

# Ratliff Gets Reversal of "Metropolis Plan"

It was evident to those of us who turned out to watch Ben Ratliff win this year's Moot Court finals last December 4 that S.J.C.L. would be well represented at the state competition no matter who won.

The four finalists competing were Alan Simpson, Nan Selover and Ben Ratliff from the second-year class and Dan Harralson from the third-year class. Instructor Wes Merritt and a handful of relatives and well-wishers sat

anxiously in the State Building courtroom as the competitors presented arguments for and against a hypothetical affirmative action plan instituted by the police chief in the city of "Metropolis."

Ratliff began his appellants' argument a little hesitantly in round one, undoubtedly feeling the pressure of the moment. His arguments were clear and succinct, however, and he answered judges' questions without flinching. Selover was the picture of ease

and confidence, explaining respondents' position to the judges as if the four of them were old friends. She was momentarily caught off-guard when one judge queried whether she would extend respondents' position to the issue of women and the military draft. She offered an opinion on the issue but admitted she was not prepared to make an analogy.

Spectators were not admitted into the courtroom where Simpson and Harralson

debated because of limited space. The winners of round one, both on split decisions, were Alan Simpson and Ben Ratliff.

Round two was an unexpected mixture of tension and humor. Judges Pauline Hansen, P. J. Brown and George A. Hopper first heard Ratliff argue for appellants — a different Ratliff from round one — totally relaxed and confident in his presentation. If Simpson was at a disadvantage having to switch from

appellant to respondent, his cool professional argument didn't reflect it.

Judge Hopper brought laughter to the courtroom when he interrupted the debate to inform Wes Merritt that the name Metropolis had the unfortunate connotation of being "Mr. Reeve's" home town. Later, on-lookers listened in wonderment as Judge Hopper listed a string of law review articles and legal

cont'd. p. 2



## San Joaquin College of Law

JANUARY/FEBRUARY 1981

# DICTA

## BAR EXAM HAS LOWEST FALL PASS RATE SINCE 1967

SAN FRANCISCO, December 6 — Passing grades were given to 50.2 per cent of the applicants taking the July, 1980, California Bar Examination, producing the lowest pass rate for a Fall bar examination since 1967, according to figures released here today by The State Bar of California.

(The Spring examinations, generally taken by a higher percentage of "repeaters," traditionally have lower pass rates. Last Spring, for example, the pass rate was 34.5 per cent.)

This Fall's pass rate was kept from plummeting further — to 47.6 per cent — through the results of two additional, experimental examinations, given to some applicants, that tested skills not directly measured by the traditional bar exam. The experimental test scores, which could be substituted for lesser scores on the conventional exam, brought overall grades up to the pass level for 2.6 per cent of the total applicants.

Although 8,470 would-be lawyers applied for the Fall, 1980, exam, 7,839 actually took the test and 3,933 passed.

Because of the two consecutive low bar-exam pass

rates, the state bar's Committee of Bar Examiners, which administers the tests, commissioned an analysis of the decline. The study shows average scores dropping at a faster rate in California than throughout the nation, an increase in the number of repeat California applicants and a decrease in applicants from California law schools approved by the American Bar Association. (California permits graduates of any law school to take its bar exam; all but a few other states allow only ABA-approved law school graduates to take the bar test.)

### Experimental test scores

Scores on the two experimental exams, which nudged 203 test-takers over the pass mark, were counted only for applicants who failed the regular examination but passed one or both of the special tests.

In a "Special Session" experimental exam — taken by 7,424 applicants and permitting 165 to pass the bar examination — would-be lawyers were asked to respond to one of four special tests. They included an examination of applicants' understanding and analysis of the methods

and arguments used by counsel in a hypothetical case and an "open-book" test on the extent to which certain facts and legal information support or are contrary to a number of legal propositions involved in a hypothetical case.

