11-1-1977

The Docket, Issue 2, November 1977

THE DOCKET

Vol. XV, No. 2 | The Villanova Law School | November, 1977

Survival plan proposed

Dean's memo outlines "major efforts"

By Jay Cohen

Now in its twenty-fifth year, the law school has reached a "critical point in its development," according to Dean J. Willard O'Brien, who has proposed that the law school undertake a vigorous fund raising program, establish a continuing and graduate legal education progam, and reorganize the school's administrative structure.

The proposals came in a memorandum from Dean O'Brien to Dr. James Cleary, vice-president for academic affairs of Villanova University. The memorandum had been formally approved by the University, according to O'Brien.

The first step in the implementation of this program was taken when Professors Gerald Abraham and J. Edward Collins, currently associate dean, were recently named to fill two of the positions in the reorganized administration.

The proposals also call for the establishment of graduate level legal education programs in forensic psychology and taxation and for the restructuring of Dean O'Brien's office, in addition to the creation of the two new posts.

The two posts would be an Associate Dean for Academic affairs, to be filled by Professor Abraham, and Associate Dean for Administration. This latter position is already held by Professor Collins but without the "for Administration" title. The new post is envisioned, however, as having more clearly defined areas of responsibility than at present.

The change in the Dean's office involves the promotion of the Dean's present secretary, Mary O'Donnell, to the post of Administrative Assistant to the Dean and the additional hiring of a Business Clerk, to oversee the increasingly complex financial structure of the law school.

According to the memo, the money needed to fund the reorganization of O'Brien's office and the creation of the Associated Deanship for Academic affairs, is already available due to a failure to find or hire "suitable, additional faculty" last year.

Major Efforts Needed

"If we are to survive in the future, major efforts have to be made," said O'Brien, who views the proposals as closely interrelated. While the memo is largely based on economic exigencies, it is grounded in a concept of expansion accompanied by excellence, common to all the proposals. The administrative changes are seen as methods to facilitate the achievement of its economic goals.

The new administrative positions are designed, in part, to free Dean O'Brien so that he may devote more attention to fund raising and, in part, to deal with responsibilities, which are now so large as to require their parcelling among several individuals.

(Continued on page 11)

Dean J. Willard O'Brien

Abraham accepts new responsibility as ass't. dean

Even though the appointment had not been formally announced, Gerald Abraham spoke as if the reins of authority were securely in his hands. There was no sign of stress on his face and the nervous sort of in-spite-of-itself laugh was still present. In short, nothing suggested, when Professor Abraham spoke with **The Docket,** that he had just undertaken a large, new responsibility as Associate Dean for Academic Affairs.

Admitting that it was his first administrative position, Abraham said that he felt some trepidations. "Whenever you go into a new field you feel them," he stated. But he noted optimistically, "we're going to be developing the position and filling it in as time goes on."

Professor Abraham, who has been at Villanova since 1962, taught at Duquesne Law School in Pittsburgh, and was a teaching fellow at Harvard before coming to Villanova. Abraham practiced law in New York City and before teaching, was at one time a clerk to New York State Court of Appeals Judge Froessel, who Abraham says with a chuckle,. is no longer on the bench.

As required under the administrative reorganization, Abraham will continue teaching two of his three subjects, dropping only Family Law, while retaining second semester Criminal Law and a seminar. "I'll be able to do both teaching and administrative work," he says with obvious pleasure. And we're sure that he will.

Associate Deans Gerald Abraham and J. Edward Collins

Student fee not simple

By DON LADD and NANCY GOODWIN

Each semester, students are charged fifty dollars for general fees in addition to tuition. These fees are not explained or itemized in the University Bulletin. **The Docket** wondered: What is a "general fee"?; How is it spent?; Why does it exist?

Mr. Charles B. Dietzler, the University's comptroller, released last year an approximate breakdown of the student fee. Twenty percent is utilized by both the law library and the main library; thirty percent by the athletic department; twenty percent by the infirmary; and the remaining thirty percent by the various student organizations.

Do these funds cover all of the expenditures for these activities? Apparently, no one knows for sure. Father Thomas Mahoney, Vice President of Financial Affairs, said that any discrepancies between the income from the fee, and these expenditures, are not carried out in the bookkeeping. When asked why, Father Mahoney stated, "It is really not important for us to know." Apparently, there is no real distinction made within the accounting system between the general fee and the tuition. Both are regarded as income.

Why then, you ask, have the fee in the first place? It seems the answer is salesmanship. Father Mahoney said that the fee is employed to make the tuition appear more attractive to perspective students. This is necessary in order to keep Villanova's price competitive with other comparable institutions using similar "fee" systems. Everyone is acquainted with the "suggested retail price" of new cars, and the so-called "dealers prep and extras" that make the price so much higher than it had appeared. When asked if the fee system was a comparable device, Father Mahoney readily assented. The increasingly competitive student market, probably due to the declining birth rate over the past twenty years, has made it necessary for institutions of higher learning to resort to these more-or-less worldly sales techniques.

How, then, do the law students benefit from the fee? The SBA received $3,000 each year out of a total of some $62,000 paid by law school students. Students enjoy the use of both libraries and the infirmary. The money earmarked for the athletic department

(Continued on page 2)

Students speculate on tenure

By JIM CUPERO

At its meeting on October 13, the tenured faculty voted to determine which of the four candidates (Professors Barry, Levin, Packel and Wenk) would be recommended for tenure, as mandated by the recently developed Tenure Policy and Procedure. These recommendations have been evaluated by Dean O'Brien and submitted to the President of the University for final ratification.

Each candidate has been notified of the committee's disposition only with respect to his own individual's application. However, Professor Abraham, Chairman of the Tenure Committee, preferred not to release the results until the President makes if official.

Approval should not take long, but the date of disclosure is a matter of speculation. Dean O'Brien checks periodically with the President and it is expected that he will publicize the results as soon as they are received.

First Run Delay

Professor Abraham explained that much of the delay was attributable to the fact that this was the first time that the tenured faculty participated in the evaluative process. Prior to this year, the Dean evaluated the applicants exclusively. Many problems were encountered in the initial implementation of the policy, but the committee is confident that future evaluations will be made more quickly.

Pursuant to the new policy, each faculty member becomes eligible for tenure during his third year at Villanova and is evaluated on his teaching effectiveness, contributions to the Law School, and contributions to legal scholarship as would merit favorable recognition by scholars or other legal professionals. These contributions could include the writing of books and articles, participation in research projects, or work in scholarly associations.

Two Exceptions Made

Should each faculty member not opt to be evaluated during this third year, tenure evaluation during the fourth year becomes automatic. There is no limit on the percentage of tenured faculty

(Continued on page 3)

Public Citizen assails legal canons of profit

A recent comparative study of six local bar associations published by Public Citizen, Inc. maintains that lawyers in this country have used the devices of a guild to preserve their own profitable domain under a Canons of Ethics that have operated more like a Canons of Profits.

Only within the last decade have the effect of these devices been eroded — minimum fee schedules, the advertising ban, prohibitions on the unauthorized practice of law, and restrictions on pre-paid legal service plans. Public opinion and government pressure in the form of the anti-trust laws have contributed to reducing the shroud of secrecy and mysticism surrounding the practice of law.

"Feel the Heat"

Public Citizen states that "bar groups and lawyers will apparently see the light only if they feel the heat." The American Bar Association's own studies have shown that in 1975, 61% of those polled agreed that "many lawyers charge more for their services than they are worth" and 57% thought "the legal system favors the rich and powerful over everyone else."

Lawyers must realize that the stability of society depends on minimizing the powerlessness and relative deprivation felt by the average citizen in relation to those he considers his social superiors. This is the greatest challenge to the Profession — identifying and meeting the vast legal needs of prospective clients who have the recurrent fear that the cost of surrendering themselves to a lawyer's care may be higher than the cost of the original problem.

National and local campaigns of legal education for the public through advertising by bar associations might be convincing that many legal services are not as expensive as they are often perceived to be. Such campaigns

(Continued on page 4)

U.S. POSTAGE PAID Villanova, Pa. Permit No. 5

Non-Profit Organization

the DOCKET
VILLANOVA LAW SCHOOL
VILLANOVA, PA. 19085

Dean's Column

In my last column I wrote about the remarkable progress the Law School has made during its first twenty-five years. In this column the question I pose is this: will there be a law school twenty-five years from today? The answer is not as reassuring as I would like it to be. The answer is that there will be a Villanova Law School twenty-five years from today, and it will be even better than it is at present, if, but only if, all of us work together to make that happen.

There are several reasons why I believe it necessary to view the future with concern. The University and the Law School each depend, to meet operating expenses, almost exclusively on income derived from students in the form of tuition, fees and the like. What has become the inexorable impact of inflation creates considerable tension between the need to raise ever increasing amounts of money to meet expenses and the ability of our students and their families to pay even higher prices for a legal education at Villanova. Even taking into account the fact that salaries will also rise, surely there must be a limit on the amount we may reasonably impose, a limit imposed by conscience and a limit imposed by economic reality.

A serious complication that must be considered is the fact that fifteen years from now the population of eighteen year olds will have dropped approximately twenty-five percent from today's level. To further compound the difficulty we are told that the states from which Villanova University and the Law School traditionally draw most of their students will lose more young men and women than the national average through migration to the South and the Southwest.

There remains still another problem. The number of college students taking the Law School Admission Test has already begun to decline. That decline seems to be attributable, in part, to the fact that a career in the law is no longer viewed as being as attractive as it once was. There may be a relationship between that perception and the common, although largely erroneous view, that there are no jobs for young lawyers.

Today the Law School is thriving. In the face of a declining number of college students taking the Law School Admission Test, our rate or applicants was up fourteen percent last year. But if we do not continue to improve the quality of our offerings to our students and if we do not at the same time keep our tuition at acceptable levels, the Law School's day of reckoning will come. We must remain attractive to that rapidly diminishing pool of young men and women from which we draw our students.

To remain attractive the Law School must find suitable non-tuition sources so that it can both improve the quality of the process and limit future tuition increases. Major steps are being taken to free the Law School from its almost complete dependence on the tuition paid in our Juris Doctor program. Among the potential sources of non-tuition income are alumni giving, graduate degree programs, continuing legal education programs, contributions from law firms, deferred giving programs, and contributions from friends of the Law School, corporations and foundations.

With respect to alumni giving, a number of factors must be kept in mind. While we have 2179 living graduates, over half of those graduates have been in practice six years or less. Further, present Law School support for graduates is inadequate. There is much that we can do to provide our alumni with information about the school and its programs, to arrange for increased social and professional contacts among our graduates, and to provide even more information about professional opportunities for those who would like to change their positions. We are proceeding to correct the deficiency and in the long run increased support by us of the alumni will result in increased support of us by the alumni. I must add parenthetically that we have an extraordinarily loyal group of graduates, many of whom make contributions to the school on a regular basis.

While fund raising is very important, we must never lose sight of the fact that a law school is first and foremost an educational institution and "no school worthy of academic respect can operate as though it were a commercial enterprise . . . . " (AALS Approved Association Policy.) Accordingly, while I have identified graduate and continuing legal education programs as sources of income, their establishment must rest on grounds compatible with the nature and purpose of the Villanova Law School.

Two graduate degree programs are presently being considered at the Law School. One is a graduate program in Taxation that might be offered as a joint venture with Villanova's School of Commerce and Finance. Approximately 1200 area graduates of the Law School were polled this summer in an attempt to determine whether that kind of program would serve the needs of practitioners in this region. The responses show strong support for a graduate tax program. (It is premature to report on the second proposed program at this time.)

The appropriateness for Law School participation in continuing legal education programs is clear. During the past two summers, primarily through the efforts of Professor Taggart, programs have been put on by the Law School in cooperation with the American Law Institute and the American Bar Association. The benefits to the Law School were both tangible and intangible. On the intangible side, extensive favorable nationwide publicity was obtained, a fact favorable both for fund raising and student recruitment. The programs also produced income directly.

Of major interest is the fact that mandatory continuing legal education is now a reality in some parts of the country and is being considered in Pennsylvania and surrounding states. If all members of the legal profession in the greater Delaware Valley are some day compelled to take a required number of courses each year in order to retain their licenses to practice, it would clearly be in the best interests of the profession and the Villanova Law School for the school to have in place a program capable of being expanded to meet the needs of the profession.

Finally there are those other potential sources of income, namely, friends of the school, law firms, corporations and foundations. I will become rather heavily involved in attempting to secure support from those sources. I intend to ask some of you to help me.

You will read elsewhere in this issue of **The Docket** about the steps that I have taken to reorganize the school in such a way as to make all of the above possible. I believe that the future should be viewed with concern, but I believe that with your help the Law School will continue to prosper. I am optimistic and I am taking decisive action to make certain that our next twenty-five years will be years that will make the Villanova community proud.

J. Willard O'Brien
Dean

Documentary probes dungeon of inhumanity at Bridgewater

By MAX PERKINS

"Titicut Follies", a film by Frederick Wiseman shown recently at the law school, opens to the music of "Strike Up the Band." The camera reveals an audience and then shifts to performers on stage. This animated group under the stage lights, sings and dances, caught up in the energy of their own performance and oblivious to all else. But after this spirited musical prelude, Wiseman spends the next one and one-half hours looking not at this show, but at the setting for this revue: the Bridgewater State Mental Institution. The performers on stage were three employees of the institution while those in the audience were inmates at Bridgewater.

Bridgewater State Mental Institution in Bridgewater, Massachusetts, is an institution for the criminally insane. Frederick Wiseman, today one of the premier documentary film makers, first visited the Institution in 1966. At that time he was a professor of law at Boston University and with some of his students, went to Bridgewater to investigate some of the problems of mental institutions.

(Continued on page 13)

Bakke forum triggers hostilities

By LISA CETRONI

The name Allan Bakke triggers thoughts of reverse discrimination, affirmative action and racial hostility.

While the U.S. Supreme Court was grappling with these perplexing social questions in the case of Regents of the University of California v. Allan Bakke, students of the Law School were discussing the same issues. On Thursday, October 27, the Villanova Lawyers Guild sponsored an open forum on Bakke in the Student Lounge. Dave Rammler, of the professional co-op, Neighborhood Resources West and Committe to Overturn Bakke, represented the National Lawyers Guild and opened the discussion with some background on the case.

Most people were already familiar with the saga of the obscure, 37-year-old, father of two, who earned two engineering degrees and fought as a Marine in Viet Nam before deciding to attend medical school. As vocal interaction began, it was obvious that many of the 40 or 50 people attending had been touched by affirmative action in education or industry.

Reynold Colvin, Bakke's attorney would have received much support if he had attended the meeting at Garey Hall. As one student put it, "Do we need black doctors? Do we need crippled doctors? It is a question of accepting the most qualified group. We just want doctors — the best." After an appropriate reaction; it was pointed out that all of those people being considered for the 16 special admissions seats of the total class of 100 at the U. of C. at Davis met basic requirements. However, by

(Continued on page 5)

VLS plugs into LEXIS

By HANK DELACATO

This year the Law Library contains one of the most modern legal research tools available. It occupies less space than a single series of A.L.R. but has a mind-boggling ability to cite cases relevant to just about any problems.

This wonder machine is LEXIS, a computer terminal which links us to a huge, up-to-date research service. LEXIS is the creation of the Mead Data Central, Inc., a firm based in Ohio. During the past ten years, these computer terminals consisting of a typewriter and television screen, have sprung up in some forty-five U.S. law school libraries, as well as larger law firms. Some Federal Courts and criminal justice systems are also taking advantage of this service.

Before continuing, it must be noted that LEXIS is not a substitute for traditional legal research methods. For most problems, the book approach remains a superior way to start. However, LEXIS is an excellent supplement to traditional methods.

LEXIS is a search system which utilizes cue words typed in by the researcher, to locate cases containing those words. The system is not selective so that skill in choosing a good cue word enhances the researcher's ability to focus on cases which are most relevant to his problem. In this respect, LEXIS serves as a giant descriptive word index. LEXIS also can perform a number of other operations including "shepardizing" and picking all cases heard by a particular judge. The possibilities increase with the operator's skill.

Our library has entered a one-year contract with an option to continue the service if the faculty feels it is worthwhile. Under the contract, students and faculty may use LEXIS for academic purposes only. Pledge cards emphasizing this restriction must be signed by all users.

Assistant Librarian, Frank Liu, has created three-hour training program which includes two films, printed introductory material, and hands-on experience. David Webster and Gerry Downey, second and third-year students respectively, will serve as instructors in the program, providing expert at-the-machine training. Both have completed the Mead Data Central training course and are competent LEXIS operators.

Because the training program has just recently been put into full swing, training will be limited this year to third-year students, faculty, and Law Review members. If the contract for LEXIS is continued, the training program will be expanded to include as many interested students as possible. No student will be forced to undergo training, but those who choose to do so will be impressed by the comprehensiveness of the program.

Because of time limitation, Mr. Liu encourages those currently eligible who are interested in learning to use LEXIS to register soon. See Mr. Verbo in room 107. Seventy students are currently registered and since only ten people can be trained each week, it is important to sign up early.

Professor Barry gets LEXIS training from Frank Liu

Student fee tale

(Continued from page 1)

enables student tickets to be purchased at half price, and provides athletic facilities for student use. Among the various student organizations benefitting from the funds are **The Docket** and the Law Review.

There are two budget committees, the Executive Budget Committee, composed of administration officials, and the University Senate, composed of both students and faculty. These committees decide how the fee will be spent. The former committee proposes a budget, and the latter is charged with seeing that University priorities are observed. It is in the University Senate that the law school's interests are represented by two student representatives and Dean O'Brien. All of this, of course, is subject to final approval by the Board of Trustees.

Father Mahoney said that he felt the law school received an equitable share of the approximately $60,000 contributed by law students in the form of general fees. However, since no figures have been compiled for this purpose, this assertion cannot be substantiated one way or the other.

Dr. Arvid Pardo (l) and Villanova Univ. Professor John Logue. In his speech, Pardo assessed the progress of the law of the sea conference.

Pardo advocates common heritage

By DONNA BAKER

Culminating a day-long series meeting and lectures concerning the law of the sea, Dr. Arvid Pardo, former United Nations Ambassador from Malta, delivered an address on the current status of the Law of the Sea Conference on October 28, 1977, at St. Mary's Hall.

It was the tenth anniversary of a speech given by Dr. Pardo to the General Assembly of the UN, which was the impetus and inspiration for the Law of the Sea Conference. Friday night's lecture was an assessment of the progress made in the six sessions of the Conference, in which 145 countries have participated.

The day's activities, sponsored by Villanova University's World Order Research Institute, directed by Dr. John Logue, included the delivery of papers by representatives of Yugoslavia, Bulgaria, Nepal, and Pakistan, as well as by church and private groups.

Dr. Pardo, who is now a member of the faculty of the University of Southern California, advocated the adoption by nations participating in the Conference of the principle of the common heritage of the oceans.

This doctrine encompasses the concept of ocean space and ocean resources as part of the common heritage of mankind to be owned by no state but to be used for the benefit of all.

The most current report of the Conference, the Revised Informal Composite Text, does not present a viable solution to the problem of ocean managment, in Dr. Pardo's opinion, because the common heritage principle has been forgotten. The Composite Text is a political, rather than a functional, document which strongly favors developed coastal states.

The coastal states have pursued a policy of perceived self-interest in a national jurisdiction over hundreds of miles of the territorial sea. This has resulted in over one third of total ocean space being under the exclusive control of coastal states.

According to Dr. Pardo, the alternative to large areas of exclusive national control and a free-for-all policy for the rest of the ocean is an International Authority which would manage all ocean space for the benefit of the entire international community. Coastal states would have a limited area of national jurisdiction over which they would have control, but not sovereignty.

The International Authority would be a cohesive agency, which would manage sea bed resources, fisheries, and travel over the high seas. The Authority would contract with both public and private entities to exploit the riches of the ocean without depleting them.

Since it would be based on the common heritage philosophy, the International Authority would be motivated by principles of equity in sharing the benefits of the sea with all nations and in securing these benefits through efficient management.

Dr. Pardo sees the application of the common heritage principle in the ocean context as a possible paradigm for international cooperation in other areas. The acceptance of this principle will open the way for the development of a new structure for peace that would extend to other areas of international concern.

The questions which followed Dr. Pardo's lecture were primarily concerned with pragmatic aspects of the effect of the adoption of the common heritage principle. As to the probability of the states embracing the common heritage philosophy, Dr. Pardo ventured no opinion.

Profs await their fate

(Continued from page 1)

permissible. Theoretically, one-hundred percent of the faculty could receive tenure.

An exception to the three year general requirement may be made in exceptional cases where a faculty member's prior experience indicates that early evaluation is appropriate. Presently, two faculty members are being evaluated pursuant to this exception provision.

Professor Turkington, a visiting instructor from DePaul, has received top priority inasmuch as he must notify that school soon after the Christmas break as to his teaching plans. Professor Dellapenna is next on the list. Both nominees enjoyed tenure before coming to Villanova.

Time Will Tell

It is expected that next year Professor Frug will choose to undergo the evaluation for tenure, which will be in her third year at Villanova.

