Translated, it means, "Do not read this if you want to be surprised." For example, this site ruined the cool ending to *The Sixth Sense* for me, and the ending to *Scream 3* (which I've managed to avoid, so don't tell me) is already available. Also, this site is so popular that studios monitor it and often try to post reviews of their own movies. If some purported "insider" sounds excessively enthusiastic, be skeptical. He's probably just some studio tool. Normally AICN screens out these self-promoters, but occasionally some slip by. On the whole, however, this site is one step ahead of the rest. Reviews for *Sleepy Hollow* and *Fantasia 2000* are already available, as well as production news about the new *Aeon Flux* film and *Toy Story 2* footage. You just can't find this stuff anywhere else.

To be sure, gossip sites are little more than rest stops along the Information Superhighway, but they are a great way to waste an hour. Besides, in Los Angeles, this kind of knowledge is real power.

OCIP

From page 7

confidence masks a fear of missing out on the golden job-opportunities to save oppressed castes from Capitalism's evil hand while still being able to pay the rent). Because this is LA, I think the "spankmeI'msocool" approach works better. Put your best face forward, but when you're at a loss for something interesting to say, try to resist shouting "Show me the money!"

Another thing I noticed is that the questions asked by interviewers are, unsurprisingly, exactly the same. And there is always an ulterior motive--the question behind the question. "Why do you want to work for White Guy, Old White Guy & Long Since Deceased White Guy?" This question is easy to answer. All you have to do is avoid the truth. Don't tell them it's because they pay you more money than your parents make back in Michigan. Answers such as "I'm really interested in [insert whatever they happen to specialize in] law." seem to work just fine. In fact, I bet they don't really care either way, since what they are really asking is "Can you think of something cool to say after I stop talking?"

Then there's the question: "What kind of firm do you think best suits you?" This question is harder than it appears. You can't just blatantly answer "umm...your firm" even though, in essence, that's what you have to say. The correct answer to this question involves a bit of research and some creativity to help mask the description of your ideal firm into — you guessed it! — the firm you're interviewing with. This type of cloaking strategy works well for all of the "Name your ideal [insert legal industry-related noun here]" questions.

Another question worth mentioning is "Why does [fill in the specialty of the firm you are currently being interviewed by] law interest you?". Again, you must temporarily forget how far their dime would take you in Kalamazoo when formulating your answer. Think of something, say, an adjective, that remotely describes your personality and then try to wedge it into the same sentence as the specialty in question. Can't think of anything chaste enough to be said out loud yet interesting enough to be distinguished from your fellow dark suited, impeccably groomed, bulletproof resume-carrying cult members? No matter. This question really can be summarized as "Are you willing to spend the rest of your twenties doing legal research in a basement and laughing at our jokes?"

Of course, as over-achievers, interviewing is not an entirely new experience for most law students. Even so, the veterans among those I observed seemed to leave the interview wondering if they somehow came across as utterly transparent as they felt. As a witness to many fine interview moments, I must say many students did. To those students, however, two things should be noted. First, most interviewers probably felt as glad to meet you as you did them (read unreservedly devoid of emotion: "Hi, How are you?"). Second, this time next year most of you will have landed choice jobs while my fellow 1Ls and I are just starting to learn how to fake it through an interview. He who laughs last....

John Targowski simply cannot stop playing "The Legend of Zelda" on his roommate Ethan's Nintendo 64. If you have any tips on how to beat the game, or if you have any visualization exercises to help explain personal jurisdiction (other than Marvel Comics characters and disturbed Gremlins) email him at targowsk@2002.law.ucla.edu.

Cell Phones Disrupt Classes

By Michael Lopez, 2L
Editor

Recently the office of the Dean of Students has received several e-mails from irate professors complaining about the use of cellular telephones by students in the classroom. According to Dean Cheadle, one professor was absolutely furious. "He said it had happened twice already and if it happened a third time he was ready to confiscate the property. Three strikes and you're out."

How widespread is this problem? Students seem to think it's rare for a cell phone to disrupt class. In fact, we had a hard time finding a single student who recalls a cell phone ringing in one of her classes.

"I've never had it happen in one of my classes, that I can recall," said one 3L. Others claimed that they had only run into the problem once or twice. Most students also feel that when it does happen, it's not very disruptive.