An "Assessment Center" experimental exam — which enabled 38 of the 489 applicants who volunteered for the test to pass the bar exam — measured a number of lawyering skills including interviewing, client counseling and the ability to produce written documents such as trial briefs and interrogatories.

Complete descriptions of the testing and grading procedures for both experimental exams are available from the Committee of Bar Examiners at the state bar's San Francisco and Los Angeles offices. Publication of research findings on the Special Session testing is planned for May, 1981. Results of a similar study on the Assessment Center experiments are scheduled to be released next Fall.

### Pass-rate analysis

During the past two weeks, an independent analysis of the decline in the bar exam pass rate was completed for the

Committee of Bar Examiners by a consultant to Gansk and Associates in Los Angeles.

The study shows that the average multiple-choice test score of Fall bar-exam applicants in California dropped 11.1 points between 1976 and 1980. During the same period, the average score for applicants taking the same test in 45 other states dropped only 3.6 points. A similar drop in scores on the essay portion of the California test also helps account for the reduction in the pass rate here, according to the study.

The pass-rate analysis also shows a significant change in the makeup of California bar exam applicants. Twenty per cent of the people who took the Fall, 1978, bar examination previously had failed the test at least once. In Fall, 31 per cent of all applicants for the entire bar examination were repeaters, a group that traditionally receives lower

scores than first-time applicants.

In addition, the pass-rate study shows a drop in the number of bar-exam applicants who are ABA-approved law school graduates — a group that usually receives higher scores than other applicants. ABA-approved schools provided 55 per cent of the test-takers in 1978 and 50 per cent in 1980.

Although graduates of ABA-approved schools who take the Fall bar exam for the first time continue to pass at a high rate, the study shows a decline in their pass rate from 75 per cent in 1979 to 73 per cent on the regular examination in 1980. On the multiple-choice portion of the bar examination, their average score dropped about five points in the last year.

The study also concludes that grading standards for the bar exam were practically unchanged during the past five years.

### Quote —

Necessity knows no law; I know some attorneys of the same.

— Benjamin Franklin,

Poor Richard's Almanack (1734)

# Kidnap Victims Suffered No "Bodily Harm"

The whole thing started out as an idea for a movie. James Leonard Schoenfeld, his brother Richard and a friend, Frederick Woods envisioned a film about a mass kidnaping — a film that would not only get them out of debt but make them financially independent as well. Somehow the idea seemed too good and the fictional kidnaping became nonfiction.

On July 25, 1977, the Schoenfeld brothers and Woods pled guilty to 27 counts of kidnaping before an Alameda County judge for the gunpoint abduction and underground detention of 26 Chowchilla school children and their bus driver. The three defendants were sentenced to concurrent life sentences on each count. The trial court found that certain physical maladies suffered by three of the kidnaped children constituted "bodily harm" within the meaning of Penal Code Section 209, making the life sentences arising out of these three kidnapings without the

possibility of parole.

The appellate court framed the issue as follows: Do "minor and unsubstantial physical distresses, concededly associated with a significant degree of emotional suffering, constitute bodily harm consistent with the intended legislative purpose" of Section 209? (*People v. Schoenfeld* (1980) III Cal. App. 3d 671, 688, — Cal. Rptr. —.) The injuries in question were nose bleeds, fainting spells and stomach aches suffered by three young girls at various times during the 28 hour ordeal. The prosecution contended that the lower court's findings of bodily harm resulting from the infliction of "unnecessary suffering and terror" were valid. (*Ibid*, p. 681.) Defendants, on the other hand, maintained that the evidence was insufficient to justify these three sentences and that imprisonment without the possibility of parole amounted to cruel and unusual punishment.

The relevant section of Penal

Code Section 209 provides that anyone convicted of kidnaping for either ransom or robbery "shall be punished by imprisonment . . . for life without possibility of parole in cases in which any person subjected to any such act suffers bodily harm . . ." Both parties and the trial court were in agreement that the Legislature had never elaborated on the statutory standard for life imprisonment without parole.