It is an objective of the new policy to provide for a more comprehensive and accurate evaluation of the faculty and to assure the retention of talented personnel. Time will tell whether the means effectuate the ends.

Consultors chairman, McHugh tells Docket next ten are crucial

James McHugh, VLS '62, is chairman of the Board of Consultors and a partner in the Washington firm of Steptoe and Johnson.

Q: First of all I'm sure that our readers would like to know what the Board of Consultors is, and does, and what powers it has.

A: The Board of Consultors is exactly what its name implies — a consulting board. It's not a legislative group in any way, it is not a governing board, it is not a Board of Directors nor a Board of Governors.

It doesn't have any legislative powers whatsoever. In fact, it really has no power. It has the power to perpetuate itself and to elect its officers, its members, but its sole function is to advise the Law School and to advise the Administration of the University.

Q: Just to advise?

A: Just to advise. The Senate advises and consents. All we do is advise.

Q: O.K. Does the Dean come to you before a policy decision or is this an on-going process?

A: The things that the Board of Consultors considers are things that are generally brought to the Board by the Dean. He has no obligation to bring matters to us.

I have been on the Board, I guess this would be my fifth year now, and it's certainly my impression that most, if not all, of the major policy decisions that are made here are discussed with the Board at one time or another.

Their views are solicited, and in a number of instances I think that the Board has been able to make very constructive observations and suggestions. We bring a perspective that really is different than what the Law School Faculty and administration have.

Most of the Consultors are people who are in private practice or lawyers with corporations, in administrative positions with corporations, some of the members are judges. We tend to approach Law Schools from the point of view of our impressions of the products of the law school and we are able to tell the law school what we think that product ought to be.

We are really not in too great a position to tell the school how that product ought to be achieved. You probably feel the same way after you have been in law school for a few years, you feel like you're an expert on legal education, but, in fact, we're not.

We're kind of amateurs and we may read, we may observe, but very few of us have taught. I think that the only person on the Board who has ever taught is one of our newest members, Jane Hammond.

But, going back to your question, which you probably prefer that I do, the Board has the power to initiate on its own things that must be discussed or considered. And certainly that happens from time to

"The law school . . . ought to be run by the people here."

time, but most of the things that we would focus on are things which the Dean has asked us to think about and give him advice on.

Q: Then, you don't really have the kind of power or final say that a Board of trustees of a University would have?

A: Absolutely.

Q: Do you have an opinion on that?

A: As to whether that's the way it should be?

Q: Yes.

A: The Law School is something which basically ought to be run by the people here, working on a day to day basis. They certainly ought to be open to the views of outsiders, people with other perspectives, other ways of looking at it.

But you have here a very capable faculty and administration, and they can run this place a lot better than a group of people who are relatively uninformed about curriculum.

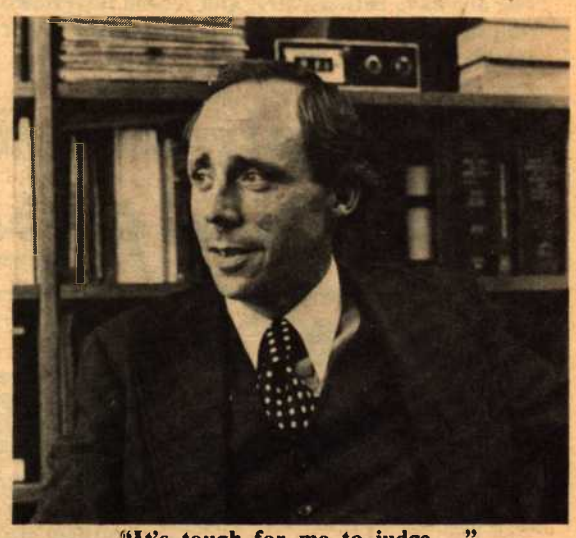
Q: You mentioned "products of the law school." Let's talk about them before they become the "products," when they are prospective candidates for admissions. Are you aware, first of all, that only about 25% — it may be slightly higher — accept admission who are the University's first choice?

A: Only 25% of the students coming in, we'd say were Villanova's first choice?

Q: Right.

A: No, I didn't know what that percentage would have been. I knew from hearing statistics in the past that obviously there would be a large number who might have had a first choice somewhere else.

Q: Now that you do know, what do you think that means in terms of Villanova's attractive strength for



"It's tough for me to judge. . ."

exceptional students from highly respected universities throughout the country?

A: It's tough for me to judge that without knowing what other schools have in the way of similar experiences.

Q: Well, I believe the national average is something like 40/60. 40% accept admissions.

A: The national average still doesn't tell me a lot because if you look at law schools across the country there is obviously a whopping difference in law schools. There are the Harvards and the Yales and the Chicagos and those people, and then there are a whole lot of law schools you really wouldn't want to send your daughter or son to.

A large number fall into two different categories. What sort of admission experiences those people have, I don't know. But, what does that mean? Well, that says that Villanova must be competing with some pretty good law schools. I would take that as a fairly positive sign.

I would be less impressed with the student body at Villanova if I thought that the competition for students that they were experiencing was from fairly mediocre law schools, and if you're getting a smaller percentage of people which you would like to accept then that says you are competing against some of the very good law schools.

When you do that, and you get into the tough field of competition, you are not going to do as well in terms of percentages, but I suspect that in the long run you do better in terms of quality of your class.

We find that in our law firms. We can go to one law school where we have found over the years our percentages of acceptances of job offers we make might be two out of three or one out of two.

Then we can go to the other law schools where the percentages of acceptances might be two out of ten, or one out of five, but the difference is usually in terms of the level of the law school. We don't do as well in terms of percentages at Harvard or Yale or Chicago, as we do at some other schools, and that's because there's a lot more competition for those people.

And so if that experience is in any way translatable to the experience here, you are probably getting a better calibre of student that you get a shot at than if you were having a much higher percentage. That's a guess though, because without really knowing a lot more of various people's percentages it can't be much more than a guess.

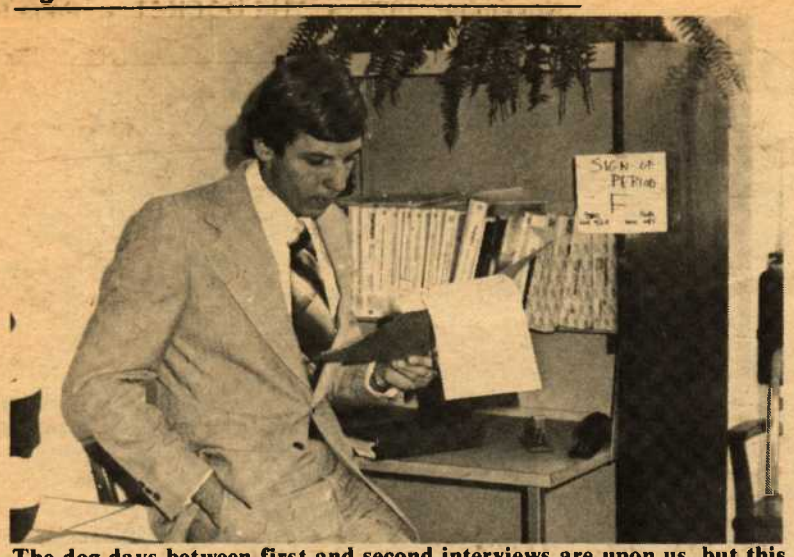
Q: I'd like to get into the economics of the law school, and my first and most obvious question would be "Are we making money?"

A: Well, I haven't seen any figures since last year, but over the four years that I have been looking at financial figures of the law school, I haven't seen any surplus. I guess there are some law schools that approach their existence almost as a commercial enterprise . . . I don't think that's an appropriate way for a law school to go at, but it is certainly not the way this school is going at it.

In terms of making money, is there more money coming in than is actually being spent over a year? That's a tough one. I don't know enough about cost accounting to know what's the proper way to attribute various types of overhead, indebtedness and that sort of thing for a law school.

But from looking at numbers over the last four years, I sure don't have the impression that the law school is subsidizing the University.

(Continued on page 4)



The dog days between first and second interviews are upon us, but this student remains cool in one of his Moreville "interview" suits. The suits are showing some fatigue.

Public interest group studies legal problems

(Continued from page 1)

might demonstrate to the public that large big-city firms charging $100 to $200 an hour are only one side of the legal profession serving a specialized clientele of corporations with specific complex legal needs in taxation, financing, and anti-trust, etc. The other side of the profession — and numerically the larger — is the small general practice law firm and the solo practitioner. Even these still charge high prices which operate as barriers to unmet legal needs.

Legal Featherbedding

Public Citizen maintains that members of small firms could maintain their standard of living and yet serve more clients at lower cost by the judicious use of paralegals, internal specialization, and the sharing of facilities such as libraries. But many bar associations, alarmed at the proliferation of paralegals, and fearful that they will take away attorney jobs, are considering certification and disciplinary systems to ensure that they are not engaging in the unauthorized practice of law. In any case, price-fixing itself is no longer a problem as minimum fee schedules were held to violate the antitrust laws in **Goldfarb v. Virginia State Bar,** 402 U.S. 773 (1975).

Legal featherbedding is still encouraged by bar association rules. Title insurance companies, banks, real estate agents, and experienced non-lawyers would be able to complete many standard tasks, according to Public Citizen, except for the prohibition against the unauthorized practice of law. Lawyers' fees should stabilize or come down with the advent of public education, pre-paid legal services and the advertising of fees and services.

Although the conventional wisdom and the tight job market seem to indicate an overabundance of lawyers, there is substantial evidence that lawyers are really in short supply for citizens with unfulfilled needs.

The evidence for this is the type of legal problems which come to pre-paid legal plan lawyers for unions and other organizations. They frequently see consumer, debt and landlord problems which are rare in private practice because of the attorney cost barrier. Other evidence is the demand in congressional districts among moderate income constituents for legal services from their representatives in Congress. There is an extraordinary lack of adequate and accessible dispute-reconciliation mechanisms.

Plans End Search

Pre-paid legal plans, in which a client pays in advance for legal services he or she may need in the future, seem to have the best potential for delivering legal services to working and middle-income Americans.

Three types are becoming available — closed panel, open panel and legal insurance. Unions use the closed panel plan which is limited to a pre-selected group of lawyers such as one firm or a salaried legal staff. Open panel plan members may choose any qualified attorney within a certain geographic area, contract with him on a fee-for-service basis and remit the bill to the plan. Legal insurance is available in only a few states and is structured like automobile or medical insurance. Members pay fixed premiums to an insurance company in return for coverage of enumerated legal problems over a certain period of time. Perhaps the greatest benefit of these plans will be to end the agonizing search for an attorney which so many people go through when they first discover that they have a legal problem.

As the Supreme Court found in **Bates v. State Bar of Arizona,** 53 L.Ed.2d 810, free speech considerations and increased access to the legal profession are more important than lawyer's fears of diminished dignity from advertising. (see Docket Oct. 1977) Advertising will reveal that lawyers' fees are in fact lower than most people assume.

But still the problem remains of finding an attorney. The long list of undifferentiated names in the Yellow Pages is a hopeless source, and few non-lawyers are aware of Martindale-Hubbell. Bar association lawyer reference services are little better, offering the names of three randomly selected lawyers to a client who calls in.

Walking Violations

Because attorneys are generally held in such high regard by the public, the lack of quality control is an acute and difficult problem. In the law office, there is nothing to shield the unknowing and trusting client from his lawyer's errors. Bar examinations have little or no relationship to a candidate's competence to represent a client.

And there is no way to ensure wisdom, experience, judgment, dedication, or morality among lawyers. Chief Justice Burger has charged that "from one third to one half of lawyers who appear in serious cases are not really qualified to render fully adequate representation." And Chief Judge Bazelon of the D.C. Circuit characterized some attorneys as "walking violations of the Sixth Amendment." Specialty certification, if allowed, would only give lawyers the leverage to command substantially higher fees, as has been the case in the medical profession.

Part II will discuss the disciplinary system, pro bono work, political involvement, and judges.

of lawyers ... plumbers ...

(Continued from page 3)

Q: That's been claimed.

A: I don't think there's much subsidization going the other way, either. The impression I have had is that the law school is pretty much on a self sufficient basis.

Q: This raises the question before I wanted to ask it, but are you aware that the University took about a quarter of a million dollar chunk out of the monies raised by tuition from the law school and returned the rest of it to us?

A: No. When was that?

Q: Well, I'm referring to this report, which is a memorandum from Dean O'Brien on proposed administrative changes.

A: Yes, I'm familiar with that memorandum.

Q: We made about $1,600,000, and they returned to us $1,400,000 as an allocation.

A: Unless you look at a full statement it doesn't mean much, because I would assume that there are certain overhead items that the University tacks against the law school which are always arguable.

It's the same old problem that lawyers get into when you are looking at a construction contract and have agreed that you are going to do this for a 10% profit. But then where we find we have a big fight is over how much of your home office overhead is really going to be attributable to this particular project.

In any operation like this, you are going to have that same battle — the battle between the law school and the Administration over how much of the overhead of the general university is going to get assigned to this operation.

Certainly, I don't think you can make the argument that none of it should be assigned, and yet it ought to be a proper number.

I have no idea of how proper those numbers are, but I know it's a matter of concern — I don't think great concern — but I think it's a matter of legitimate concern on the part of the law school as to whether it's the right number. I would guess that that's what the difference in those numbers is, but I don't know.

Q: The reason I ask you is because it's a common charge, at least among students, that the University is, in effect, being subsidized by the law school, which is, it is claimed, the only branch of the University that's making any money.

A: The Consultors have looked at these general financial pictures over the last several years and we have not been concerned that the University is taking an unfair amount, or an inappropriate amount.

And I think that the law school rightfully ought to be battling over how much that is, but we haven't seen that as being a major problem.

I thought . . . Dean O'Brien's report . . . was an extremely interesting one because it showed the tremendous dependence that Villanova has on tuition. It shows the lack of income it has from other sources, for instance, endowments and from gifts, and I think that's unfortunate.

Through no fault of the present law school administration, they have been put in a very difficult position with regard to Alumni fundraising, and that got itself all intertwined with the University's current efforts.

Certainly, in the long term future of the law school, it is important for the university to effect a sound financial footing, so that's a good project, and it ought to be encouraged.

At the same time I think it's unfortunate that it has set the law school back in terms of alumni giving, and I know that the Dean and the other people here have plans to really get that thing going, and that's important.

And it's going to be more important in the future, because there isn't a private school of any sort in this country that isn't looking ahead and saying that the population is going down, inflation is coming along, in an area like the East Coast, not only will the population nationwide of young people be reducing as the birth rate declines, but the migration of population is away from this part of the country.

The number of people that are going to be available to go to these schools, or wanting to go to these schools, may be reducing in the future. And with inflation and everything that means that some place in the future there are going to be terrible demands for students.

There already are very tough demands, and the law schools have to find ways so that they can find — everybody talks about what they are teaching, and what they are doing, and how they ought to be doing it — it all translates, in the end, back to how much money we have to do things.

And until you build a really strong financial base, until you've got your alumni willing to really stretch and work hard to throw some money into the thing, and until you broaden that base inevitably most of your income is going to have to come from tuition.

Q: What I'm interested in knowing is really two things here. One is initially why the amount of gift-giving is so low, in other words why the base which you speak of is not so broad yet, but secondly I'd like to know whether the University has impeded our search for gifts?

A: I'm not close enough to all the history of that to really comment on it difinitively, but as long as you take what I say for whatever it is worth, and realize that there's a lot I don't know about it. I will tell you what I do know of the background.

In the early days of the law school there was an annual alumni fund-raising effort, and the thrust at that point was to get as high a percentage of participation as possible. They didn't worry much about the dollar amounts, and believe me the dollar amounts were low.

People were giving $5 or $10 a year — people who were out of law school five, six, seven year. It really wasn't very significant, but it was a drive for participation. The participation levels were very high.

That was a smart approach overall, because it was recognized that you were dealing with a very young alumni and they didn't have a lot of money, and the smart thing to do was to get them into the habit and practice of making contributions and worry about the volume later.

At some point, and this is where I'm really not at all clear on what happened, or why, or how, that program got off the track. I think it may have had something to do with the involvement of the University getting involved in overall fund-raising, but I don't really know that.

> **"it all translates, in the end, back to how much money we have to do things."**

I have that impression but I've never really dug into it. Certainly, shortly after Dean O'Brien became Dean, there was an effort to begin all that back up. There were a few years where the alumni giving started to get back up to a speed and then the University's campaign kicked off.

The law school's giving fund was held up while that went forward. I think that there were some timing problems when the University didn't get it going as far as everybody thought they would, and that sort of thing.

And I think that's been a setback, because just the momentum that started to be built up a few years back, you lose, and every time you lose momentum it's tougher to go back and start over again, because it's no fun raising money from the alumni.

You get an awful lot of people who leave the school who say "I'm glad it's over, and I don't ever want to see that place again," but I think whenever you lose somebody for a few years and you don't have them making contributions, your chances of getting them back to it are harder.

I have the impression, after talking to Bill O'Brien this morning, that he has backing now from the University and I don't think that's going to be a problem in the future. The real problem is going to be in how well can the school put together a really broad based program to raise money properly. I'm talking about alumni, and other sources as well.

Q: Dean O'Brien has proposed a drive. Does that mean though that the actual mechanisms of fund raising are in the hands of the Law School now or is it still a University-controlled affair?

A: It is my impression, and I'll know more about this today, Jay, that the Dean's plan — and I think it's been approved by the Administration of the University — would put the fund-raising right here, which is where I think it ought to be.

The Law School will always have a distinct constituency. There are an awful lot of us who went to this law school who feel a great attachment to it. I do, anyway.

The school did a lot for me and did a lot for my colleagues. But it just makes sense, and this is true with any law school — nothing unique about it here — that a lot of people come here and are perfectly willing to make a substantial contribution to the law school but no desire to have that money going into the general University treasury.

It ought to basically be run out of here. At the same time, there has to be a cooperation. There are a lot of other sources that the University can tap and the Law School can tap. There are business interests. There are foundations.

And, if the Law School starts working independently of the University, and starts to undercut the University, and the Law School can be very aggressive and has a good product to sell, and at the same time if they are dealing with the same potential contributors as the University is, they have to do that in the right way.

But I think basically the project ought to be run from here, and I haven't heard of anybody who thinks differently.

law students ...

Q: Lately we have had a lot of controversy about what the proper quest is in law school. I don't know if you've seen the headline, but there was a controversy over the sale of Gilbert's in the building, and eventually it was moved over to the bookstore.

But, that raises a question that I'd like to ask you. What attitude you think a law school should foster, whether being a lawyer is a sacred trust, or whether it's a matter of doing the mechanics correctly for a client?

A: Both. It's both. The law school and lawyering. Well, there was a man who used to be Dean here who used to refer to law school as something like plumbing schools, and what the law school can do is teach somebody a trade, teach him the mechanics of how you do a certain thing.

But he also recognized that there was a lot more to being a lawyer than just being a plumber. That term "plumber" has always amused me because Harold Reuschlein used to talk about this as a plumbing school and then probably one of the darkest hours of the legal profession in recent history has been when some of the lawyers actually became plumbers.

I think in a way there has been a bit of an overreaction to all of the post-Watergate morality approach, but I think it has also caused a few more people to think about just what the nature of law is and what the lawyer's function is. And it's not just pure plumbing.

The techniques that you use are things that can be taught as skills, but the real long term function of lawyers is something that is more than just mechanics. I think there are perhaps a couple of observations I would make as to why it has to be that way.

For one we are dealing in a legal system that is a voluntary system essentially. We have learned in the ghettos of the big cities in the late '60's that we don't have enough troops in this country to enforce the law if people aren't willing to voluntarily comply with the law.

We certainly find that almost on a day to day basis in the streets of some cities. The police cannot stop crime. So, it's a voluntary system, as much as it's one that's backed up by force.

It still depends upon the people being willing to live within a certain legal structure. How does that happen? Well, they've got to have confidence in them. They've got to trust them.

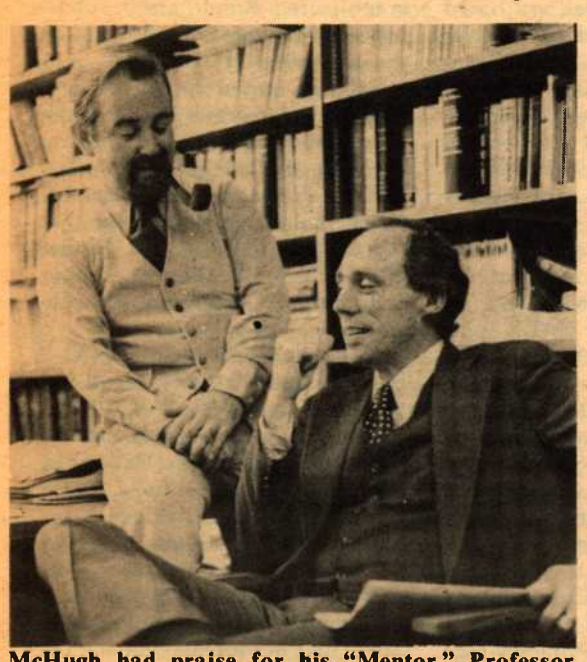
And the only way to have confidence and trust in them, is that the people who are part of it and running it are the type of people who can inspire that confidence. So that's one reason why I think it's got to be more than just a plumbing operation.