Shalon Zeferjahn, 2L, noted that a phone ring is "a short duration, and doesn't disrupt the [learning] process that much."

Anne Jollay, 2L, expressed her amazement that it was being considered an issue by the faculty and administration. "In fact, I'm not even sure why we're not cutting this article. Who the hell cares? No one's going to read it, I tell you."

However, from a professor's perspective, ringing cell phones may be much more intrusive. When the professor is lecturing or engaging in a dialogue with a student, the ring of a cell phone in an otherwise attentive classroom can interrupt the professor's chain of thought and disrupt the flow of the discussion.

Whether or not one has a problem with a cell phone ringing in class, Sean Pine notes that, "It's not so much the ringing, though that's bad enough. It's that people will actually pick the thing up and have a conversation in class."

Lisa Sergi, 2L, can't believe someone would behave so ridiculously. "I've never seen that happen. That can't possibly be true," she said.

One 3L noted, "Hey that's pretty darn rude- law students are kind and not the least bit self-absorbed. I just don't believe it."

When asked whether the administration would consider formally prohibiting cell phones in the classrooms, Dean Cheadle suggested that good sense and common decency should come first.

One 2L strongly disagreed. "Good sense and common decency just don't exist in law school. The administration is fooling itself. People only think of themselves here. So with no rules, how the hell are we supposed to know how to behave? Ban the hell out of cell phones is what I say!"

Some students felt that perhaps a prohibition of cell phones during exams would be a good idea.

"During a final exam, careers are at stake," said SBA President Terrence Mann, 3L. "That's not the time to be fooling around with your phone. If the administration honestly feels [having a phone ring during a final exam] warrants disciplinary action, I wouldn't have a problem with that."

One 2L suggested a shaming penalty. "Let the consequences be that they have to stand in front of the school after the exam [so] we can all scream at them, 'YOU BASTARDS!'" she said. The administration refused to officially comment on whether they would consider such a disciplinary measure. However, one anonymous source said "It seems a tad harsh to me."

Another 2L said that during finals, there are special rules, and students should not be permitted to use cell phones. "You're not allowed [to use] anything. Who are you talking to during an exam? Bar-Bri?"

Not everyone thinks the problem is so simple. "Let's say the guy coughs next to you. Should he be penalized? Or what about heavy breathers? I sat next to a heavy breather at an exam but luckily my powers of concentration can rise above heavy breathing," said one student.

"Give me a break. I have asthma," said another student. "Should I be penalized for that?"

Many students, particularly the non-native Californians, might be baffled that this is even an issue. Yvette Neukian, 2L, said "[Sometimes] you [might] need to have it on . . . we're in law school, we're not in kindergarten." Only in L.A.

Editors-in-Chief Brady M. Bustany and Anne E. Jollay also contributed to this story, and we here at The Docket *are deeply committed to covering issues of such great magnitude.*

Paul Ryan, Betty Chan, Andrew Elmore, Inés Kuperschmit, Stacy Tolchin, Derek Jones, and Alison Yager brought the first STTP Conference to UCLAW.

CONFERENCE

From page 1

area and to see how one can use the law to effect social change.... In future conferences, or perhaps a different kind of conference, I would like to see the panelists address how grassroots activism ... becomes legislative policy."

The closing plenary, "Tying It All Together," gave Conference participants an opportunity to step back from the panel-specific focus to redefine social justice issues under the broader category of human rights. This facilitated a discussion of how the goals of the seemingly disparate panels overlap in the struggle for human rights. The panelists and participants explored the challenges and rewards facing coalitions, touched on the overarching theme of criminalization of the poor, and looked at strategies for engaging isolated organizations when thinking about creative solutions to difficult problems. But the spirit of the conference, an event that emphasized the importance of community outreach in both word and deed, was summarized by Leonard Weinglass, chief council for political activist and death row inmate Mumia Abu Jamal. "You are not organizing or advocating if you are not educating."

LAW REVIEW

From page 2

might encorage greater participation in the Law Review. Currently, only members are eligible for publication in the Law Review. If non-members, as well as members, could compete to get comments published, the Law Review itself might become a more engaged and relevant aspect of student life for the the whole community. This would likely spark greater involvement and interest in the content of the Law Review, and encourage more students to take part. Similarly, we want to encourage law professors to take an active role in offering to coauthor pieces with students with whom they share interests.