The court turned to case law in order to arrive at the proper definition of "bodily harm." The earliest reported case, *People v. Tanner* (1935) 3 Cal. 2d 279, 44 P. 2d 324, utilized a tort definition of bodily harm to test the validity of applying the death penalty where one kidnap victim had been tortured with fire. This unreasonably strict standard, the court noted, had been seriously criticized by a later case, *People v. Jackson* (1955) 44 Cal. 2d 511, 282 P. 2d. 898, which defined bodily harm as "any touching of the person of another against his will with

physical force in an intentional, hostile and aggravated manner, or projecting of such force against his person." The *Schoenfeld* court concluded that the three-pronged test in *Jackson* — 1) a substantial or serious injury to the body of the kidnaped victim 2) by application of a physical force 3) beyond that necessarily involved in the forcible kidnaping — reflected the legislative intent of Penal Code Section 209.

Focusing on the third prong of the *Jackson* test, the court in *People v. Gilbert* (1965) 63 Cal. 2d 690, 47 Cal. Rptr. 909, 408 P. 2d 365 expressly overruled *Tanner*, holding that a "trivial or insubstantial injury" which is "almost necessarily an incident to every forcible kidnaping" is not "bodily harm" within the meaning intended by the Legislature. (*Gilbert*, p. 701.) In other words, there must be some separate and gratuitous injury, something more than "transient physical distresses . . . related to the conditions of

confinement" to constitute bodily harm. (*People v. Schoenfeld* (1980) III Cal. App. 3d 671, 687, — Cal. Rptr. —.) The nose bleeds, stomach aches and fainting experienced by the children in this case were only physical by-products of the emotional trauma of the kidnaping, the court reasoned, and not the result of the application of any direct physical force by the defendants.

Concurring Justice Newsom pointed out that if the Legislature had intended emotional distress and psychic damage to be factors in determining whether kidnap victims had sustained bodily harm it could just as easily have said so. (Justice Newsom conceded that infliction of mental harm) may well deserve a more severe punishment than some kinds of physical injury.)

Dissenting Justice Elkington argued that there was no difference between direct blows which produced bloody noses and stomach aches and indirect blows inflicted by threat of death or bodily injury.

## Ratliff cont'd.

treatises, asking each competitor if he had read them and why not.

Wes Merritt announced the judge's decision: Ben Ratliff would be S.J.C.L.'s representative at the state competition in San Diego later this spring. The judges called all four competitors to the front of the courtroom to congratulate them for their efforts and to express confidence in their future success as advocates.

(Note: Also representing SJCL at the state competition will be Alan Simpson, as runner-up, and Tom Sharpe, a second-year student with the best written brief in the competition.)

**OUR ADVERTISERS  
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by Nanette Selover

This edition of the Dicta features two outstanding Alumni of SJCL, both valedictorians of their respective classes. The senior of the two is Robert Gray Williams, known to friends (he doesn't have any known foes) as just Bob or "Williams". Bob is a Fresno native but spent summers in the Southern Sierra, motly at Shaver Lake. He graduated from CSU Fresno in 1969 with a degree in Business Administration and minors in Econ and Industrial Art. He completed SJCL in 1975 and went to work greasing machines in a local packing house under the supervision of his friend, Bill Crossland. However, he was lured away by a phone call from the firm of Parichan, Renbert, Crossman and Harvey and became a law clerk until he passed the bar that fall. He was then employed as a litigation attorney with that

firm, engaging mostly in Personal Injury Defense cases and assisting Mr. Parichan with some large Products Liability defense cases. The firm has several automobile manufacturers as clients, and Bob stated that the time and effort in those large cases was extremely challenging and rewarding. Besides, Bob is an automobile freak, indulging in decadent weekends attending races like the Long Beach Grand Prix and guiding his cherry jeep on off-road treks. The auto experts who were involved in litigation Bob was working on provided music to his ears with talk of torque.