The other one is that, just as a matter of good practice, in order to be a good lawyer, you've got to be an honorable lawyer. Sure, you can shave corners and do various things which may make a certain amount of money in a certain way.

But over the long term or the long haul, the only way to do it is perfectly straight — open to your clients, so that they know what your other conflicting interests might be, and that sort of thing.

It's just a matter of good, practical, business sense. It works better if you go that way, because your client's going to trust you.

I don't know about Gilbert's. I went through law



McHugh had praise for his "Mentor," Professor John Cannon. Both men graduated from VLS in 1962.

school without benefit of those, but I'm not in a position to say they are evil or wicked. It may be better to have read Gilbert's than to have never read at all. I don't know.

It isn't just a question of getting grades. Lord, I know its' tough getting jobs now, and that grades are awfully important to everybody, but I kind of doubt that things like that improve grades. Grades come on the basis of more in-depth work that people do.

Q: Well, certain people around the Law School seem to feel that you can't be a certain kind of lawyer and be moral and I've seen it now with the Lawyers Guild's Reorientation Guide.

It's called, a booklet for first year students, which basically says that if you are an attorney and you would like to make a comfortable living, the only way you can do that is to play a so-called game, they call it, and in order to do that you have to sell yourself.

This is their feeling, that you can't be a lawyer and be moral at the same time — you can't be a certain kind of lawyer.

A: A successful lawyer?

Q: I think that that's what they mean, although I'm not sure.

A: Well, that may imply some pre-judgments as to what's right and what's wrong. If someone assumes that my clients are wicked, evil people but they are prepared to help them be more wicked, more evil, that certainly would pose a moral dilemma.

But maybe I'm over simplistic, Jay. But they — moral dilemmas — have always seemed to come in some of the smallest matters. I've never run into a client who has asked us, our firm, to do anything which I thought was either illegal or immoral.

I've certainly known clients who were prepared to do something illegal or immoral, and I think it's always been a lawyer's obligation to make sure their client fully understands what the consequences of those actions would be.

Now it's not my job to stop him from doing it. There's a bond between lawyer and client that prevents me from taking certain actions that would be adverse to the client's interests, but as long as the canons of ethics prevent me from doing that, then I've got to live like a father confessor, so to speak.

There are all kinds of dilemmas. There are dilemmas of conflict. Does this case conflict with something else that you are doing somewhere else? In large law firms that's a daily problem.

At least in the law firms that I'm familiar with people tend to resolve all of those problems in the safest way they can. They just don't want the problem to become a problem.

Certainly there are a lot of lawyers around, and we all know about them, who behaved improperly. I for one think the Bar Association has been terribly remiss in their disciplinary practices. I don't think they hit them hard enough who have stepped out of line.

I know an instance in Washington, D.C. recently. I don't know of any person in my firm who would not have immediately expelled an individual who did something (like what) happened in Washington. He was suspended by the Bar Association for one month. I thought he should have been disbarred forever.

If there's anybody in this school now who doesn't think that law ought to be practiced on the basis of morality, I really think he ought to just go, just clear out now, because he's not going to be any help to the profession. We don't need that.

I go back to what I was saying earlier that our system is a voluntary one, and if people don't approach it on an honorable basis, it's all going to collapse around us. That's why it wasn't so bad that John Dean was a crook. John Mitchell was the worst part, because he was the Attorney General.

Q: Projections. I'm interested in your projections. Ten years from now, how do you see this school? In any way that you want to say.

A: Good question. I think the next ten years are terribly crucial. I don't think it's going to be anything other than a solid, sound law school.

I don't think it's a question of the next ten years breeding disaster, because I've seen what's here, the faculty, the type of student body that it's attracting, the Administration, the good support.

For all the battles which you might have with the guys on the other side of the railroad tracks, they've supported this place solidly all along. They've never really thrown any major roadblocks at it.

Given all of those things, there's no reason to expect that it's going to be anything other than just as solid a law school as it is now.

However, it's got a great opportunity. This place is only twenty-five years old and it's a very highly regarded school. It is one of the better law schools in the country.

The next ten years are probably going to be very crucial in terms of how much better can it be, and that's something that only, frankly, dollars and a lot of effort can tell. If there's one thing money can buy it's a first rate education.

Everything you might talk about in terms of what you might do — curriculum, courses, faculty, all of that — it all comes back to dollars. And as you're keenly aware, it can't all come out of the hides of the students.

It has to come from somewhere else. You can't expect it to come from the University. The University isn't rich, either. They are not in any position to subsidize the law school, unless they want to start to shut down other things. So, the Law School's going to have to develop.

I think that ten years from now we'll know whether this is going to be a very sound, solid law school, or it's going to be something even better. It has that chance.

Anita De Franz (l) and Marjorie Stein (r) addressed students on Nov. 3.

Women's Caucus hosts job futures forum

By JOHN FORD

Two radically contrasting career options were presented November 3 in the Faculty Dining Room, providing a somewhat informative career forum. While two of the expected four participants did not show up, the participants who were present did provide some insight for us bookbound students.

Anita De Franz, of the Juvenile Law Center, and Marjorie Stein, of the Reliance Insurance Co., discussed their jobs with a largely female audience.

Marjorie Stein, working in a six attorney legal department, deals mostly with contract, property, and insurance law, which she finds "not always really stimulating." While she did not want anything to do with corporations when she graduated from VLS in '76, this was the only acceptable job she could find.

Little People Contact

Stein complained, though, of corporation work in that her job offers little "people contact" as she is usually at her desk discovering whether contracts are lacking in consideration.

Her most interesting work, she explained, is in Title 7 complaints, allegations of discriminatory practices by her employer, she hopes to concentrate in this area in the future.

All of the litigation work of the company is farmed out to private firms, so she is only involved in the preparation of the cases, as is the practice in most corporations.

Anita DeFranz, the other guest at the forum, explained a totally different legal experience. The Juvenile Law Center, a public interest firm, represents children in a variety of types of litigation, ranging from school problems, to civil litigation, to special education difficulties, to delinquency.

The Center operates on a "team approach," in which the staff of five attorneys and two social workers work on all cases. There is no hierwarchy in the Center, but other public interest firms do operate in much the same way as private firms.

Center Tries Reform

The Center, while concentrating on representing individual children, also tries to develop law reform cases. For example, the Center is now preparing a case in an attempt to force the school system to accomodate more children in special education programs.

DeFranz noted, though, that practicing in a public interest firm can be very draining, in that one must seek funding and make many public appearances in addition to one's regular legal duties.

Both participants also expressed their views with regard to their experiences as women working in a predominantly male profession. In the Juvenile Law Center, three of the five attorneys are female, and, thus, DeFranz had not experienced any discrimination within the firm. In the courtroom, though, she said she had been called "honey" a few times by the judges.

Discrete Discrimination

Stein said she had encountered a good deal of what she termed "discrete discrimination." While noting that the insurance industry was once notorious for discrimination, she has not witnessed any blatant acts.

Rather, she sees traces of discrimination "in the way they deal with you." Like being called "that girl," or one of her bosses' harem.

The forum, sponsored by the Women's Law Caucus, was informative in that it did give those present a sampling of what it is like to work in the two careers represented. And that is helpful and needed.

Rammler supports affirmative action

(Continued from page 2)

standard criteria — grades and tests scores — they were not the most qualified of all applicants. In light of the fact that Bakke's record is better than that of many of the minority students, several people present firmly held that Bakke has a right which is not to be discriminated against by reason of his race. The opposition was puzzled. How could minority students who have been victims of unequal opportunity, be expected to be the best qualified when judged according to majority group standards?

As in the Supreme Court, it was necessary at the Villanova discussion to steer arguments from belabored facts and emotions to the constitutional issues. Dave Rammler, explaining the dissenting opinion, pointed out that while walking the fine line of the Fourteenth Amendment, one must balance between equal protection and discrimination on racial grounds. He noted that all types of racial classification are not cases of racilal discrimination.

"Affirmative action," Rammler says, "enhances rather than violates the Fourteenth Amendment. If Bakke is upheld we will be turning around years of attempts to remedy negative history."

One student responded, "In the last few years, there has been a retrenchment caused by affirmative action programs. We are creating racial bigotry. We are taking steps backward by having reverse discrimination."

Some people defending Bakke attempted to present a stand in sympathy with minorities by saying that through such programs we are "pitting society against minorites." Others expressed a fear for the Constitution. "Are we setting the groundwork so that people can be treated differently because of race?" The active discussion terminated after two hours of such interactions.

How to ace a first year exam

Caveat: *Although this article appeared in* **The Docket** *last fall and in other law school newspapers this spring, most students taking their examinations did not Ace their courses.*

By PROF. FREDERICK P. ROTHMAN

Notice that it's one of the guys who doesn't teach the first year courses who is sounding off on technique for taking first-year examinations. My comments may lack credibility. In addition, they do not necessarily reflect the opinions of my colleagues, particularly those who do teach first-year courses.

Read the question carefully. Focus on the question being asked. You are going to have to address yourself to that question at some point; why not do so at the beginning of your answer? If you were writing an interesting murder myster (**a la** Professor Dobbyn), you would want to save the best for last; but in a law school examination it is easier for the grader to follow your analysis if he knows your conclusion first. You would be surprised how many students write for hours without ever finding, much less answering, the question.

Now that you know what you are going to have to do (answer the question), you should suppress the impulse to begin to write. Before you read the first paragraph of the question, the person on your left will be writing. And before you find the issue, it will seem that most of the class is on its second bluebook. Stifle your pen for one-quarter of the time suggested for answering the question. Often there is no single correct answer; and if there is one, it counts for nothing without analysis. Decide first what you want to say. This requires that you determine which facts go with what issues and which facts are irrelevant. That's right, professors are trick ; not all the facts are relevant The lawyer in practice comes across irrelevant facts; so must the examinee.

Don't "Improve" the Question

Worse than the irrelevant fact is the missing fact. If you discover that you must have additional information, explain why you need it. Don't assume the fact that makes resolution of the question easy. Give alternate assumptions and the analysis that follows from each. Under no circumstances should you assume facts which are not necessary in order to answer the question.

The issues often have logical order. Would it not aid communication if you could ascertain and then follow that order? For example, there has to be a duty before there can be a breach of a duty. If there is uncertainty as to whether there is a duty and also as to whether certain conduct constitutes a breach, consider the uncertainties in that order.

Use Time Effectively

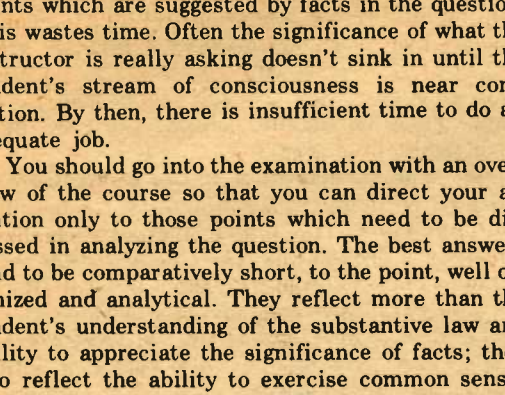
Many of the fast starters err by discussing all the points which are suggested by facts in the question. This wastes time. Often the significance of what the instructor is really asking doesn't sink in until the student's stream of consciousness is near completion. By then, there is insufficient time to do an adequate job.

You should go into the examination with an overview of the course so that you can direct your attention only to those points which need to be discussed in analyzing the question. The best answers tend to be comparatively short, to the point, well organized and analytical. They reflect more than the student's understanding of the substantive law and ability to appreciate the significance of facts; they also reflect the ability to exercise common sense.

If the answer states a point of law which is in conflict with common sense, the writer notes the conflict and presents arguments as to why the law ought to be changed. If the writer finds the law to be unsettled in that there are two or more positions taken by reputable authorities, he states each of the diverse positions and then explains why he favors one of them.

Don't Restate Facts

Do not restate the facts; this just wastes valuable time. The grader can read the question. State the issues in lawyerlike fashion. Bring into your analysis of the issues those facts which bear on those issues. Pretend that the grader is not the learned professor who taught the course. Instead, pretend that the grader is a non-legally trained adult. Explain the concepts that are relevant. Define terms of art. Don't leave out any steps in your analysis. Don't discuss irrelevant exceptions or qualifications to a rule unless you are arguing by analogy.



"THE HARDEST EXAM PROBLEM!"

Unimpressable Profs.

Law professors are notoriously difficult to impress. If you know every case by name and can recall the last detail of every hypothetical, keep it a secret.

Poor spelling and grammar are not merely distracting; sometimes they preclude communication. And, if your handwriting cannot be read or your abbreviations cannot be interpreted, there may be nothing on which to base a grade. Even if your handwriting can be read, but only with great difficulty, this may impede the process of communication to a point where your grade is adversely affected without the grader being conscious that this is having any effect. Some instructors will attempt to have the registrar contact you to break the code. Others take a "tough luck Charlie" attitude. Even if you cannot type, you can print.

If you get to a point in your analysis where you cannot remember a particular legal principle, don't try to bluff. Indicate your recollection and then analyze the issue using alternate answers to the forgotten point. Don't omit the issue entirely, since recognition of the issue often earns substantial credit.

If you run short of time — and this happens all too often, more by those who start to write before they have thoroughly analyzed the problem — copy your outline into your bluebook with a short note to the grader: Have only 5 minutes left for this question." Do not give the question all the time you think it needs. Getting an Ace on that question and failing the rest of the examination will not put you near the top of the class.

Naturally, there is an exception. If the examiner has suggested that you spend 90 minutes on a question and you have answered it with ease in 10 minutes, stop, reread the question, and see if there is not another point which the examiner may want you to discuss. This process is especially important where you don't have to hit the other issues because of the reasonable conclusion you came to with respect to the threshold question. **Arguendo,** decide it the other way.

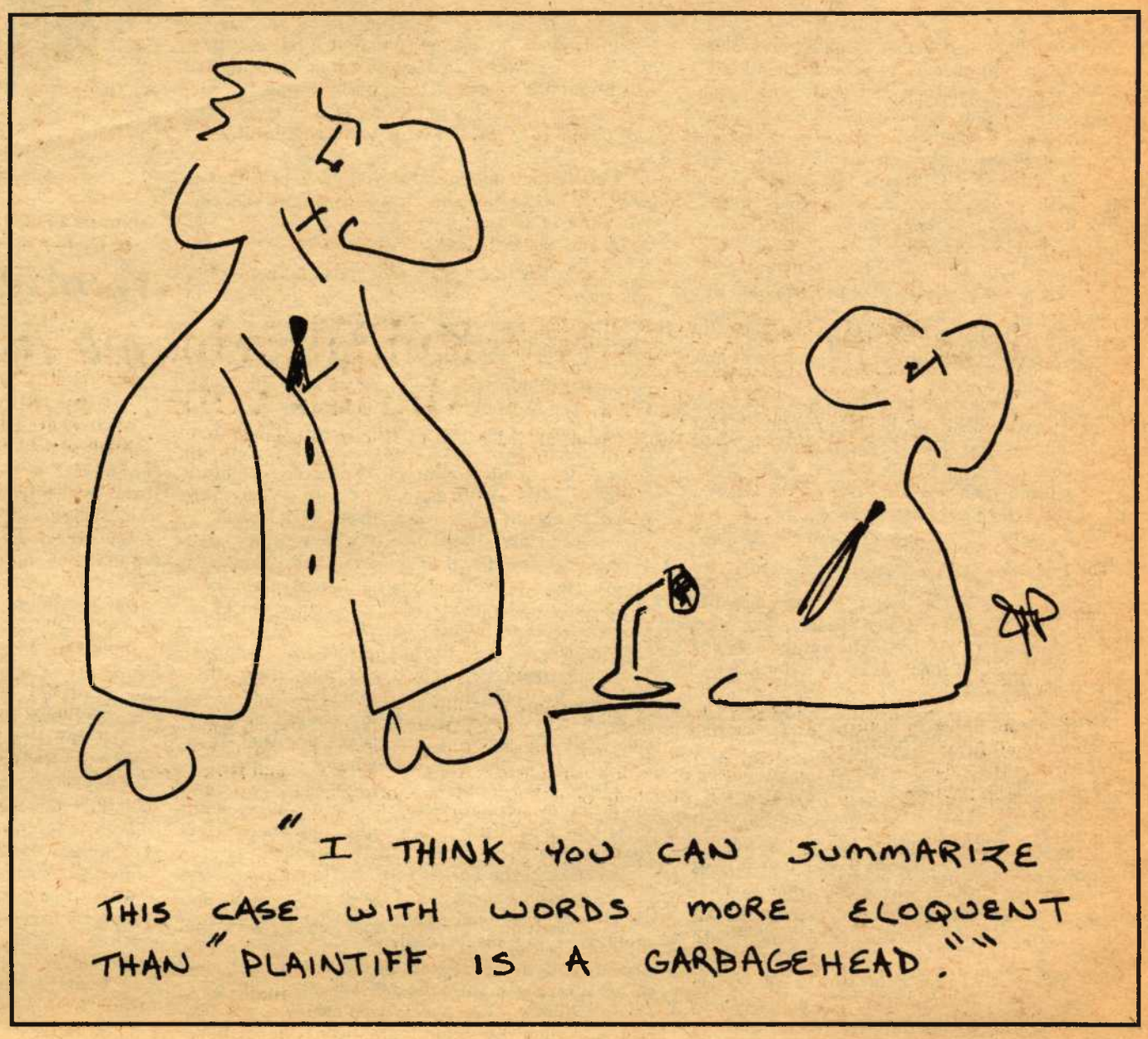
Generally, the issues are not clearcut. Each party can usually raise some nonfrivolous argument, even where it is not likely to succeed. Make it a point to look at all sides of each issue.

Reread Your Answer

When you finish your answer, take a couple of minutes to reread it. That missing "not" can be critical. The grader does not know that you meant to put it in. You may also find an inconsistency in your answer.

If on rereading the question and your answer, you see an error, do not rip the pages from your bluebook. Put a note at the beginning of your answer which sets forth your sad discovery. Label your original answer "minority opinion," and at the end state the new majority opinion, incorporating the prior analysis where you can.

(Continued on page 7)



'76 VLS grads fare well in national stats

By JOAN BECK
Ass't. Dean

A recent study of the employment patterns for 1976 law school graduates indicates that Villanova graduates compare well with national averages for employment statistics.

The national figures are based on a report prepared by the National Association for Law Placement (NALP) and show that 92% of all 1976 graduates were employed in law-related positions by early spring, 1977. For the classes from 1975 and 1974, the figures were 91% and 88% .

Concerning employment categories, it is noteworthy that the Villanova Law School Class of 1976 exceeds the NALP percentages greatly (23% to 9%) in the judicial clerkships category. These are considered highly prestigious employment positions. Furthermore, the VLS class is 5% above the national average in corporate legal positions, generally believed to be competitive in the large law firm.

Thus while Villanova's private practice percentage 43% falls short of the NALP percentage 52% , Villanova law students have opted to seek employment in positions of equivalent status.

Salary ranges for VLS employment categories are estimates based on salaries reported by 1976 graduates. It should be noted that salaries in each category may vary considerably according to geographic area. Employers in suburban and rural areas tend to pay in the low range of the scale.

Salaries stated for NALP employment categories were taken from the statistics of the responding Philadelphia area law schools. For salary comparison between Philadelphia and other U.S. cities, the NALP report Binder No. 3, Room 49, the Law Career Information Center may be consulted.

Geographically the NALP report found that 49% of all law graduates in the Class of 1976 located in Washington, D.C. and the 7 most populous states: California, New York, Texas, Illinois, Pennsylvania, Ohio & Michigan.

The Villanova Class of 1976 located in 16 different states. 67% (128 of 190) of VLS '76 graduates were employed in Pennsylvania; 55% (104) in Philadelphia and the surrounding suburbs.

CLASS OF 1976 STATISTICAL REPORT:
A COMPARISON OF PERCENTAGES OF VILLANOVA AND NALP* CLASS EMPLOYMENT CATEGORIES AND ESTIMATED SALARY RANGE

EMPLOYMENT CATEGORIES	VLS '75	VLS '76		NALP '75	NALP '76	NALP Phila. region
Private Practice	45%	43%	$9-20,000	(51%)	52%	$18,000 $17,500 $14,750
Corporation	11%	15%	$12-17,500	(10%	10%	$15-18,000
Government	17%	11%	$13-16,000	(10%	10%	Fed.- $13,482-16,25 State- unknown
Judicial Clerkship	15%	23%	$10-15,000	9%	9%	unknown
Public Interest/ Legal Services	7%	5%	$10-12,000	7%	5%	unknown
Academic: Teaching & Advanced Study	0%	2%	unknown	3%	3%	unknown
Other (including military)	5%	1%	unknown	1%	2%	unknown

* © National Association of Law Placement Report on Class of 1976 published June 1977.

VLS grads tell what they did next

By JOHN SPARKS

So, it's the end of November and the large firms have been here and gone and you didn't get a job. Maybe you didn't even get a decent interview, but since only 10% of the law school population goes to the big firms you have 90% of the potential employers still available. But the question remains, "What Do I Do Next?"