Second, we are planning to engage the student of color campus groups, such as La Raza, BLSA, APILSA and AILSA in blue-booking and informational sessions, which will encourage their members to find out about Law Review, and get support in preparing to write-on. These sessions have been held informally for years, and we think that they should be a formal aspect of the Law Review's operation. We also want to encourage joint projects, such as symposia and jointly published issues, between the Law Review and the Asian Pacific American Law Journal (APALJ) and the Chicano-Latino Law Review (CLLR).

Finally, we hope that this article itself will generate conversation regarding the racial make-up of the Law Review, and, more broadly, how to help students of color advance their scholarship outside of the classroom. Community awareness and discussion are important steps to discovering the underlying causes of this situation and creating strategies for improving representation of all UCLAW community members on the UCLA Law Review.

Jane and Lauren are current UCLA Law Review members and their views do not necessarily reflect the views of Law Review or its other members.

MEMO

From page 7

up my soiled clothing in a plastic bag, and threw it and a number of papers and books into the trash can out in the rain, then I returned to my paper.

At that point, the electricity went off again. Stumbling to the door, I stepped on Romaine, who howled, and which set off Mulder, who had already demonstrated just how unwell he felt. In the deluge outdoors, I again groped for the circuit box and flipped the appropriate switches. This time nothing happened. With more fiddling around, the lights came back on in my apartment, but the glow produced was an ominous, flickery dim brown, rather than the steady, cheery yellow glow that had been there before. It was then that fear made itself known in my heart. I realized that it could be that this was going to get worse before it got better — if it got better at all. I believe that the words "I'm so f*cked!" flashed through my head. Whatever trace of confidence I had had about the lawyering skills paper evaporated when I went back to the computer screen and realized, in a free fall of horror and disbelief, that my carefully wrought argument has transformed into a series of boxes, slash marks, and assorted symbols. Just then, Mulder began to make what I now recognized as the Ralph's-cat-food cry for help. The projectile poo-fest erupted anew.

Since so much time has passed since this disagreeable night, I am not certain how many repetitions of electrical black and brown-outs; sprays of fecal matter; attempts to sanitize my apartment, cat, and person; and intermingled feline and human despair transpired. After shower number eight or so, I remembered that I had a very early, non-rule proofed, non-blue booked version of my paper on a disk somewhere. It was basically a statement of facts. But it was better than nothing. In earnest, I began trying to re-create my paper. At this point it was about 3:45 a.m. I scrounged up a disk and saved nearly every word I wrote, as I wrote it, and backed it up on the hard drive. Then, prancing about on his pointy hooves, the horned one struck again. The screen of my computer went black, save a white dialogue box that said "Sweetheart" (my hard drive) "is corrupt!" Recently out of a relationship, I reflected darkly on the truth of the statement for a moment. Then I realized that I was really in trouble. I did some fancy maneuvering around, and tried to create a "firewall" to protect my latest data. Knowing that I was in a full-on "hail Mary" situation, I put the data I had generated into a new file and called it "HELP ME JESUS." Perhaps the default religion of the Macintosh platform is non-Christian: immediately upon saving this file the computer obliterated it without a trace.

Frantic, I followed up with another attempt to create a salvage file, the name reflecting my shift in strategy from expressing a plea to the heavens to spewing an epithet: "JESUS"! This time, it seemed like it would work. I was able to retrieve my work, save my work, and had entered a print command, when suddenly the screen went black again, and a dialogue box came up that said: "JESUS is corrupt!" My paper was gone. The lights were flickering again, and Mulder looked at me apologetically and began another cycle of ejecting—fountain-like—Ralph's catfood around my apartment.

What do you do when you find yourself living out a singularly unfunny situation comedy, with your own Job-like, humorless self as the sole audience member? I mused about potential secret meanings of CRRPAP. I thought about the fact that this was a graded memo that had disappeared, and how certain it was that I would help out my classmates by occupying the bottom register on the curve. I shook my head, laughed, and thought "this could only happen to me." And I made coffee and started over again.

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