In April of last year, Bob became a partner in the new firm of Perez, Mikasian and Williams here in Fresno. The firm specializes in Personal Injury Plaintiff cases and Bob feels that he is now "on the right side of the fence". He enjoys the informality of the office and his association with

the partners. Bob enjoys travelling; his work has required a lot of out-of-town jaunts which provides the opportunity to get out of the office routine. In his leisure time, travel is also a big priority. This past summer, he was able to spend a little time with his bride Lauren on a trip to Europe. They are going to Sun Valley to ski in February, and then it's off to Calwa for a weekend in March. Bob has a six year old son, Ryan, who is my fishing buddy. Asked if he had any advice for law students, Bob said, "Be a dentist". Then he said that there is still a need for quality attorneys and that he feels SJCL students may underestimate their ability to secure employment outside of Fresno. In his experience with out-of-town firms, especially in the Bay Area, the school is known for turning out qualified graduates. he said the large firms in Fresno still

look primarily at class standings, but notes that many alumni are enjoying successful practices in many different areas of the law. So, take heart and hang in there!

Judy Evans is a 1978 graduate. Prior to interviewing her, I knew very little about her except that she has a growing reputation in her specialty of Family Law. I happened to attend her law school graduation two and one-half years ago, heard her valedictorian speech, and decided that some day I would like to talk to her. The Dicta gave me the obvious opportunity to do so! Judy's speech struck me because she talked about her class (with an age span of about fifteen years) having had the experiences of living through the political and social turmoil of post World War II years, the Sixties, Viet Nam and the subsequent

cont'd. p. 4

## Alumni News

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# THE SJCL ALUMNI ASSOCIATION LIVES

by Barbara St. Louis

Like a new-born foal finding strength in its initially shaky legs, the SJCL Alumni Association is off and running. The association was formally incorporated by the Secretary of State on November 3, 1980 and its articles and by-laws are proceeding through the process of obtaining state and federal approval of its tax-exempt status as of this writing.

The first get-together of alums sponsored by the association was held on November 22 and its success was due to the efforts and resourcefulness of Georgia York and Michele Balenger. The association also wishes to express its gratitude to United Vitners for its generous donation of liquid refreshment for the evening. The reunion of school chums and the com-

munication and personal contact fostered through these activities will be the lifeblood of the organization in the future.

A welcomed boost came from future members, too, in the form of a \$100 contribution from the SJCL Student Association.

The specific purposes for which the organization is being formed includes, but is not limited to: Assisting the San Joaquin College of Law in providing the best and most complete legal education possible; to provide financial aid and personal time in assisting the school and its students in their development; to develop classes and instruction for continuing education programs for the local legal community; to develop and provide increased

job opportunities to students and graduates of the school; and to increase city, county and state awareness of the quality of education at the school and the substantial accomplishments of the school and its graduates.

The election of officers in the next item on the agenda in order to turn over the operation of the organization to officers elected pursuant to the by-laws. To vote in the election, one must be a member of the association. Membership is open to all graduates of SJCL upon payment of the \$15 fee.

The association invites all SJCL graduates to join soon to insure the success of this endeavor. Continued growth and effectiveness of the association depends on the participation and support of the graduates.

I would like to thank those members of the alumni and faculty who have contributed to the DICTA Editor's Scholarship. However, we're still short of our goal of \$500.00. So for those of you who haven't sent in your donations, there's still time. To those of you who have, thanks again!

Barbara St. Louis  
Mary Ann Bluhm  
Steve Blumberg  
Philip Tavlian  
Mio Quatraro  
The law firm of Salisch and Salisch  
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# SJCL ON WHEELS

by Peter M. Wasemiller

Who says lawyers and law students never have any fun? Well, on the evening of November 11, 1980, approximately seventy-five members of the SJCL student body, faculty, staff and administration were able to demonstrate how much fun lawyers and law students can really have, at the first annual SJCL roller-skating party.