This theme was the subject of a well attended seminar moderated by the Placement Director, Joan Beck, in which four recent Villanova Law School graduates discussed job hunting methods for small and medium firms, state judicial clerkships, corporate legal departments, and federal and state agencies.

Not By Calendar

The Placement Office is an important asset. It can get word out to employers that you're looking, and by working through interests and desired location it might be able to provide you with early information.

An important thing to remember about small firms is that they don't hire by the calendar. When enough people in the firm get sufficiently overworked to cry for help, they start looking for somebody.

And often they aren't specifically looking for a Law Review member, but for the first good person who comes along with common sense, and ability to get along with people, and maybe the ability to bring some business to the firm. The obvious problem is, how to be in the right place at the right time?

Make Resume Unique

Mass mailing is a time consuming and often depressing endeavor. You may receive only 1% - 4% response, but even that small return is worth it if it lands you a job.

Len Sloan, a 1975 graduate who works for a Media firm, emphasizes making your resume different. Some firms will see thousands of the things, and if you want yours to be singled out, make it unique. So if you once played cornerback for the Pottstown Firebirds or interviewed a Supreme Court Justice for your college newspaper, put it down on paper.

When a job opens, it's a big help if they remember your resume. It is also advantageous to send another resume to the same firm later in the year. If a job has opened, you may get a longer look than your first copy.

Debbie Lerner, a 1977 graduate, who works for a ten attorney center city firm suggests specializing even in form letters. If you're writing to firms that do large amounts of tax work, emphasize any courses or background you have in that area.

Network of Contacts

The personal approach still remains most effective. If you know what field you want to get into, get the word out. Tony Tinari, '77, now clerking in Norristown, discussed building a network of contacts.

Let your family, friends, and acquaintances in the profession help you out. If they hear something, get on it quickly. Hand deliver your resume and bring a writing sample in case somebody wants to talk to you right away.

If you get an interview, be prepared. Find out what they want you to do, what kind of work the firm does, who you will work for, what kind of money you can expect to make, if they specialize, and how the firm's pecking order is established.

Other recommended activities include checking with the Philadelphia Bar Association Annex, which maintains a list of available jobs, advertising in the County Bar Association Journals, and taking any law related job you can before you apply for full time employment. Employers want somebody to do a job and the more practical experience you have, the more marketable you make yourself.

Walter Kubiak '78

Kubiak wins Merion vote

Walt Kubiak, a member of Villanova Law School's class of 1978 has recently been elected to the position of Township Commissioner of Ward 12, Lower Merion Township. As a member of the Board of Commissioners, Kubiak's responsibilities will include budget hearings, passage of new ordinances, jurisdiction over all township employees, police protection, roads and other township services.

Kubiak is 29 years old and the father of three daughters Adrienne, Elizabeth and Rebecca. He is a 1970 graduate of the United States Naval Academy and before entering law school in 1975 spent 5 years in the United States Marine Corps. Kubiak's military career has stationed him in a variety of communities throughout the United States and has exposed him to a wide range of employment opportunities which uniquely qualify him for his new position. In particular Kubiak's positions as Aid to Camp Command General Fleet Marine Force Atlantic (Norfolk, VA) and Project Officer in the M-60 Tank Project (Philadelphia, PA) developed his leadership potential, skills for organization and ability to deal one on one with the everyday problems of people.

Kubiak's interest in people and his leadership ability — are evidenced by his participation in a multitude of law school and community activities.

Curriculum study notes dilemma

At the request of the faculty, a Report of the Special Curriculum Study was recently written and published by a committee composed of Professors Dowd, Packel and Cannon. The report traced the history of Villanova Law School's curriculum from 1953 to the present, with a parallel look at the development of other law school curriculums.

Before evaluating the content and quality of current Villanova curriculum, the authors set down what they considered to be the goals of a Law School curriculum. For this they followed the guidelines made by Professor Frank L. Stong of the College of Law of Ohio State University. These goals included providing legal information and insights, developing both dialectical and technical legal skills and supplying the techniques of legal practice.

First Year Analysis

On analyzing the first-year curriculum, the authors noted that some schools have condensed the traditionally year-long courses into single semester courses with electives the second half of the first year. This has exposed first year students to wider range of subjects and enabled courses in jurisprudence and legal history to be included.

In their recommendation, the committee has suggested that the first year courses be retained intact, with each professor aware of the need to devote a portion of class time to a discussion of historical development of the law, supplemented with the second semester course of Free Speech and Association. Some schools have also begun sectioning first year classes into smaller groups, an idea welcomed by both faculty and students.

The benefits of such a move would be closer attention for the first year student, a more readily available evaluation of progress of the student, possibility of experimentation with teaching methods and, above all, the stripping of first year anomymity. However, since this change requires a great deal of the school's recources, the committee has recommended retaining most of the first year courses in large sections, with one subject being taught in multi-sections.

Generally, the committee was satisfied with the present status of the first year offering, as it provides the fundamental skills of fact discrimination, issue definition, and case and statutory analysis. It was recommended, however, that the advisor-advisee relationship be integrated into the Moot Court program. In this way, the advisor would have have more personal knowledge of the skills and abilities of the students and might be more able to evaluate and understand the submissions of the student in the program.

Cultural Strength Needed

The authors of the report noted that the aim of the second and third year offerings is to communicate legal information such as substantive concepts, principles, rules and standards. The committee felt that these aims were being fairly well met, yet could be stronger in cultural courses such as jurisprudence, legal history, development of legal institutions, comparative law and international law. There is also a noticable absence of an accounting course offering, and a need to increase labor law coverage and other developing areas of the law. There is an apparent dilemma in that the size of second and third year courses ideally would be small, but if the classes were sectioned, then the number and variety of courses would have to be cut. The committee suggests retaining the large classes rather than cutting the range of course offerings.

Skills Training

For developing legal skills in advocacy writing, the curriculum, beginning with Moot Court I, has been successful with respect to the basic writing skills. Moot Court II provides the opportunity to write on more complex and policy-oriented public law issues than in Moot Court I. A final writing requirement is the seminar writing requirement which is to develop scholarly writing techniques.

In spite of these writing opportunities, the Committee found a deficiency in the area of learning to write "lawyers' documents". This is a practical skill in which students need to become more proficient. Recommendations for improving writing skills included adding more courses, especially concerning problem solving, to emphasize the skills in legal draftsmanship.

The Committee further opined that the trial and appellate advocacy programs have been successful, but greater emphasis needed to be placed on interviewing, counseling, and negotiation skills.

Clinical Programs

The student interest and participation in the clinical programs at Villanova have not been overwhelming, but the Committee suggested that a greater variety of programs might attract more students. However, participation in a clinical program is not such an essential part of a legal education. The skills learned in the clinical programs can be learned in practice and possibly during summer employment. While a greater variety of clinical programs is encouraged, this is a lower priority deficiency with respect to the curriculum.

Chance to Concentrate

Though most law schools do not formally encourage specialization while in school, Villanova included, there is still the opportunity to at least concentrate in a particular area of law. Tc incorporate a curriculum with the ability to specialize to any great extent would mean a reallocation of faculty resources, and the Committee did not feel this to be the proper approach, since additional courses might be added through the use of local attorneys as adjunct professors. In fact, an LL.M. program in taxation and a joint degree program in forensic psychology is being considered (see p. 1 story on the Dean's proposals).

The Committee encouraged the inclusion of courses on law and its relation to other fields of study, but not to the extent that the curriculum should be completely restructured. This would not be feasible. With regard to what courses might be taught the Committee has remained open to any proposals.

Future Planning

Two suggestions for the future planning of the curriculum were included in the report. It was recommended that procedures be devised and incorporated to that end. Also, the Committee recommended that the faculty consider more formal "departmental planning." The objective of this planning would be to prevent gaps and overlapping in coverage of material in the basic courses which become the foundation for more advanced courses.

How to ace a first year exam

(Continued from page 6)

Now for a word on the grading process. As far as I know, there are no curves or quotas. No one has to fail or get a D, and no grader is limited in the number of honor grades he may give. The Ace is the best that a law professor can expect of a law student under exam conditions. You are not in competition with the instructor. He has spent more time thinking about the subject than you. In addition, he wrote the examination and knows what issues and traps it contains.

You are not in competition with your classmates either. The grader starts with a fairly accurate concept of what is the best student performance he can rightfully expect — the Ace — and what kind of answer would be professionally competent — the gentle person's hook. You are also not in competition with the prior year's class. If your examination is harder — and to the examinee, his exam is always harder — then less can be expected.

If this year's examination is easier, then more can be expected. And if this examination is unfair, then it is equally unfair to everyone in the class. The instructor should recognize this by the time he finishes grading and he can take it into account before he submits his final grades.

Catch 22

Most of the law school community appreciates that grades are not what they are cracked up to be. Few instructors will maintain that they can predict a student's potential to be a competent or outstanding lawyer based on a three-hour examination. Students have abilities and perceptions which are not reflected in the way they take an examination. Examination conditions are different from the environment in which law is practiced. Many students receive their worst grades in courses in which they put the most time and in which they learn the most. The examination system has its faults. Until the faculty finds a more accurate system, anonymous written examinations which are administered under time pressures will be with us.

My suggestions are hard to implement. Organization, analysis, ability to compose an English sentence, as well as the ability to stifle one's pen — they all sound reasonable, if not easy. But when the clock is running and the words are not flowing and you are having difficulty in getting a handle on the issues, knowing the "how-to" may not be sufficient.

The remedy to this problem is also easy to state; in your study groups and in your outlines, practice verbalization of the legal concepts. If you try to explain proximate cause or promissory estoppel for the first time, the process is difficult and time consuming. The second time is much easier and faster. Don't wait for the examination to make your initial attempt to state the concepts.

Now For "The Gold"

The last bit of advice is perhaps the most important and the least likely to be heeded: turn your brain off by seven o'clock on the night before the examination. Cramming puts your brain under unusual strain. Give that computer enough time to sort things out. It will work better for you the next day and it will permit you to get a decent night's sleep. You will need it.

You will also need some food. Eat something before the examination. I got hooked — no pun intended — on steak. Some believe that chicken soup is best.

If you are physically not up to taking the examination, let the administration know **before** the examination starts. Exercise good judgment. Don't wait for the grades to come out. Your excuse will sound like an alibi.

It is unlikely that you will Ace all of your examinations. Those that you Ace will, of course, be due to the fact that you applied my advice to the letter. And as to those you do not ace, obviously — ("obviously" is a word used by students when a concept is all but obvious, as is indicated by the fact that they can't think of a reason) — you have failed in the application. But in all of your endeavors, I wish you good luck.

P.S. When one of my colleagues tells you that he or she disagrees with my suggestions, remember **his** or **her** view — at least on **that person's** examination!

Dean's plan raises questions

Dean O'Brien recently announced his proposals for a program of development for Villanova Law School, designed to insure the maintenance on Villanova's status among law schools and the ultimate improvement in the quality of its educational service. The elements of this program sound simple — a fund raising drive, administrative reorganization, and a limited graduate program; but at the core of the proposals are concerns of significant magnitude for the future academic health of the law school.

Dean O'Brien is correct, we think, in assigning considerable importance to the financial independence of the law school. The purpose of this independence is not to acquire leverage over the University but rather to insure that, in event of economic disaster in the University, the law school will be able to continue to function, with no substantial impairment in the quality of its academic program.

This is, indeed, a worthy objective, in light of current budget conditions at both the University and the law school. Both are unduly dependent upon student tuition for their operating revenues. The University meets 98% of its direct expenses with student fees; the law school is only slightly better, in that it depends upon student fees for 94% of its direct expenses.

The nature of this dependence is clear when it is compared to the figures for other law schools that were ranked in the same, first quartile in a report on legal education, conducted by the ABA section on legal education and admissions. The average for other schools in the same quartile was that 74% of the direct expenses came from student fees. That is a significant difference.

The vices of this heavy dependency are obvious. Rapidly rising costs, especially those resulting from inflation, must be passed almost entirely on to the students, by means of increased fees. The school itself lacks the ability to offset easily any major, unforeseen expenses. Moreover the school is greatly hampered in its development and in the improvement of its academic program, because of a lack of adequate resources. Fund raising on a continuing basis, both from alumni and other private sources, is about the only solution.

The two other elements in the proposal — establishing a graduate program in taxation and a program in forensic psychology and restructuring the law school's administration — are, perhaps, reasonable in light of the overall objective. Certainly a graduate program would give the law school another service to market to the community, which would be a source of additional revenue. Also, a graduate program could provide a source of intellectual stimulation, consequently buttressing the academic quality of the school. And for administrative changes, one can usually argue, not unreasonably, that some new division of duties would improve the functioning of a decidedly overworked system.

Still, until we are able to judge the new administrative process in light of current needs, the memorandum itself offers little concrete explanation of why these particular changes were suggested. The line separating a positive reorganization from a mere juggling of resources is a fine one.

Potentially, the creation of another associate dean could have the effect of converting a full-time teacher into a half-time teacher, so that greater strain would be placed on the student-faculty ratio, which is low compared to other schools in our group. Moreover, establishing a graduate level program would require additional faculty. But the memorandum contains no reference to where this faculty would come from, or where the financial resources necessary to cover the increase in faculty would come from.

Furthermore, the memorandum indicates that the funds to pay for the reorganization of the Dean's office and the establishment of another associate dean would be those originally allocated for hiring new faculty. Last year the school was unable to find suitable additional faculty, so the money went unspent.

But we note that in the memorandum, Dean O'Brien indicates that the average salary for Villanova faculty is somewhat lower than for other law schools of similar rank. Thus we are forced to wonder whether it was wise, when considering the difficulty in hiring suitable faculty and the limited financial resources available, to embark on a program that would appear to place greater strain on the existing faculty and to divert unspent funds from faculty improvement and enlargement to administrative reorganization.

We do not mean by these questions to diminish the significance of the Dean's proposals. His objective is an important one, and one that should be supported. The specific proposals likewise seem designed to achieve that objective. But as we know of no other formal, public presentation of these issues, we merely ask whether several problems, apparent from data in the memorandum itself, have been adequately addressed.

A host of tenure assumptions counsels patience for now ...

After the shaky start the new tenure granting process got off to, and after the process was delayed so that it seemed the four faculty members who were being considered would sooner get a pension than be granted tenure (see Docket Oct. 1977), our eyebrows were understandably raised when it was reported that the tenured faculty had made its recommendation to the Dean without any publicity whatsoever.

Cranking up our investigative machine, we learned, in addition that the Dean had made his recommendation to the President of the University and that was where the decision presently resided. Each of the four faculty members under consideration had been informed of the recommendations concerning his own case, but neither the non-tenured faculty nor the students were appraised of what the recommendation had been. You don't have to be Woodward and Bernstein to think something funny was going on.

Well, in the interest of school morale, especially that of the Tenure Screening Committee and the Tenured faculty, we would like to admit that we were hasty to be so suspicious. We do not wish to condone the withholding of information from **The Docket,** but in this case there are eminently reasonable arguments for keeping the recommendations a secret until they are finalized.

Clearly by keeping the faculty recommendation secret a certain amount of dissension may be avoided. By keeping general discussion at a whisper, the President of the University will be made to look the part of the hero or villain.

We also feel better about this policy in light of the fact that students are not the only ones to be excluded. That the non-tenured faculty are in the dark too, points out to us that the decision to remain silent was not an arbitrary one.

Ultimately, the basis for the enforced silence must be regard for the feelings of the faculty members who are on the line. It is a potentially highly embarrassing situation, as the tenure process is currently structured and to release the faculty or Dean's recommendation could well be premature. Even though it is highly unlikely that Father Driscoll will reverse the determinations of the Law School faculty and Dean, it is possible, nonetheless. And whether the initial determination had been positive or not, the faculty member being considered would be thrown into a decidedly uncomplimentary light for all to see.

We think that an open policy is the only way for our law school to keep from developing into a kind of autocratic fiefdom for a Dean and the oldest faculty members — or whoever might have power to dictate policy. Moreover, such a policy is in keeping with the democratic attitude which already pervades the school. New faculty members, for instance, are scrutinized by the entire faculty. Student response is solicited on that and other matters.

In this particular instance, we feel that discretion is the better part of valor. One or two month's suspense does not seem unreasonable in light of the motivations for keeping such a decision a secret, and the emotions at stake.

Of course, what we say assumes that reality is the same here as theory. It wouldn't do to have the non-tenured faculty know the tenured faculty's recommendation even if such knowledge was strictly unofficial. Such "leaking" could result in the students being the only ones to be kept in the dark.

In addition, we assume that the University president will not drag his heels. We should not be very consoled by the faculty's lack of control if an ultimate decision were not forthcoming.

Dear Lucy

Help fo

Dear Lucy:

Recently I was told that my chances of being accepted to the University of Pennsylvania Law School are slim. I think I am very well qualified — I have a 3.8 at Harvard and a 779 LSAT score. It's just that my astrological sign is wrong — I'm a Gemini, you see, and the interviewer told me that this is a particularly bad time at Penn for Geminis. He told me that the admissions committee seemed disposed towards Pisces and gave me an example of one Taurus with a 3.25 and 650 being accepted. He suggested that I defer application for a year to let the committee "get their head together." Do you think I have a chance at Villanova?

Prospectively yours,
Another Penn Refusee

Dear Refusee:

Villanova most expressly does not discriminate on the basis of religion, color, creed or astrological sign, in compliance with Title VII of the 1964 Civil Rights Act. In any event, Venus is not in the ascendancy here, Uranus is, avoiding any problem with Geminis or libertarians. My only advice is to meet the January 31st deadline for application, because after that time, Mercury is at its azimuth.

Dear Lucy:

Do you think it possible for a non-Law Review man to be successful in love with a Law Review woman? If it's just a matter of time, I can wait for her. I'm just afraid she doesn't see me. Jeez! She's so smitten by a couple of Review guys that I could scream. And one of them is only Open Writing! Do you think I should tell her my father is the hiring partner in a large, Wall St. firm?

Desperately yours,
No. 160/210

Dear 160/210:

Better play your trump, dear. If you plan to wait for the Review, you may be waiting longer than you bargained for. But you may have to face the fact that some women can't resist procedural dandies even if they have someone substantive waiting at home for them. Keep that machismo, whatever you do and don't try a casenote just to get her.

Dear Lucy:

The reason that I came to law school is to find a husband. My mother told me that since I am a WASP, I should find a graduate of a "classy preparatory" high school. I've had trouble distinguishing them from the disadvantaged others and I need your help in finding my mate.

Signed,
Protestant and prepared

Dear PaP:

If you follow my simple directions, you should have no problem in locating your dream guy. It is merely your inexperience at the game, "SPOT THE PREPPIE." Here are the rules:

1. Look for these characteristics in his attire —

a. haircut to the exact length of Pat Boone, his ears fully shown, the part is on the right side, he wears it off of his face.

b. black or tortoise shell framed glasses in a very traditional shape — whether he needs them or not.

c. sweater — solid color (Preferably pastel shades) and crew neck — Robert Bruce must own some 'prep' schools.

for the law-worn

d. either a white shirt with a button-down collar (obviously with the points inside the sweater) or a Lacoste shirt with the collar turned up so it can be seen outside of the sweater.

e. either topsider or wallaby shoes for casual wear and penny-loafers for his formal attire.

f. pants are always straight legged, usually corduroy or khaki.

2. On pleasant Sunday afternoons, one may hear him say, "Anyone for an exciting polo match?"

So, if you follow these instructions, within two months you will be able to do what you really want to do — leave law school and shop all day long at Bonwit's, Saks, and Altman's.

Dear Lucy:

I think I have the "Hustle" down pretty well, since I've been watching the Ed Hurst show and practicing at Jeff Med School parties. I know that the guys at Dechert love to "Hustle" at the Newsstand. Do you think I should put in my resume that I know how to dance too?

Signed,
Two Left Feet Left Dangling

Dear Two Feet:

If I were you, I would say that I was interested in entertainment law. But I wouldn't take any chances. Go down to the Newsstand and cultivate some of the associates. When they learn that you are interviewing with Dechert, they won't hesitate to put in a good word for you if they're impressed with how you handle yourself.

Ed. Note: Lucy Lady Duff-Gordon is Benjamin Nathan Cardozo, Professor of Law at Villanova University Law School, where she teaches jurisprudence and socially aware psychology. Readers are encouraged to send their letters to **Dear Lucy,** c/o The Docket.

Letter to the editor

Letter to the Editors of the Docket:

For the students who signed the "Gilberts" petition it was a question of having a convenient place to purchase the study aids. For the editors of **The Docket** it was a question of ultimate authority and responsibility. As the **Docket** October editorial put it, the key question is "who has the right and the duty to determine what should be the academic objectives of the law school and of legal education at Villanova. Is it the faculty and the administration or an ad hoc majority of students?"

Well if that is the question, then there is the answer. The right and the duty to guide the legal education of Villanova Law School students belongs to the faculty and the administration. That is why they are here; and Villanova students enter the school expecting to find their academic life given direction by the educational philosophy and aspirations of the Law School. But the right and duty to determine the total content of that academic life belongs to the students themselves. The acquisition of useful knowledge is part of the concept of personal liberty which students carry with them as they enter a law school and expect to find respected by institutions of the academic calibre of Villanova.

Signed,
Nancy Schuster
on behalf of
the Members of
The Lawyers Guild

THE DOCKET

Editor-in-Chief
Jay Cohen

Senior Editor
Max Klinger

Staff Editor
Gary Cutler

Layout Editor
Kevin O'Connor

Photography Editor
Diana Segletes

Contributing Editor
Rob Federico

Sports Editor
Rick Troncelliti

Staff: Jeff Armstrong, Donna Baker, Lisa Cetroni, Mark Cherpack, Jim Cupero, Hank Delacato, Rob Federico, Rich Funk, Nancy Goodwin, Bill Kamski, Don Ladd, Renee McKenna, Michele Ndielski, Max Perkins, Wendy Rickles, John White

Faculty Advisor
Professor John Cannon

The Docket is published monthly by students of Villanova Law School, Villanova, Pa. 19085. Opinions expressed herein do not necessarily reflect the views of the university or the law school. Unsigned editorials represent the views of the editorial board. Any republication of materials herein is strictly prohibited without the express written consent of the editors.

We wish to thank those secretaries who assisted in the preparation of The Docket

Obiter dicta

A planetary silence goes largely unbroken

By JAY COHEN

I have, among other pleasures during the evolution of an issue of **The Docket,** the joy of assigning stories and events to be "covered." Sometimes, the topic seems of dubious merit and most of the time, the writer is reluctant. But by the time we put the paper to bed, I have a pretty broad picture of what has happened at the law school in the past four or so weeks. And I might add, this is the kind of total picture I don't have while everything is going on.

I say this to explain why it is just now that I've noticed that most of the speakers to appear at Villanova have been sponsored by the local chapter of the National Lawyers Guild. On topics ranging from a discussion of the Bakke case, to one concerning legislation on accumulation of personal information by organizations such as the FBI, the Guild has sponsored animated and sometimes heated forums. In addition, the Guild earlier prepared and had published a pamphlet called "First Year Reorientation Guide" which, as the title implies, attempted to show students the way around what it pictured to be misconceptions about the practice of law.

Law Forum Absent

The Lawyers Guild has obviously been busy this semester. This becomes all the more noteworthy in light of the absence, of the Law Forum which, last semester, drew large interest to informal talks by unusual legal personalities, such as sports agent, Richie "the bear" Phillips and Delaware County Councilwoman, Faith Whittlesey. It should be added, that even in its prime, the Law Forum presented enlightenment or entertainment, but usually did not present a particular political or philosophical viewpoint.

In fact, no one is presenting any kind of political or philosophical view except the Lawyers Guild, and **that** view is certainly crystallized and automatically associated with the Guild.

It is a set of beliefs that are decidedly socialistic. Or, if you don't like that term, you could say their views tend to the left . . . personally, I don't like to label them. I think that they are often contradictory — they talk about repression and yet would be quick to limit the freedoms of others — and I think that underlying all their rhetroic is an attitude about the human condition which is not liberal but rather is mistrustful, pessimistic and even misanthropic.

Guild Provokes Debate

Yet, I commend what the Guild has done this semester. Regardless of what I think of its ethics or philosophy, it has at least shown that it has a guiding set of principles. It has offered them to the students who attended its forums, thus provoking thought and debate.

I believe there must be students who disagree with the Guild. I know it, since I've heard of heated clashes inside these speaker assemblies from titillated students who watched them like fans at a prize-fight. What I don't know, is why there aren't groups of students believing differently than the Guild, who have their own organizations to present their own views. Why haven't we seen speakers like Harvard professor, Raoul Berger, who feels the Supreme Court has overstepped its Constitutional bounds, or William Buckley, who believes that the U.N. is a waste?

Apathy or Atrophy?

I don't know the answer. Perhaps at this law school, being conservative means doing nothing. Perhaps students feel that philosophy is a superfluity in law school, and that the only thing which they are here to debate is the law itself. If this is the case, the situation is more upsetting than if it was merely the product of student apathy.

In the first place, the atrophy of such debate may lead to an eventual decay of the American system of government. In his usual, enigmatic way, Mr. Justice Holmes spoke of "a free trade in ideas," in his famous dissent in **Abrams v. United States,** saying that our Constitution was based on the forceless resolution of conflicting philosophies by "the power of the thought to get itself accepted in the competition of the market. . ." Mr. Justice Brandeis went even further. He said in Whitney v. California:

Those who won our independence believed that the final end of the State was to make men free to develop their faculties . . . They believed that . . . discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty . . .

Ministers of Justice

Beyond their own circles, attorneys fill the important role of keeping dialogue open between judges and legislators. This is what Mr. Justice Cardozo called a "ministry of justice." He envisioned an ultimate ministry, composed of a handful of stellar figures — men who were rounded enough to consider all social, philosophical, economical and political aspects of a legal question — who would gather information and make recommendations to judge and legislator alike.

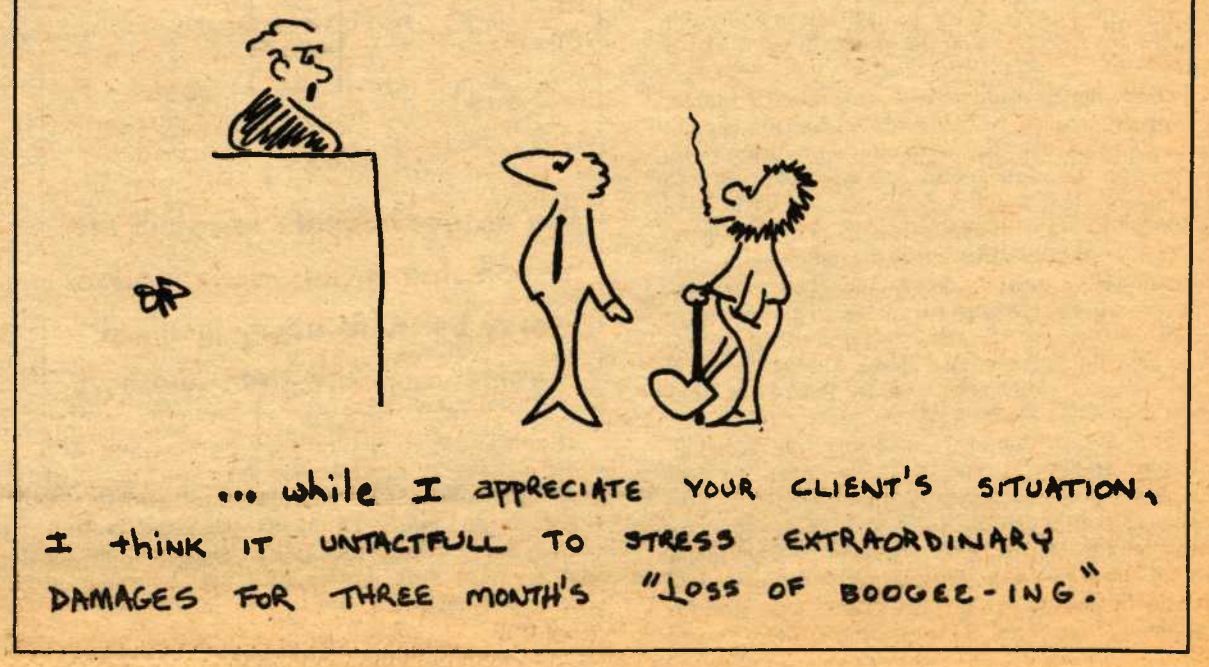
But as the bedrock for his ministry, Cardozo posited steady and meaningful discourse, both to spark the ministry to reach ideas, and also to pass judgment upon those it had already reached. "The legislature may reject them. But at least the lines of communication will be open. The long silence will be broken. The spaces between the planets will at last be bridged." It is just this communicative, bridging aspect of discourse and debate which is missing at the law school, except in the case of the Lawyers Guild.

Inquisitive Reflex

Finally, I wonder if it is really possible for law students to meaningfully debate the law, as it is encountered in the class, when philosophical debate is not an ongoing process. What is to prevent the inquisitive reflex from atrophying if it is not constantly exercised? And if students feel that they must learn the law before questioning it, what makes them think that as attorneys they will have the inclination or even the expertise to do so?

Actually, the classroom may not be the place to philosophize. To an extent, one does have to learn the rule first. But that just says to me that forums of the nature of those presented by the Guild are ideal places to contemplate the law. I might also toss in the idea that another under-utilized forum is **The Docket.** In fact, it has a larger audience than any other method of dissemination in the school, and is not subject to the vagaries of scheduling, but can accommodate itself to an individual's time demands.

As students we have a trust — to develop ourselves so as to become the best attorneys possible. But it is a trust to be realized in the future and its present breach will be suffered by unsuspecting beneficiaries. It seems almost negligent then, to concentrate so single-mindedly on one aspect of the trust while completely ignoring another which is just as essential. No matter how well we know the law, as lawyers we must be thinkers. Otherwise, we are no better than grease-monkeys or plumbers. The Lawyers Guild must know this, but for now, they are simply talking to themselves.



Affirmative action programs restricted by epic decision

ALLAN BAKKE
v.
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
(18 C. 3d 34; 132 Cal. Rptr. 680; 553 P. 2d 1152 (1976)

Ed. Note: Allan Bakke applied for admission to the medical school of the University of California at Davis in 1973 and 1974, and was rejected both years. He was not admitted to any other medical school.

Bakke filed a complaint against the University, claiming that he had been denied admission because of an affirmative action program to admit minority students. He sought an injunction to force the University to admit him. Davis filed a cross-complaint seeking to have the California court declare its special admission program to be constitutionally valid.

The lower court found against the University of its cross-complaint but denied Bakke's prayer for injunctive relief. Both parties appealed from the decision. The California Supreme Court transferred the case without a prior decision by the Court of Appeals since it felt the issues were so important as to warrant such a step.

On October 12, both sides argued the case before the United States Supreme Court, the California high court having found for Bakke. Among the many amici briefs filed was one written jointly by Harvard University, Columbia University and the University of Pennsylvania. Villanova Law School was one of seven private institutions supporting that brief.

The Docket feels this issue important enough to warrant substantial treatment, and so we have reprinted the opinion of the California Supreme Court in a slightly abridged version which gives a faithful rendition of the court's ruling.

MOSK, J. —

The selection of students for admission is conducted by two separate committees. The regular admission committee consists of a volunteer group of 14 or 15 faculty members and an equal number of students, all selected by the dean of the medical school. The special admission committee, which

In this context the only relevant inquiry is whether one applicant was more qualified than another.

evaluates the applications of disadvantaged applicants only, consists of students who are all members of minority groups, and faculty of the medical school who are predominantly but not entirely minorities. Applications from those not classified as disadvantaged (including applications from minorities who do not qualify as disadvantaged) are screened through the regular admission process.

The evaluation of the two groups is made independently, so that applicants considered by the special committee are rated only against one another and not against those considered in the regular admission process. All students admitted under the special program since its inception in 1969 have been members of minority groups.

* * *

Bakke had a grade point average of 3.51, and his scores on the verbal, quantitative, science, and general information portions of the Medical College Admission Test (expressed in percentiles) were 96, 94, 97 and 72 respectively. His application warranted an interview in both years for which he applied. In 1973, his combined numerical rating was 468 out of a possible 500, and in 1974 it was 549 out of a possible 600. He was not placed on the alternate list in either year.

Some minority students who were admitted under the special program in 1973 and 1974 had grade point averages below 2.5, the minimum required for an interview for those who did not qualify under the special program; some were as low as 2.11 in 1973 and 2.21 in 1974. . . The mean percentage scores on the test of the minority students admitted to the 1973 and 1974 entering classes under the special program were below the 50th percentile in all four areas tested. In addition, the combined numerical ratings of some students admitted under the special program were 20 to 30 points below Bakke's rating.

* * *

The trial court found that although the special admission program purports to be open to "educationally or economically disadvantaged" students, and although in 1973 and 1974 some applications for the program were received from members of the white race, only minority students had been admitted under the program since its inception, and members of the white race were barred from participation. The court concluded that the program constitutes invidious discrimination in favor of minority races and against Bakke and others whose applications were evaluated under the regular admission procedure, in violation of their rights under the Fourteenth Amendment to the United States Constitution. The University does not challenge the trial court's finding that applicants who are not members of a minority are barred from participation in the special admission program.

* * *

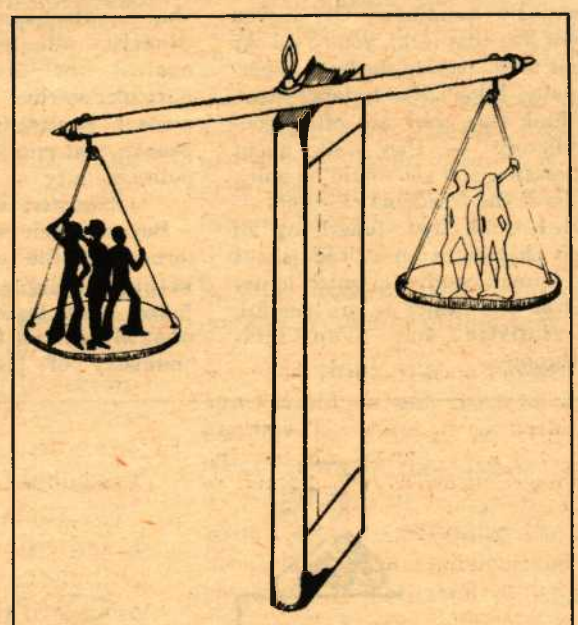
We also observe preliminarily that although it is clear that the special admission program classifies applicants by race, this fact alone does not render it unconstitutional. Classification by race has been upheld in a number of cases in which the purpose of the classification was to benefit rather than to disable minority groups.

Thus, such classifications have been approved to achieve integration in the public schools *(Swann v. Board of Education* (1971) 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed. 2d 554; *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 950-951, 92 Cal.Rptr. 309, 479 P.2d. 669), to require a school system to provide instruction in English to students of Chinese ancestry *(Lau v. Nichols* (1974) 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1),[10] and to uphold the right of certain non-English speaking persons to vote *(Katzenbach v. Morgan* (1966) 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828; *Castro v. State of California* (1970) 2 Cal.3d 223, 85 Cal.Rptr. 20, 466 P.2d 244). These cases differ from the special admission program in at least one critical respect, however. In none of them did the extension of a right or benefit to a minority have the effect of depriving persons who were not members of a minority group of benefits which they would otherwise have enjoyed.

It is plain that the special admission program denies admission to some white applicants solely because of their race. Of the 100 admission opportunities available in each year's class, 16 are set aside for disadvantaged minorities, and the committee admits applicants who fall into this category until these 16 places are filled. Since the pool of applicants available in any year is limited, it is obvious that this procedure may result in acceptance of minority students whose qualifications for medical study, under the standards adopted by the University itself, are inferior to those of some white applicants who are rejected.

* * *

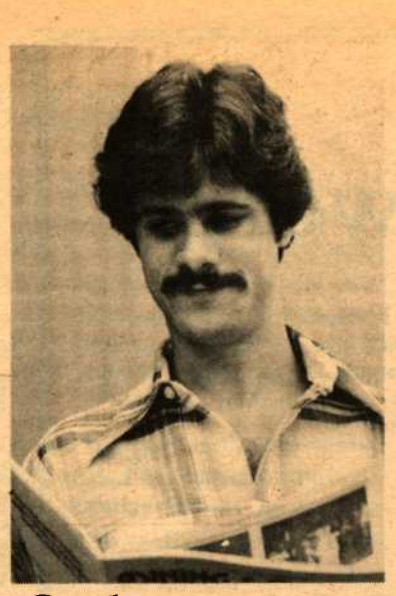
The rating of some students admitted under the special program in 1973 and 1974 was as much as 30 points below that assigned to Bakke and other nonminority applicants denied admission. Furthermore, white applicants in the general admission program with grade point averages below 2.5 were, for that reason alone, summarily denied admission, whereas some minority students in the special program were admitted with grade point averages considerably below 2.5. In our view, the conclusion is inescapable that at least some applicants were denied admission to the medical school solely because they were not members of a minority race.



We do not hesitate to reject the notion that racial discrimination may be more easily justified against one race than another.

The fact that all the minority students admitted under the special program may have been qualified to study medicine does not significantly affect our analysis of the issues. In the first place, as the University freely admits, Bakke was also qualified for admission, as were hundreds, if not thousands of others who were also rejected. In this context the

(Continued on page 11)



Galperin publishes gastronomy magazine

Third year law student Jeffrey Galperin recently published a magazine entitled **The 1978 Dining and Dancing Directory.** It is a 52 page magazine profile of nightspots in the Greater Wilmington-Chester Media area. The Directory can be found on newsstands and in the reading room of the Law Library.

The following interview was held in one of the area's finest eating establishments — the Villanova Law School Cafeteria.

Docket: Tell me, Jeff, how did you get the idea for this magazine?
Galperin: Well, last May, around exam time, I was killing time at a local newsstand. I came across a restaurant guide published by Philadelphia Magazine that profiled many of the restaurants in the area. I'm not originally from the area, so I picked up a copy. A week later I noticed they were sold out.

Docket: And that's when you got the idea for the magazine?
Galperin: Right, but I figured that a magazine that featured not only restaurants but nightspots as well should do just as well in Wilmington. I enjoy writing and drawing and going out, so I thought that this would be a great way to do all these while making some money doing it.

Docket: Did you have any magazine experience?
Galperin: I'd written for a magazine in Spain a few years ago and became somewhat familiar with its workings.

Docket: How did you go about setting up the magazine?
Galperin: The first thing that I did was have business stationery made, you know, business stationery and cards. That was crucial. We (I had a partner in the early days) had to look official. Show someone a nice business card and I guess they automatically assume you have an office full of secretaries somewhere. I had a LEGAL INTERNSHIP with the City of Wilmington working on labor projects. It was an interesting job, but in the meantime I was taking a late lunch and trying to convince downtown restaurant owners to buy space in the magazine. Once I had swung a few key accounts and it looked like it was going to go, I went to the banks with a proposal and projected earnings etc. They went for the idea and approved it.

It was at that point, in late June, that my partner, seeing our potential liability instead of our potential profits, left.

Docket: So you were on your own?
Galperin: Only for a little while. For a while, I continued my legal job and sold at night and during lunch hours I drafted a contract and began to get the interested restaurants to sign. Eventually the magazine really began to snowball and I left my legal job. At that point, I took on a friend of my sister who was a photographer. He became my managing editor. Then a girl from Syracuse's School of Advertising joined us. Together, the three of us drew up a war map of all the restaurants and nightspots and pinpointed them. As the magazine grew bigger, we began to add more and more staff sales people and layout people (mostly friends) until we numbered 14. I had a friend from Georgetown Law School and a friend from Delaware Law School selling. I even put my grandfather to work selling.

Docket: How did they do?
Galperin: Great. We were originally shooting for sixty restaurants and nightspots but we ended up with 76. I guess when the restaurants began to hear that places like Winston's, The Magic Pan, and the Sheraton were going in, they didn't want to be left out. We were getting great press. I think had we continued to sell into September we would have been able to add at least another dozen or so restaurants.

Docket: Why didn't you?
Galperin: School, remember. When September rolled around my staff all left (except my grandfather), and the magazine still wasn't laid out.

Docket: Has it been worth it?
Galperin: How do you mean?

Docket: Well, financially, for instance?
Galperin: Well, we had a hundred and ten accounts (we had advertisers other than restaurants) with ads ranging from $100 to $1,700 depending on size, location, or color, so we did run a profit.

Docket: How's it doing on the newsstands?
Galperin: O.K. Companies have put in bulk orders.

Dupont had an initial order of 300 to give to incoming executives. A Wilmington Realty Company is giving them to prospective customers. I suppose I'll begin to approach other companies during Christmas break.

Docket: What about that press party we heard about?
Galperin: We threw a "Black and White" press party at Wilmington's Grand Opera House when the magazine first came out. We asked that everyone come dressed in black and white to honor the printed word. Invitations were sent out in a deco motif asking "What is black and white and read all over? We are! And you will be too when you attend," etc. No one had seen the magazine before that night, so we had the waiters bring out the magazine on silver platters while the band played the Johnny Carson theme. Show biz, you know.

Docket: How did the press respond?
Galperin: Real well, I was interviewed on Channel 12 last week. I have had a little play in the Wilmington press — the Bulletin and the Inquirer are supposed to be doing stories on the magazine within the next couple of weeks. One magazine in Delaware, in fact, contacted me about buying them out.

Docket: What are your plans for the future?
Galperin: Right now I'm in the process of getting a trademark for the Dining and Dancing Directory. After that, I don't know what I'm going to do. Once I finish taking the bar, I may publish the second annual in Wilmington, and then move Galprint publication (my company) to other similarly situated cities. With the advent of gambling, I think Atlantic City could eventually support entertainment magazine on a weekly basis. I'm also thinking about working for a magazine in New York. I don't know.

Youth system forum topic

By MARK CHERPACK

The juvenile justice system was the topic of discussion as the Montgomery County P.D. Seminar met Tuesday, October 11. Leading the discussion were Joseph D'Annunzio and George Ditter (a 1976 graduate of Villanova Law School) of the Montgomery County Public Defenders Office.