The party was sponsored by the administration of SJCL for the benefit of those who helped the school move to its new campus last Fall. The fun and "falling" took place at Fresno's Roller Towne on west Clinton Avenue near Highway 99.

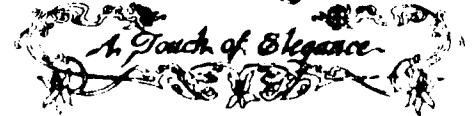
The happy (although somewhat bruised) participants took some time out from the drudgery of jurisprudence, applied wheels to their feet and sailed (or, in some cases, slid) into an evening in which a good time was had by all (including the dentist and the milkman who sat on the sidelines and watched).

A super buffet, hosted by the administration, was served at the rink and added a touch of er . . . ah . . . "good taste" to the festivities.

Although it is impossible to acknowledge all of the participants, there are certain feats of athletic prowess that should be recognized:

Best barefoot figure skating — Phyllis Eash  
Best intentional speed skating — Gary Dyer  
Best unintentional speed skating — Tom Riggs  
Best smiling and skating at the same time — Wes Merritt  
Best rail-holding — Polly Getz  
"Eyes-glued-to-floor" award — Glo B. L. Chin  
Tai Babylonia/Randy Gardner award of valor — Sue & Ollie Wanger  
Best skating while invisible — Carlos Guzman  
"Those-who-can-do-those-who-can't-coach" award — (Tie)  
Bob Garabedian, John Shehadey  
Thanks again, administration, for the delightful evening. Let's do it again next year.

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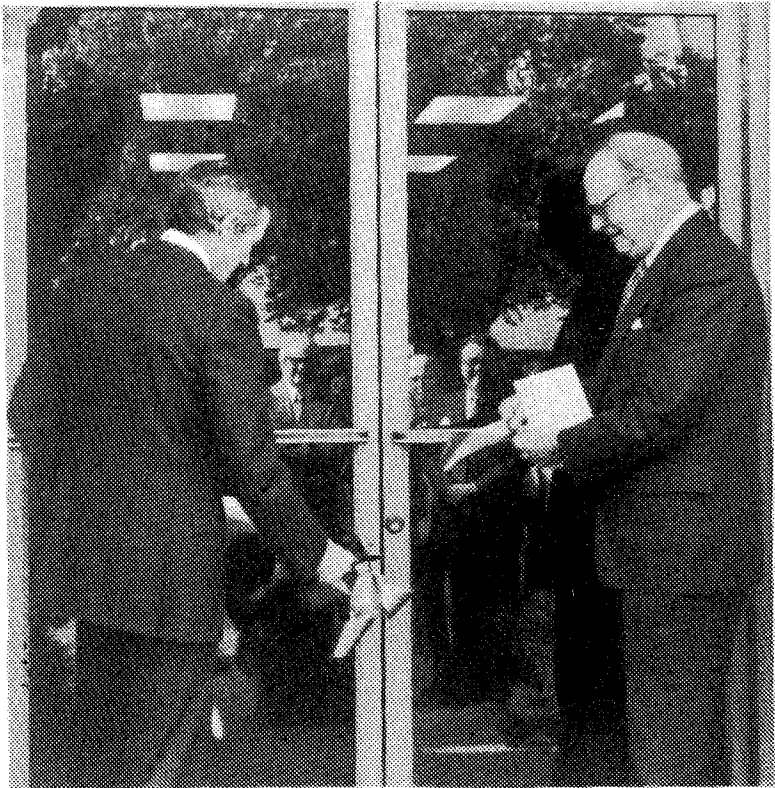
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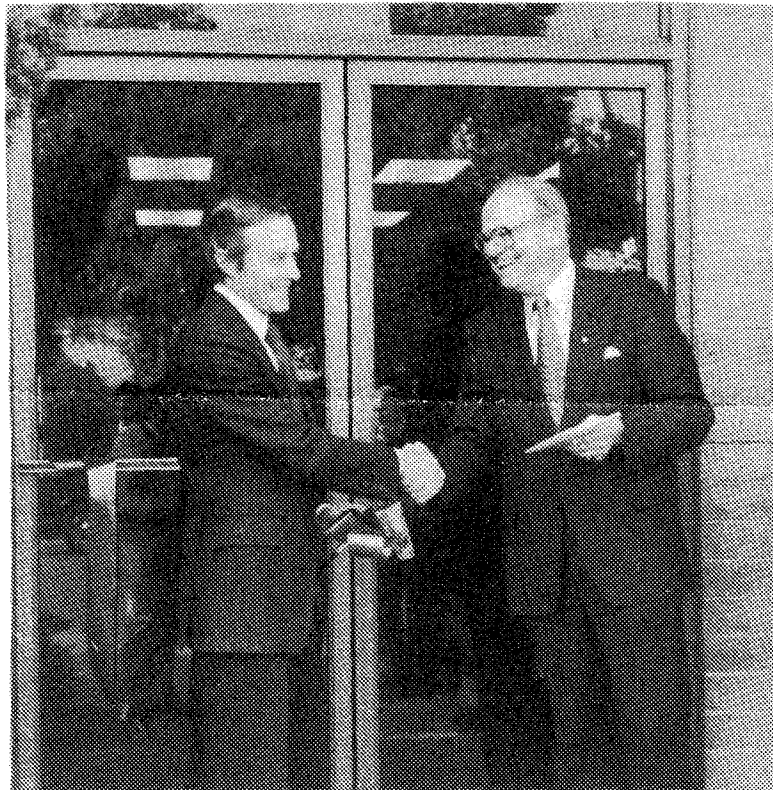
Quote —