The Defenders program has been in operation at Villanova for several years under the direction of Calvin S. Drayer, Jr., chief of appeals division of the Montgomery County Public Defenders Office. The theory of the program is that students benefit not only by gaining experience in writing briefs but in learning about the operation of the criminal justice system from practicing attorneys presently involved in that system.

Although it was pointed out in the seminar that in many juvenile cases lawyers do not become involved due to the dispositional discretion used by police and probation officers, D'Annunzio and Ditter pointed to many interesting aspects of the relationship between lawyers and the juvenile justice system.

Benevolent or Adversary System

One question raised was whether an attorney in a juvenile case should see himself as part of a "benevolent" system seeking to reform juveniles or as an advocate representing a child in an adversary process similar to a criminal trial. Although current treatises can be found to support both viewpoints, the trend in the law has been to give the accused delinquent in a juvenile proceeding all the rights of an adult defendant, such as the right to suppress illegally obtained evidence. In this area, a juvenile has more rights than an adult — the confession of a juvenile without a parent or "interested adult" present is excludable per se.

Dean O'Brien: "We are moving."

Opposite Desires

Another problem discussed was the difficulty lawyers encounter in family situations when the child the lawyer is representing wants one result from the system and the parents of the child may desire an opposite result.

It was also pointed out that if the juvenile system is becoming more like the adult criminal justice system, the reverse is also true. Pre-sentence investigation, traditionally an important part of juvenile cases, is becoming more important in criminal cases.

Dean plans for independence

(Continued from page 1)

The Associate Dean for Academic Affairs will deal with long-range curriculum development, including the new graduate programs, and matters such as the supervision of such activities as the Law Review, Moot Court, and Community Legal Services.

The Associate Dean for Administration will serve as the chairman of the Admissions Committee, oversee the financial aid program, and "cultivate the interest of alumni in the Law School's fund raising, placement and recruitment activities."

In addition, this new Dean will oversee non-academic activities such as The Docket and other student organizations.

Break Even Period

The administrative shakeup comes upon the law school's Silver Jubilee and also at a time of increasing fiscal worries, as the law school enters what O'Brien terms a "just-break-even" period.

The University itself is also beset by financial woes, primarily because of an undue reliance on tuition payments for its funding.

At the present time, tuition or student generted fees represent 98% of the University's income. The law school suffers from the same problem; it relies on tuition for 94% of its funds.

Precarious Situation

"When income is based on tuition," O'Brien said, "the institution faces extinction." He told The Docket that the precarious situation at the law school would lead to a deficit by 1985 which could not be funded by the University.

But the University cannot well afford financial weakness in the law school. Currently it draws about $250,000 from the money raised by law school tuition payments to meet what Dean O'Brien calls "legitimate overhead costs."

These costs cover the basic utility functions of heat and light and such other services as University insurance and time allotment on the University computer line.

Even though O'Brien said he budgets without regard for these indirect costs, he stressed that "such indirect costs are real." (For more on this subject, see p. 3 for the Docket's interview with James McHugh, Chairman of The Board of Consultors).

Dean O'Brien pointed to two other weakening elements currently at play: a population shift from the populous Eastern seaboard states to the "sun belt" region of the Southwest United States, and a decline in the number of 18 year-olds in the United States, which is expected to reach 25% by 1992. He emphasized that the law school would suffer a loss of greater than 25% since it would be losing its potential students to both trends.

Plan for Independence

The call for a vigorous new fund raising effort and new graduate law programs can be seen as an effort to make the law school financially strong and independent. "My plan," O'Brien said, "is to see that this institution is entirely self-supporting at an appropriate level in the near future, because we cannot depend on deficit financing by the University."

The new fund raising activities will mark the first time in several years that the Law School has had the reins of fund raising in its own hands.

In the school's early years, alumni giving was conducted by the Law School but amounted to little because of the small graduating classes and the fact that the novice attorneys could not be expected to contribute large sums.

University involvement with Law School fundraising really came about as a result of the Law School's Capital Campaign, in 1969, when the University collected on pledges made to the Law School building drive, many of them by non-alumni sources. This involvement resulted in the suspension of fund raising by the Law School on its own.

According to Dean O'Brien, VLS efforts were reinstituted about four years ago but were again suspended when the University began its Covenant Campaign, for fear of possible competition over the same sources.

The Dean also pointed out to **The Docket,** that the Law School had never organized a program for fund raising from non-alumni sources, except for a limited number of foundation scholarships.

But all this would change with the new proposals. "We will need the cooperation of alumni and students," O'Brien stressed, pointing out that students could affect the amounts raised to the extent that they were able to direct fund raisers to potential sources of income and also, to the extent that they created a climate that would encourage giving.

Grad Programs of Service

Integral to the fund raising is the proposed program of graduate studies in taxation and program in forensic psychology, the latter to be given in conjunction with Hahnemann Medical College, and resulting in the joint degree of J.D. from Villanova Law School and Ph.D. in psychology from Hahnemann.

These programs will generate additional income, O'Brien stated, but they will also be of service to the profession and the community. "If they could not be justified on educational grounds then regardless of the money, we couldn't do it," he emphasized.

The Dean pointed out that mandatory continuing education for attorneys may be a reality in the near future and he saw this as further justification for the new programs.

Dean Looks Ahead

When asked to make predictions about the future effects of his proposals on the economics of student life at Villanova Law School, Dean O'Brien told **The Docket** that tuition would almost certainly rise as a reflection of inflation in the near future.

However, O'Brien said that he was committed to minimizing tuition increases and would be able to do so to the extent that outside funds were secured. The situation was considered too uncertain to predict, but the Dean was guardedly optimistic, saying, "We are moving."

Bakke shakes racial notions

(Continued from page 10)

only relevant inquiry is whether one applicant was more qualified than another. Secondly, Bakke alleged that he and other nonminority applicants were *better*-qualified for admission than the minority students accepted under the special admission program, and the question we must decide is whether the rejection of better qualified applicants on racial grounds is constitutional.

* * *

The general rule is that classifications made by government regulations are valid "if any state of facts reasonably may be conceived" in their justification. This yardstick, generally called the "rational basis" test, is employed in a variety of contexts to determine the validity of government action and its use signifies that a reviewing court will strain to find any legitimate purpose in order to uphold the propriety of the state's conduct.

Bit in some circumstances a more stringent standard is imposed. Classification by race is subject to strict scrutiny, at least where the classification results in detriment to a person because of his race. In the case of such a racial classification, not only must the purpose of the classification serve a "compelling state interest," but it must be demonstrated by rigid scrutiny that there are no reasonable ways to achieve the state's goals by means which impose a lesser limitation on the rights of the group disadvantaged by the classification. The burden in both respects is upon the government.

* * *

We cannot agree with the proposition that deprivation based upon race is subject to a less demanding standard of review under the Fourteenth Amendment if the race discriminated against is the majority rather than a minority. We have found no case so holding, and we do not hesitate to reject the notion that racial discrimination may be more easily justified against one race than another, nor can we permit the validity of such discrimination to be determined by a mere census count of the races.

That whites suffer a grievous disadvantage by reason of their exclusion from the University on racial grounds is abundantly clear. The fact that they are not also invidiously discriminated against in the sense that a stigma is cast upon them because of their race, as is often the circumstance when the discriminatory conduct is directed against a minority, does not justify the conclusion that race is a suspect classification only if the consequences of the classification are detrimental to minorities.

> "The Equal Protection Clause commands the elimination of racial barriers, not their creation ..."

Regardless of its historical origin, the equal protection clause by its literal terms applies to "any person," and its lofty purpose, to secure equalty of treatment to all, is incompatible with the premise that some races may be afforded a higher degree of protection against unequal treatment than others.

The University seeks to justify the program on the ground that the admission of minority students is necessary in order to integrate the medical school and the profession.[19] The presence of a substantial number of minority students will not only provide diversity in the student body, it is said, but will influence the students and the remainder of the profession so that they will become aware of the medical needs of the minority community and be encouraged to assist in meeting those demands.[20] Minority doctors will, moreover, provide role models for younger persons in the minority community, demonstrating to them that they can overcome the residual handicaps inherent from past discrimination.

Furthermore, the special admission program will assertedly increase the number of doctors willing to serve the minority community, which is desperately short of physicians. While the University concedes it cannot guarantee that all the applicants admitted under the special program will ultimately practice as doctors in disadvantaged communities, they have expressed an interest in serving those communities and there is a likelihood that many of them will thus fashion their careers.

We reject the University's assertion that the special admission program may be justified as compelling on the ground that minorities would have more rapport with doctors of their own race and that black doctors would have a greater interest in treating diseases prevalent among blacks. The record contains no evidence to justify the parochialism implicit in the latter assertion; and as to the former, we cite as eloquent refutation to racial exclusivity the comment of Justice Douglas in his dissenting opinion in *De Funis:* "The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans. . ."

We may assume arguendo that the remaining objectives which the University seeks to achieve by the special admission program meet the exacting standards required to uphold the validity of a racial classification insofar as they establish a compelling governmental interest. Nevertheless, we are not convinced that the University has met its burden of demonstrating that the basic goals of the program cannot be substantially achieved by means less detrimental to the rights of the majority.

(Continued on page 13)

HOW TO TELL A BUSINESSMAN FROM A BUSINESSWOMAN

A businessman is aggressive; a businesswoman is pushy.

A businessman is good on details; she's picky.

He loses his temper because he's so involved with his job; she's bitchy.

When he's depressed (or hungover) everyone tiptoes past his office; she's moody, so it must be her "time of the month."

He follows through; she doesn't know when to quit.

He stands firm; she's hard.

His judgments are her prejudices.

He is a man of the world; she's been around.

He drinks because of the excessive job pressure; she's a lush.

He isn't afraid to say what he thinks; she's mouthy.

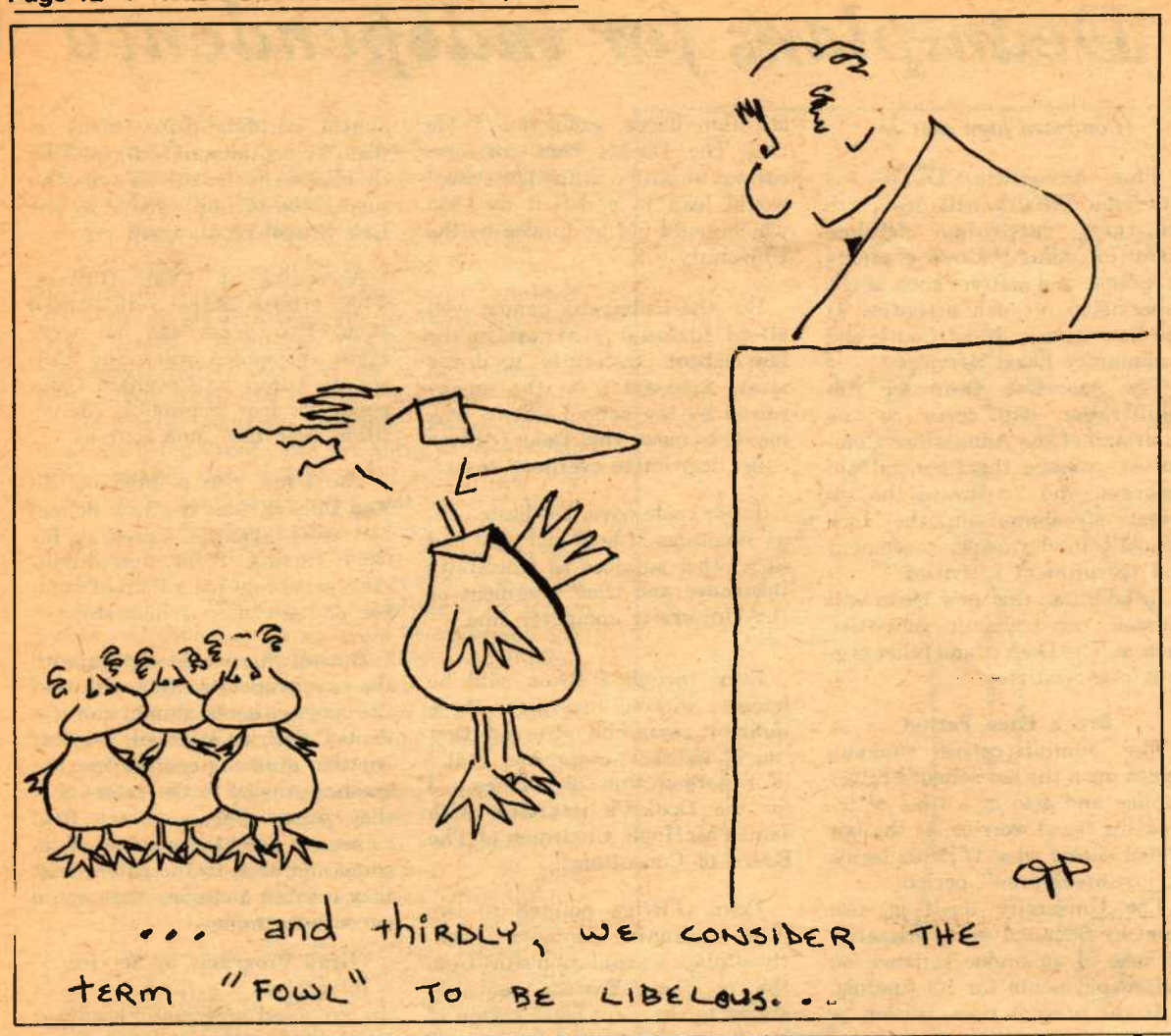
He exercises authority dilegently; she's power-mad.

He's close-mouthed; she's secretive.

He climbed the ladder of success; she slept her way to the top.

He's a stern taskmaster; she's hard to work for.

Reprinted by permission of the Woolsack, Univ. of San Diego Law School



High rollers beware!

Ed. Note: The following represents one person's assessment of a few retail outlets. The recommendation in no way reflect the editorial judgment of **The Docket** or constitute an endorsement by **The Docket.**

So, it's your first year in law school and you suddenly realize that the cost of the 1000 plus page textbooks, supplemented by Gilberts, student outlines, and hornbooks has really drained your funds. Or, perhaps you're back for the second or third round, and already the money you earned from your summer job is quickly vanishing. Below is a list of local places where you can splurge a little without having to cash in your valuable lawbooks.

* * *

WOMENS CLOTHES

LOEHMANN'S, Drexel Hill. Take Route 320 to Route 1, North, Loehmann's will be on Route 1 on your right. If you like names, symbols and other official branding but willing to sacrifice the actual label in your sportswear for 50% savings, this is the place to go. Loehmann's carries all the better-known designer clothes: Givenchy, both Kleins, Cacharel, Evam-Picone, Diane Von Furstenberg, etc.

* * *

AMAR, 8933 Krewstown Rd., Phila.: Take Roosevelt Blvd. North to Grant Ave. Make a left — go to Krewstown Rd. - make a left. Two more blocks. This is the place to go if you want moderate-priced junior and womens' sportswear for half what you'd pay in a department store. There's a great collection of sweaters, shirts and turtlenecks — brand carried (Labels aren't cut out here) include Jones New York, Givenchy and Nik-Nik.

* * *

MEN'S CLOTHES

DAVID CRYSTAL, Reading, Pa.: Take Pa. Turnpike to Morgantown Exit; then take route 176, the Morgantown Expressway, to Reading. Follow Reading signs onto Penn St. Once on Penn St. cross the Penn St. Bridge into Reading, until 5th St. Make a left and go north on Walnut st. Make a right turn and travel eight blocks to 13th St. Make a left turn and go north on Rosemont St.

The ride to Reading is about an hour from the law school, but definitely worth it, as Reading contains a potpouri of outlets. This is one of the best, especially if you're fond of alligators, the kind on the shirt, but you don't want to part with eighteen dollars. Crystal's has them for $8.00. The men's department also has a full line of dress shirts, sweaters and shirts. For women, there's a decent collection of Haymaker sportswear.

* * *

MENS AND WOMEN'S CLOTHES

MARSHALL'S, Springfield, Pa.: Take Route 320 to Route 1 South. Marshall's possibly the newest outlet in the area, carries name-brand sportswear for men, women and children at considerable savings. In addition, they discount housewares, pillows, rugs, bedspreads and shoes. They also take checks and charges, plus there's a return policy, unusual at outlets.

* * *

WOMEN's SHOES

LOU'S SHOE BAZAAR, Gateway Shopping Center, Wayne: Located across from Valley Forge Music Fair, off Rtes. 202 and 363. Better quality shoes go for 20-50% off the department store price at Lou's. Look for his special — often, you can get two pairs for the price of one.

* * *

KITCHENWARE

DANSK, Flemington, N.J.: North of Princeton. It's located at the first traffic circle in Flemington, near Perkins' Pancake House. If you like the merchandise the Peasant Shops and Design Research carry, but don't want to pay those prices, this is the place to go. **Dansk** carries cutting boards, flatware, bowls, dinnerware, mats and napkins, glassware, etc. at discount prices. Some of the items are seconds, so check carefully. There are several other outlets nearby including **Stangle's Pottery** (dinnerware, glasses) and the **Flemington Glass Works.**

* * *

FOOD

STOUFFER's THRIFT SHOP, Berwyn: Take Lancaster Ave.; it's near Duffy's. This outlet is good for frozen dinners that are a cut above the average TV variety. Also, there's a great selection of cakes, pies, and breakfast pastries at costs much below grocery store price. Even better buys are offered on large quantities of items.

Professor Leonard Levin leads a discussion on the "chain of title" concept.

Court watchers aid City Hall justice

For those who voice the fear that the 'system' is becoming too unmanageable and ponderous for the ordinary person a counter-argument can possibly be found in Philadelphia City Hall.

City Hall??? There a group of retired individuals have unofficially banded together and have seized the opportunity for a possible 'input' into the Judicial system.

Roving Jurors Formed

Indeed the 'Roving Jurors,' as they dub themselves, are well acquainted with the employees that form the official side of City Hall. The fact that those responding to questions about this group tend to give extreme reactions suggests that something, as yet undefined, is being felt within a small part of City Hall.

All the present activities of this group evolved from chance meetings of the members in City Hall. The foreman of the 'jurors', after several meetings with others who also sat in on trials, saw the possible merits of a more defined organization.

He also assumes the task of policing' of the group by directing its members into those trials that would be the most interesting for attendance.

In fact, this type of activity is not confined merely to Philadelphia. Similar groups have been working in Los Angeles as was reported in August in the **Wall Street Journal.** The Philadelphia 'Roving Jury' has had its day in **The Evening Bulletin** and will be examined in the upcoming **Jewish Exponent.**

Pick Lurid Cases

The Court Watchers meet almost daily, and agree mutually on the different trials and courtrooms to be covered. Naturally, the watchers pick those cases that have popular appeal.

Where the mass media has publicized the issues, there will be the interest. Thus the trials for a violent crime are more likely to be attended. Those for non-violent felonies are generally given short shrift (unless the case involves a public official, as with a recent City Hall official.)

Appellate review is rarely attended. The jurors feel that the argument over points of law is beyond their interests. Also, politics is rarely infused into the meeting of the group. The basic tenet of the Court Watchers is the down home desire to see 'justice served.'

Resist Criminal Protection

The general positions of some of the members are reflected in the following beliefs: the imposition of mandatory sentence for all convicted felony; the return of the death penalty to Pennsylvania for certain brutal crimes (e.g. the event of the police officer being killed in the line of duty in the apprehension of a felon, certain types of rape/murder) and a general anti-plea bargaining stance.

From the tone of these attitudes, the position can be reduced to a resistance by the members to the Supreme Court's broad protection of criminal defendants.

Rather Mundane Day

At 9:30 a.m. on Thursday, November 10, the foreman of the 'Roving Jury', David Deitch met with three members, Herbert Fritz, Ben Schwartz and Ed Gold, in Room 134 City Hall. This use of the room is a courtesy extended by the City of Philadelphia.

After reading over the docket of the day's activities in the courts, it was generally agreed that the day would be a rather mundane one, either because the cases that were watched during the preceding weeks were in the wrap-up stages after the verdict, or because the cases yet to be tried were in the jury selection stages.

On the fifth floor, however, jury selection had just been completed for the murder trial of Jessee Jones, Jr., and the presentation of evidence would begin today.

The Assistant District Attorney came over to the Court Watchers and gave them a brief filed in the case, reciting the basic facts and stating the issues to be proven. The District Attorney made the opening statement, and the 'Roving Jurors' seemed to be impressed by his delivery, which might indicate the effect that would be predominate on the sworn jury.

The defendant's opening statement was seen less favorably by the group, and after several mutters they concluded that the case was very strong against the defendant, absent new evidence.

The first witnesses were examined and cross-examined, and the primary impression was fortified in the group's mind.

Case Sewn Up

After the court declared a recess for lunch the Court Watchers decided against returning, since they were of the opinion that the case was 'sewn up' against the defendant and there could be little contribution that could be made in this particular case.

In speaking to the group one can readily see why the group's members have taken such strong positions regarding the legal system. Ed Gold, for example, was a pharmacist in the City, and was robbed four times over a period of years.

The last robber beat him so viciously that he was in bandages when the alleged robber was arraigned by a Municipal Judge. The case was dismissed from the Court, and the victim can still not fully understand why.

In fact the 'Roving Jury' seems to be the direct expression of the public's questioning of, and confusion about, the rights afforded criminal defendants.

Honorary Asst. D.A.'s

The City recognizes that the expressions of these individuals should not be totally blocked out from the judicial system, especially when there is a trial by jury. Each member of the group carries a card identifying him as 'Honorary Assistant District Attorney,' and the group is given the use of a room at City Hall in which to conduct their meetings. During recesses some attorneys solicit their opinions about how well the lawyers are sustaining their respective burden at the trial.

In essence, there is a national undercurrent of retired people who are recognizing their constitutional rights to watch these trials, and possibly, to have a voice, albeit indirect, in the judicial system.

One can only wait to see if they can have a significant effect on the process or whether their positions will be condescendingly treated by those who have the ability to influence others.

Titicut Follies

(Continued from page 2)

He toured the facility and decided to record on film the life and events which he saw. With permission granted from the State of Massachusetts, Wiseman put his burgeoning film making skills to work for 3 months, photographing the daily activities at Bridgewater. The resulting finished product set off a legal battle between the state and Wiseman that lasted for two and one-half years. The state claimed that Wiseman had overstepped his privilege and invaded the inmates' privacy.

The case ended in the Supreme Judicial Court of Massachusetts in 1969. The Court ordered that a total ban on the film be relaxed but only so far as to allow limited showings to organize groups concerned with the social problems of inmates in such institutions. The Law School qualifies within this narrow category; showings to the general public are forbidden. Why?

Wiseman's film allegedly violates the privacy of the inmates for whom the state acts as parens patriae: The state must protect the helpless who are in its charge. A viewing of "Titicut Follies: however, reveals that it was not the camera eye that invaded anyone's rights; the truth is that this film recorded the existing violations and invasions of the rights and privacy of these inmates which this institution, itself, had already caused. Wiseman merely reports in painful realism the naked helplessness and degradation suffered by the inmates in this institution.

Prison Camp Conditions

When the camera scans the hallways and rooms in the building, it stops to examine the cells in which many of the patients lived. The camera peers through a small opening in a dungeon-like door. Within, a naked cowering body sits huddled in a corner on a bare floor. A solitary mattress is on the floor. The room has one translucent window covered with a wire grating. When the door is thrust open, the body tries to retreat further into the undefended corner.

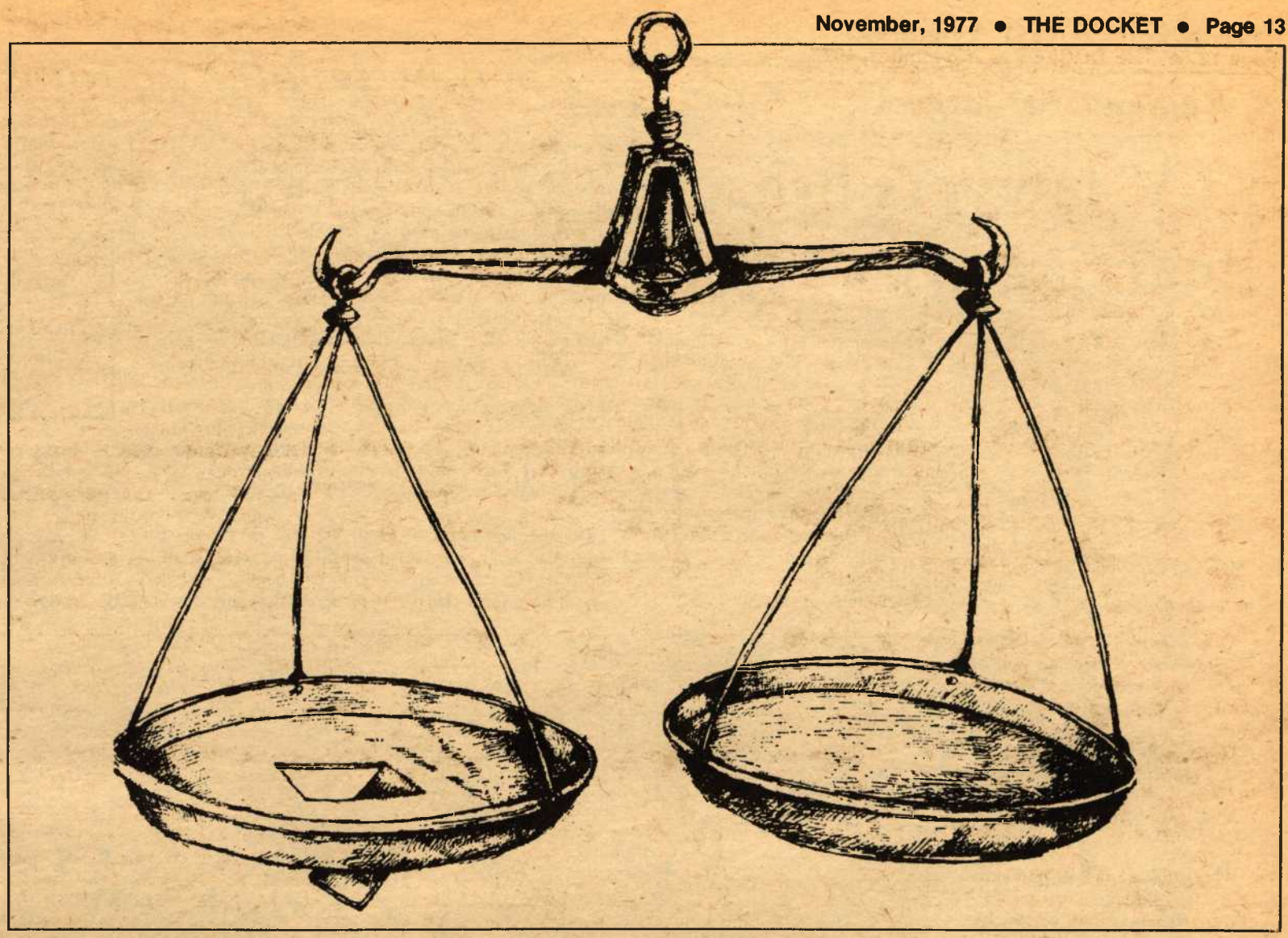
Other inmates did not fare so well. Some were still aware of their condition. One young man, in reward for his attempt to petition for a transfer to another institution, received an increased dose of tranquilizers to deal with this exhibited "hostility." Another inmate who had refused to eat for three days was also summarily dealt with; he was force fed under conditions and a callousness recalling war time prison camps.

The film proceeds to tour the institution in great detail. Incoherent and ranting patients wandering around aimlessly, a patient grossly deformed by congenital brain damage, institution officials carrying on business as usual, and patients stripping down on arrival to surrender their last vestiges of individuality are scenes placed before us.

Callous Capacity

If a society's treatment of the least of its citizens is a measure of its civilization, then the repulsive reality of these scenes forces us to contemplate our capacity for callousness. The real crime of "Titicut Follies" was that it requires us to contemplate the relegation of persons to facilities like Bridgewater.

Under the order of the court, Wiseman was required to indicate "that changes and improvements" have been made at Bridgewater since the filming. Wiseman complies with this order in a single sentence: Changes and improvements have taken place in the institution since 1966." The film then returns to the earlier performers who are still dancing and singing to the music of "Strike Up the Band."



Univ. goals fail to sway Ct. on racial preference issue

(Continued from page 11)

The two major aims of the University are to integrate the student body and to improve medical care for minorities. In our view, the University has not established that a program which discriminates against white applicants because of their race is necessary to achieve either of these goals.

* * *

The University is entitled to consider, as it does with respect to applicants in the special program, that low grades and test scores may not accurately reflect the abilities of some disadvantaged students; and it may reasonably conclude that although their academic scores are lower, their potential for success in the school and the profession is equal to or greater than that of an applicant with higher grades who has not been similarly handicapped.

In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race. We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.

> ... the university has not established that a program which discriminates against white applicants because of their race is necessary to achieve ... these goals.

In addition to flexible admission standards, the University might increase minority enrollment by instituting aggressive programs to identify, recruit, and provide remedial schooling for disadvantaged students of all races who are interested in pursuing a medical career and have an evident talent for doing so.

Another ameliorative measure which may be considered is to increase the number of places available in the medical schools, either by allowing additional students to enroll in existing schools or by expanding the schools. In 1974, the University received almost 40 applications for each place available, and the entering class in all the medical schools in the state in the last academic year totalled only 1,094 students.

* * *

We question, however, whether the University has established that the special admission program is the least intrusive or even the most effective means to achieve this goal. . .

* * *

The University cites certain cases in support of its position. A substantial number of decisions, most of them determined under title VII of the Civil Rights Act of 1964 have upheld the right of minorities to preference in *employment*. The University asserts that these decisions establish the validity of a preference to minorities on the basis of race even if the classification results in detriment to the majority.

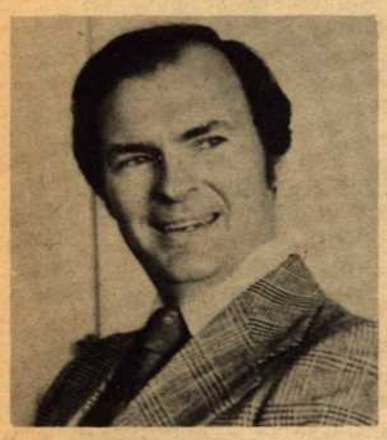
The authorities are not persuasive. In all these cases the court found that the defendant had practiced discrimination in the past and that the preferential treatment of minorities was necessary to grant them the opportunity for equality which would have been theirs but for the past discriminatory conduct. Absent a finding of past discrimination — and thus the need for remedial measures to compensate minorities for the prior discriminatory practices of the employer — the federal courts, with one exception, have held that the preferential treatment of minorities in employment is invalid on the ground that it deprives a member of the majority of a benefit because of his race.

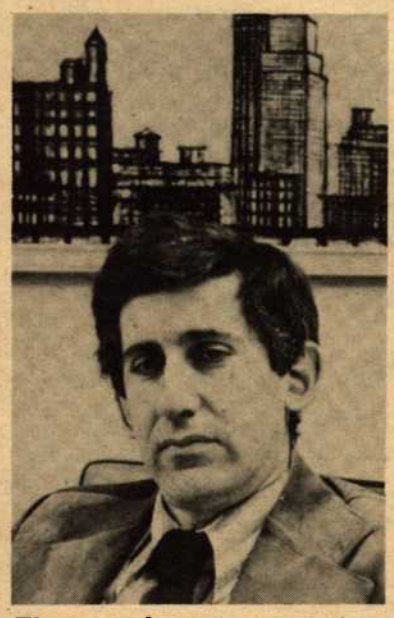
It is important to observe that all of these cases, with one exception, hold that it is unconstitutional reverse discrimination to grant a preference to a minority employee in the absence of a showing of prior discrimination by the particular employer granting the preference. . .

There is no evidence in the record to indicate that the University has discriminated against minority applicants in the past. Nevertheless amici curiae ask that we find, by analogy to the employment dis-

(Continued on page 14)

> We question whether the University has established that the special admission program is the least intrusive or even most effective means to achieve its goal.





These professors represent a cross-section of the moods one can find at VLS. Prof. Dobbyn (above left) smiles as he brings a 10 (b)(5) action; (left) Prof. Becker tries unsuccessfully to bargain with a Docket photographer; (Above) Prof. Cohen sits somberly beneath a picture of his latest levy and sale.

Reviewer at large

TV lawyers breach marriage vows-sob!

By CHRIS BARBIERI

For the most part, the marriage between the legal profession and television has been a fairly unhappy one. In a medium that dotes on stereotypes, lawyers often make convenient heavies on cop shows, slimy, smooth-talking, deal-makers every one. On the other hand, once the lawyer becomes the axis of a series, he is righteous, plain-speaking, and — he always works for **free.**

I think it all started with Perry Mason, which I'll come out and admit I've never seen . . . But no matter. Apparently Raymond Burr, in baggy suits and dark under-eye circles, went around solving a lot of very complicated and unlikely "mystery" stories while dramatic music blared in the background.

There was a substantial number of F. Lee Bailey-ish animals-in-the-courtroom gambits, which is interesting in view of the full circle that has been accomplished in NBC's Rosetti and Ryan, about which more later.

Gum Beating Tiresome

The next memorable step was "Judd for the Defense," in which Carl Betz (who for some inexplicable reason always wore a string tie) did a prodigious amount of "gum-beating" (to quote an eminent source) about "justice" (right there you can see he was headed for trouble).

One particularly tiresome episode had a meek, mild-mannered man on trial for murder. Obviously a "bum rap," except that it developed the gentleman had a split personality and turned into a vicious, French-speaking(?) killer when there was a full moon, or something. Anyone who has ever watched a soap opera for more than a week knows that this particular personality phenomenon, along with amnesia, is an everyday occurrence.

Old Judd didn't last too long (13 weeks), but he lasted a lot longer than the next two entries, "The Young Lawyers" and "The Storefront Lawyers." These two shows, which debuted the same season ('70-'71) on different networks and both died the death within eight weeks, were the industry's delayed response to the late sixties "youth cult."

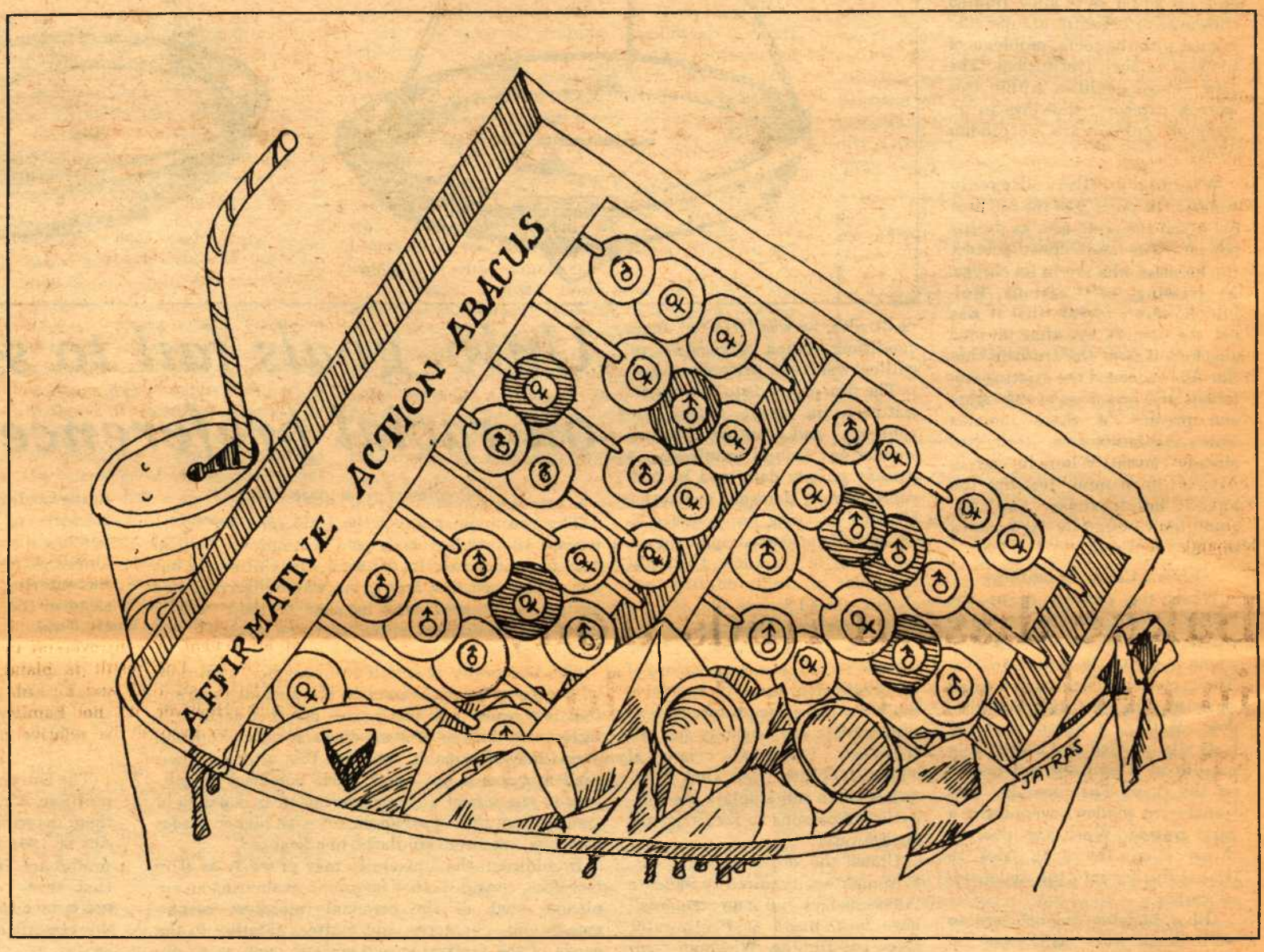
The storefront lawyers were three idealistic "kids" (i.e. not over 40), fresh out of law school, who represented indigent murderers, rapists, etc. The show was so good I can't remember a single episode (which is the point of all T.V., it's disposable).

Ethnic Effort Flops

On the other hand, "The Young Lawyers" is indelibly etched on my brainpan because it starred the strangest looking person ever seen on television, Zalman King. He played Aaron Silverman, ABC's bid for ethnic consciousness, a law student helping out an old windbag barrister (Lee J. Cobb) on some of his cases.

The funny thing was that he always ended up running the entire show, courtroom and all. There were lots of "youth-oriented" stories, such as runaways and teenage junkies and other great stuff. By the way, none of the clients ever paid on either of these shows.

Next came "Owen Marshall, Counselor at Law." I don't know anyone who watched this show, including myself, but it was notable for the fact that a certain waxwork dummy who played Owen's sidekick later became bionic (and not a minute too soon). The show was patterned on the hit "Marcus Welby," and indicated a return to the slick, murder-mystery format after the debacle of the "young" shows. It bombed anyway.



A year or so later came "Petrocelli," in which a majority of the plots centered around this lawyer trying to get people in the small (but **lively)** southwestern town where he practiced to pronounce his name right and stop calling him an Eye-talian.

Bone of Contention

All of which brings me to the main bone of contention, namely this season's "Rosetti and Ryan." Of all the lawyer shows in the history of television, this has got to be the silliest. Any grit or dramatic conflict the other shows may have had has been neatly removed.

It focuses on two partners, Joe Rosetti (Tony Roberts) and Frank Ryan (Squire Fridell). The series was developed from a made for TV movie of the same name bearing the sub-title, "Men Who Love Women," and they never waste an opportunity on this show to underline that fact.

For all you suspicious types who always thought Starsky and Hutch seemed just a little too "close," and have noticed the alarming way that all their girlfriends are mysteriously disposed of by the end of each story, these gentlemen will set all anxieties at rest.

Joe and Frank practically foam at the mouth every time a woman comes within a 50-mile radius, which is about every two seconds on this show. So far in six episodes, they have defended only

(Continued on page 15)

Even benevolent quotas are opposed

(Continued from page 13)

crimination cases, that the University's reliance on grade point averages and the Medical College Admission Test in evaluating applicants amounted to discrimination in fact against minorities. Amici claim that the application of these quantitative measures by the University had resulted in the exclusion of a disproportionate number of minority applicants, that grades and test scores are not significantly related to a student's performance in medical school or in the profession, and that the test is culturally biased. The United States Supreme Court has made it clear that . . . a test is not invalid solely because it may have a racially disproportionate impact. Thus, the fact the minorities are underrepresented at the University would not suffice to support a determination that the University has discriminated against minorities in the past.

* * *

On the one hand, it is urged that preferential treatment for minorities is essential in order to afford them an opportunity to enjoy the benefits which would have been theirs but for more than a century of exploitation and discrimination by the prevailing majority. Although legal impediments to equality have been removed by the judiciary and by the Congress, goes the argument, minorities still labor under severe handicaps. To achieve the American goal of true equality of opportunity among all races, more is required than merely removing the shackles of past formal restrictions; in the absence of special assistance, minorities will become a "self-perpetuating group at the bottom level of our society who have lost the ability and the hope of moving up." Preferential admissions will be necessary only until minorities can compete on an equal basis, and will benefit not only the applicant who is specially treated, but also the minority community in general.

The persuasiveness of these arguments cannot be denied, for the ends sought by such programs are clearly just if the benefit to minorities is viewed in isolation. But there are more forceful policy reasons against preferential admissions based on race. The divisive effect of such preferences needs no explication and raises serious doubts whether the advantages obtained by the few preferred are worth the inevitable cost to racial harmony. The overemphasis upon race as a criterion will undoubtedly be counter-productive: rewards and penalties, achievements and failures, are likely to be considered in a racial context through the school years and beyond.

> the overemphasis upon race as a criterion will undoubtedly be counter - productive ...

Pragmatic problems are certain to arise in identifying groups which should be preferred or in specifying their numbers, and preferences once established will be difficult to alter or abolish; human nature suggests a preferred minority will be no more willing than others to relinquish an advantage once it is bestowed. Perhaps most important, the principle that the Constitution sanctions racial discrimination against a race — any race — is a dangerous concept fraught with potential for misuse in situations which involve far less laudable objectives than are manifest in the present case.

> ... a dangerous concept frought with potential for misuse ...

While a program can be damned by semantics, it is difficult to avoid considering the University scheme as a form of an education quota system, benevolent in concept perhaps, but a revival of quotas nevertheless. No college admission policy in history has been so thoroughly discredited in contemporary times as the use of racial percentages. Originated as a means of exclusion of racial and religious minorities from higher education, a quota becomes no less offensive when it serves to exclude a racial majority. "No form of discrimination should be opposed more vigorously than the quota system."

To uphold the University would call for the sacrifice of principle for the sake of expediency and would represent a retreat in the struggle to assure that each man and woman shall be judged on the basis of individual merit alone, a struggle which has only lately achieved success in removing legal barriers to racial equality. The safest course, the one most consistent with the fundamental interests of all races and with the design of the Constitution, is to hold, as we do, that the special admission program is unconstitutional because it violates the rights guaranteed to the majority by the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Because the University has conceded that it cannot meet the burden of proving that the special admission program did not result in Bakke's exclusion . . . he is entitled to an order that he be admitted to the University.

TOBRINER, J. — dissenting

In reaching the conclusion that the special admission program at issue here is unconstitutional, the majority proceed from two fundamentally flawed premises. First, the majority erroneously equate the racial classifications utilized by the medical school to achieve an integrated student body with the traditional "invidious" racial classifications embodied in laws or state policies which discriminated against blacks and other racial or ethnic minorities, and hold that the use of racial classifications even to promote integration is presumptively unconstitutional and "suspect." The governing

(Continued on page 15)

After Boston College beat Villanova in football, Dan Callaghan, VU '76, had to wear pajamas to his corporations class. (Above right) Joe Cincotta, B.C. '76, gloats.

Laws of nature revised

In the beginning, God created heaven and earth. Quickly he was faced with a class action suit for failure to file an Environmental Impact Statement. He was granted a temporary permit for the heavenly part of the project, but was stymied with a cease and desist order for the earthly part.

Appearing at the hearing, God was asked why he began the earthly project in the first place. He replied that he just liked to be creative.

Then God said, "Let there be light," and immediately the officials demanded to know how the light would be made. Would there be strip mining? What about thermal pollution? God explained that light would come from a huge ball of fire.

God was granted provisional permission to make light, assuming that no smoke would result from the ball of fire, that he would obtain a building permit and, to conserve energy, would have the light OUT half the time.

God agreed and said he would call the light "day" and the darkness "night." Officials replied they weren't interested in semantics.

God said, "Let the earth bring forth green herb and such as may seed." The E.P.A. agreed so long as native seed was used. Then God said, "Let the waters bring forth creeping creatures having life, and the fowl that may fly over the earth." Officials pointed out that this would require approval of the Game and Fish Commission with the Heavenly Wildlife Federation and Audubongelic Society.

So everything was okay until God said he wanted to complete the project in six days. Officials said it would take at least 180 days to review the application and the impact statement. After that there would be public hearings. Then there would be 10 to 12 months before . . .

God said, "To H--- with it!"

(Ashley Cooper in Charleston News and Courier)

Reprinted by permission of The Woolsack, Univ. of San Diego Law School

Everyone's got a shtick ... so where's that leave the law?

(Continued from page 14)

one person of the masculine persuasion.

The first woman shot at a man to get his attention. It worked. The second one sat in a car with the motor running while some guy she had just met walked into a hotel and waved a gun at the desk clerk. When he was shot by the hotel owner, the girl was charged with felony murder as an accomplice in a getaway car. After three months in these hallowed halls I still don't know what's going on, but even **I** know that one would be laughed out of court, let alone a California court.

Ultimate Eva

The next week the boys handled their ultimate bubble-headed woman client, Eva Gabor, as a woman six of whose seven husbands had all mysteriously died with large insurance policies. It turned out the 70-year-old elevator boy did it, and all for love of the hapless widow. Shucks.

Number four had them defending a man framed for possession of cocaine. In order to win this one, Frank and Joe brought a chimpanzee into the courtroom as their star witness (remember about the animals?). Observed the judge, "Circus tactics, yes, Mr. Rosetti, but an actual circus?" An actual circus would have been a lot more entertaining.

In episode five our heroes were assigned to defend a woman with half a brain, which is half a brain more than any of the others before had. She hated lawyers and chose to defend herself which she did miserably, of course. At the last minute Frank and Joe stepped in to save the day.

Frogprince Goes Lame

Last week involved a girl who ate a lot of health food and whose father, a television character named Stanley Frogprince, was always saying things like, "Froggy kiss of truth, fellas." It turned out the girl was being hauled in on trumped up charges so that her house could be used to hide an important state's witness in a grand jury trial. One of the lamer plots if I may say so.

As for the principles, Fridell and Roberts are decidedly classy individuals with a genuine flair for light comedy, fun and games flavor the producers are apparently trying to create. Jane Elliot, who plays a lady D.A. who for some reason always has some kind of scarf or do-rag on her head, is also very good.

But the best characters in the shows are undoubtedly the judges who provide the "comic relief." One, Praetor D. Hardcastle is an old guy with a hilariously obvious "rug." His schtick is to ogle all the beautiful women defendants, and he even ends up getting a date with one of them. Another is Hon. Marcus Black who punctuates all his sentences with, ". . .and so forth . . .," and referred to one defendant's roster of charges as "a nice shopping list."

Breach of Contract

The problem is that the stories are bad. After last year's AMA and PTC threats, everyone in the industry is afraid to have anything at all violent or controversial in the shows. The result is bland situations, all fluff and no substance. However, it's not Family Hour fare despite the relatively "safe" themes treated in the courtroom.

Not only does sexual innuendo of the current "Three's Company," peek-a-boo type abound, but there are usually several sincerely obscene moments per episode, such as the time Frank kept having to walk back and forth past this girl in a crowded bar and . . . well, you'll just have to watch the reruns (if the show lasts that long, which I doubt) to find out what happened.

So much for bad taste. In the intro of every episode, Tony Roberts looks out his window at the city and says, "There are millions of people out there, **violating** contracts (cringe) . . ."

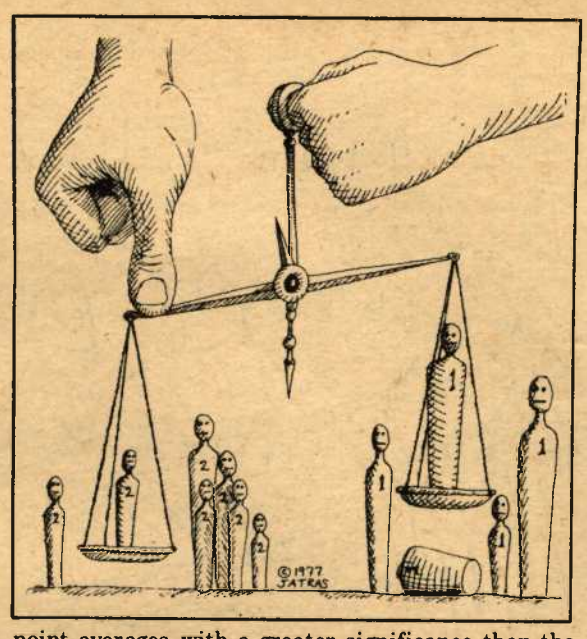
Unfortunately, what it all adds up to eventually is just a lot of nuthin'.

Bakke dissent finds irony in decision to strike down special admissions program

(Continued from page 14)

authorities, however, lend no support to the conclusion that the use of racial classifications to ameliorate segregated conditions is presumptively unconstitutional. On the contrary, numerous decisions recognize that as a practical matter racial classifications frequently must be employed if the effects of past discrimination and exclusion are to be overcome and if integration of currently segregated institutions is to be achieved; these cases establish that the Constitution does not forbid such use of remedial racial classifications. By failing to distinguish between *invidious racial classifications* and remedial or *"benign" racial classifications,* the majority utilize the wrong constitutional standard in evaluating the validity of the Davis special admission program. This fundamental error inevitably infects and invalidates the majority's ultimate constitutional conclusion.

Second, the majority incorrectly assert that the minority students accepted under the special admission program are "less qualified" — under the medical school's own standards — than nonminority applicants rejected by the medical school. This is simply not the case. The record establishes that all the students accepted by the medical school are *fully qualified* for the study of medicine. By adopting the special admission program, the medical school has indicated that in its judgment differences in academic credentials among qualified applicants are not the sole nor best criterion for judging how qualified an applicant is in terms of his potential to make a contribution to the medical profession or to satisfy needs of both the medical school and the medical profession that are not being met by other students. In asserting that the accepted minority students are less qualified than rejected applicants, the majority in effect endow standardized test scores and grade



point averages with a greater significance than the medical school attributes to them or than independent studies have shown they will bear.

Unless it can be said that the promotion of integration is a constitutionally illegitimate purpose — a proposition which the majority obviously do not intend to embrace — I cannot understand how the admission policy at issue in this case can properly be found less permissible than these other long-accepted admission practices. There is, indeed, a very sad irony to the fact that the first admission program aimed at promoting diversity ever to be struck down under the Fourteenth Amendment is the program most consonant with the underlying purposes of the Fourteenth Amendment.

There is indeed, a very sad irony to the fact that the first admission program aimed at promoting diversity ever to be struck down under the fourteenth amendment is the program most consonant with the underlying purposes of the fourteenth amendment.

Pa. Bd. makes rules for ad complaints

The Disciplinary Board of the Supreme Court of Pennsylvania has adopted the following policy to guide the Office of Disciplinary Counsel in regard to the handling of complaints against lawyers involving advertising related to the practice of law.

Policy

Whereas the U.S. Supreme Court by its decision in the case of Bates and O'Steen vs. State Bar of Arizona (No. 76-316) has ruled that certain proscriptions on lawyer advertising contained in the Code of Professional Responsibility in effect in Arizona as well as Pennsylvania (see DR 2-101 — Publicity in General; DR 2-103 — Recommendation of Professional Employment) as exemplified in the newspaper advertisements of Bates and O'Steen violate the First Amendment made applicable to the States through the Fourteenth;

And whereas appropriate revisions to the Code of Professional Responsibility in effect in Pennsylvania to accord to the U.S. Supreme Court opinion will take time;

And that until such time as appropriate revisions to the Code are made, the Office of Disciplinary Counsel will be required to consider and act on complaints against attorneys which may violate the present Code in effect but not the law as expressed in the U.S. Supreme Court opinion;

Now, therefore, the Board establishes the following policy to guide the Office of Disciplinary Counsel in regard to handling such complaints:

(1) Complaints involving newspaper advertisements similar in nature to those of Bates and O'Steen shall be dismissed.

(2) The Office of Disciplinary Counsel is authorized to take no action on "other" complaints which it considers may involve violations of DR 2-101 or DR 2-103 and other related disciplinary rules currently in effect until such time as revisions are adopted by the Supreme Court of Pennsylvania to accord to the U.S. Supreme Court's decision on the Bates and O'Steen case.

(3) All "other" complaints received shall be held in pending status with advice to the complainants and respondents of this policy if the latter is considered desirable by Disciplinary Counsel.

(4) On adoption of revisions to the Code by the Supreme Court of Pennsylvania to accord to the U.S. Supreme Court opinion any pending complaints shall be considered and disposed of in the normal manner as with other complaints.

(5) The Office of Disciplinary Counsel by this policy is not restricted in any action it considers necessary or desirable in the initiation and prosecution of charges for Code violations involving advertising which is false, deceptive or misleading; which concerns transactions that are themselves illegal; which extoll the quality of services claimed in exaggerated manner; or which are so aggressively blatant as to appear overreaching.

Schedule maker wins rugby MVP

By RICK TRONCELLITI

The Garey Hall Rugby Team concluded a surprisingly successful season on a sour note by dropping two of its final three games and finishing with a 5-3 record. The "B" squad dropped one of its last three and finished with a 6-2 mark.

The squads split in their final encounter of the season with Philadelphia College of Osteopathic Medicine, with the A team falling by 26-12 mark and the B team crushing their physician counterparts by an 18-0 score. In the A game it was simply a case of too much PCOM size and superb kicking that brought on the victory, despite a fine performance by the Garey Hall scrum. The Doctors were successful in wearing their spirited opposition and having a "Doctor" as the official made for some interesting forward pass calls against Villanova.

Ace Gilligan pulled himself out of his carrel long enough to score one of the Garey Hall tries while Kevin Silverang added to the other and Rick Tompkins added both extra points.

The outcome of the A game left the B team snorting for revenge on the muddy field. While they were cheered on by an assortment of feminine pulchritude, erstwhile professors, jailbait, social deviants, and even a few students they got it too. Dominating PCOM in all aspects of the game, including pugilism, the boys from Garey Hall and other parts unknown came up with their finest collective performance of the season.

Joe Spinelli proved that if you fail to put the ball down correctly in the end zone the first time, you will get another chance to do so again as in true Bill Tocco fashion he had a try disallowed for that reason. The game was scoreless at the half, but tries by Jim Bowes, Spinelli, and Mike Duffy led the way to the win.

The previous week both teams had thrashed the Wilmington Rugby Club, a collective bunch of "lameos" that gave further credence to the theory that the Most Valuable Player this fall for Garey Hall was the schedule-maker. The A team rolled up their biggest score of the year as they won 26-0, while the B team triumphed 6-0. Kevin Silverang, the squad's answer to Don Rickles led the victors.

Earlier, the team had suffered a disappointing pair of losses to the Middletown Rugby Club. The A team lost by a mere 4-0 count due primarily to the efforts of Mario the referee, he of the international shoes. This fabled character disallowed two tries and so upset the troops that they were unable to perform with their usual effectiveness. The B team also was defeated 6-0 despite the debut of several burly characters known as "House and Friends" who made mincemeat out of Middletown physically.

The season held its post-season banquet at the Italian-American Club in Wayne. Hosted to a delicious dinner by the family of Nick Caniglia, the ruggers relived many great moments of the fall and looked forward to a promising spring season.

Weasels amaze Follies

The pride of the third-year Legal-Weasels and the first-year Kingsfield-Follies made the second year teams swallow their pride as the Follies defeated the I.R.A. 9-7 and the Weasels sneaked by Permissive Joinder 10-6.

The game was somewhat anticlimactic for the I.R.A., who in the quarter-finals, outplayed the Rongons for the honor of last year's section A. The uninspired play of the I. R. A. in the early innings allowed the Follies team coupled with the pitching of Hank Delacato and Mark Bunitsky to take a 9-4 lead into the last inning. Noticing that their fate was almost sealed, the I.R.A. suddenly came alive, and, led by the bats of Bob Ghazey and Jack "Samurai" Duffy, the team amassed three runs in the top of the seventh inning and had bases loaded with two out but a fly ball to center field ended the "Irishmen's" hopes.

Permissive Joinder also suffered from a lack of inspiration because of their hotly contested and hard fought victory over their arch-rivals from second year- the Hangmen. In their semi-final game against the Legal Weasels, the PJ's got off to an early 4-0 lead on successive singles by Captain Gary Cutler, John Scavitto, Scott Ekchhorn, Rick Troncelliti, and Jay Cohen and an error by the

A member of the first-year follies tries to tell a Weasel that he committed a tort. Here comes Ace.

And they said the Weasels didn't have guts!

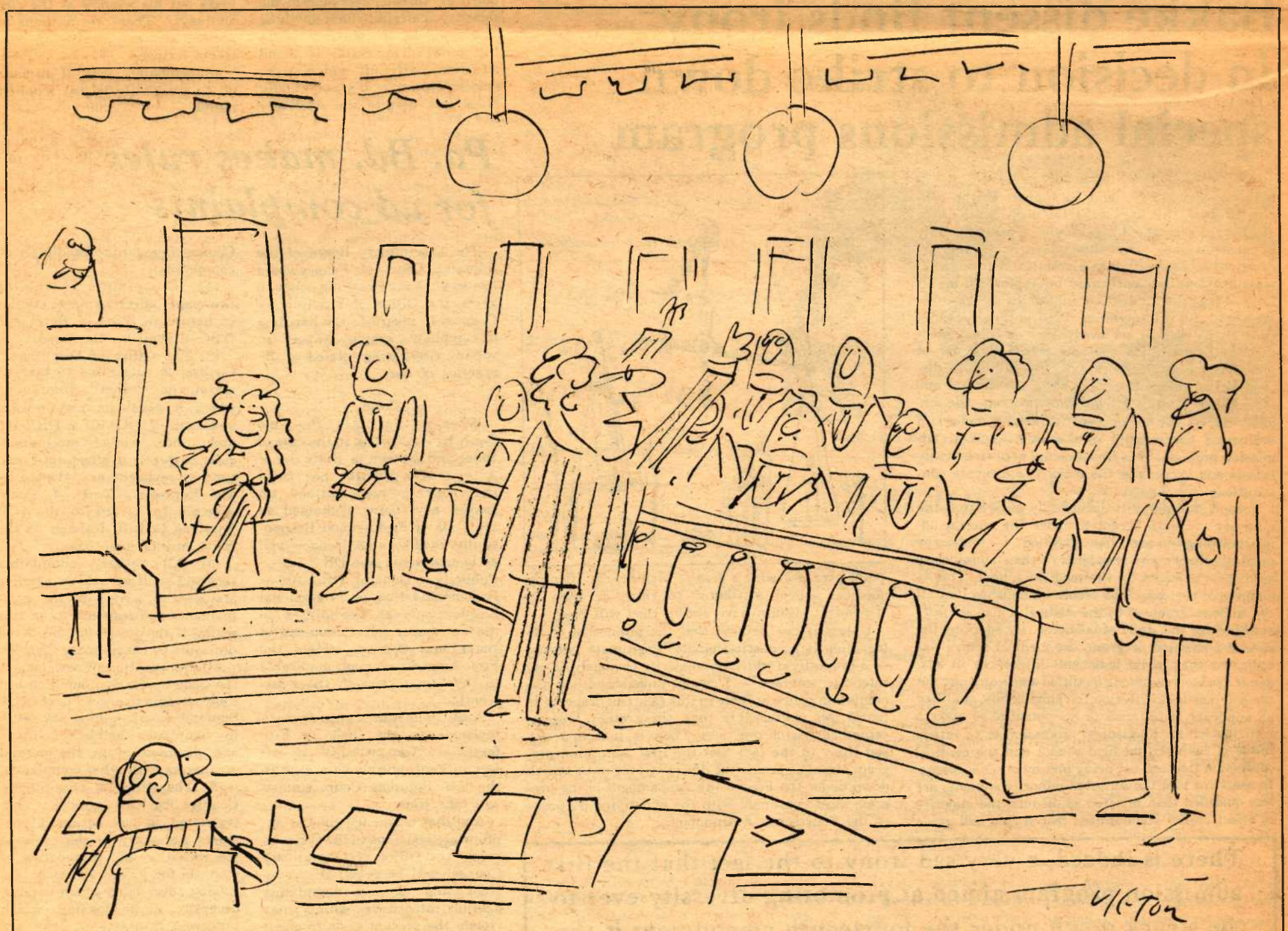
Weasels. The Weasels scored three in the third and two in the fourth to take the lead, but they failed to hold it as the PJ's retaliated with two in their half of the fifth. The Weasels, sensing a possible elimination for the playoffs, deadlocked the game with a run in the sixth making the score 6-6. The Weasels, led by Mike Deschler's triple which scored two runs, tallied four times in their half of the sixth to put the game out of reach.

The excitement of two semi-final games and the lure of free beer at an SBA — sponsored TGIF brought a large crowd out to watch the softball final between the Legal Weasels and Kingsfield Follies.

The Weasels began the game by scoring three runs in the top of the first inning on extra base hits by Paul Cody and Mike Arnold and heads-up base running by the entire Weasels team. The Follies came right back to score three in the bottom half of the first, taking advantage of the muddy field conditions by lining hits just over the heads of the Weasel infielders and short of their outfielders who, because of the treacherous footing, could not reach the balls to make the catches, standing up.

The score remained tied at 4-4 entering the third inning as both teams scored once in the second. The game was decided in the top of the third as the Weasels exploded for an amazing eighteen runs, batting around almost three times, and taking a commanding 22-4 lead (at the end of the first quarter). Prior to this game, the pitching of Hank Delicato had been extremely effective, but a temporary streak of control trouble led to the deluge of scoring by the Weasels. The demoralized Follies never gave up but the eighteen run lead was too much to overcome as the Weasels won the First Annual Granny Hamner Trophy for the championship of the Law School Softball League 26-9. Captain Nick Caniglia accepted the award (a dousing of beer) for the team.

The Bobby Del Greco Trophy for the most valuable player does not go to a player this year, but goes to first base umpire Jim McKenna. His effervescent play calling maintained an air of excitement throughout the game (waiting to see if he would reverse his calls) long after the game was decided.



"My next witness is one of the greats. She appeared in Forbes v. Atkinson and State of New York v. Fred Halle. Let's all give her your undivided attention as she takes the stand. Here she is–Miss Credibility–Eva Tarkington!"

Reprinted by permission of Quaere, Univ. of Minn. Law School.