Once (says an Author; where, I need not say)  
Two Trav'lers found an Oyster in their way;  
Both fierce, both hungry; the dispute grew strong,  
While Scale in hand Dame Justice pass'd along.  
Before her each with clamour pleads the Laws.  
Explain'd the matter, and would win the cause,  
Dame Justice weighing long the doubtful Right,  
Takes, open, Swallows it, before their sight.  
The cause of strife remov'd so rarely well,  
"There take" (says Justice), "take ye each a shell.  
We thrive at Westminster on Fools like you:  
'Twas a fat oyster — live in peace — Adieu."

— Pope, *Verbatim from Boileau*



The acquisition of San Joaquin College of Law's new building was celebrated with a simple ribbon-cutting ceremony last November 14. Dean Oliver Wanger and Chairman of the Board Vance Clark, pictured here, did the honors as a small crowd of SJCL supporters looked on. Faces in the crowd included Art Wiebe, John Loomis and Bill Busick of the SJCL Board of Trustees; Jackie Riles representing Mayor Whitehurst's office; Ken Wagner, SJCL Student Association President; and Barbara St. Louis and Nancy Winston of the SJCL Alumni Association.



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*Alumni* cont'd.

ensuing responsibility of the legal community to effect balance and positive change. I can't possibly do justice to her efforts, but she remains committed to those ideals.

Coincidentally, Ms. Evans also began her legal career with Mr. Parichan's firm. Unlike Mr. Williams, Judy went straight out of high school at age seventeen and began to "learn the ropes" of the office. Starting with secretarial duties, she became a paralegal before there was a name for it! She continued working there through her undergraduate years at CSU Fresno, where she earned a degree in Communications. After graduation from SJCL, she decided that practice in a large private firm was not what she

wanted at that time, so she hired on at Fresno County Legal Services, where a large part of her practice was with problems of Senior Citizens. After a year there, she received a call from the Honorable John Fitch, who was at that time in private practice limited to Family Law, and his associate, Vic Sanders. They asked Judy to go to work with them, which she did. She feels strongly about the impact of our court system on society and maintains that a balance must be struck between government action through the Courts and the private rights of citizens as concerns their marriages and their families. The value systems of attorneys, judges and others involved in the justice systems have tremendous daily impact on clients which cannot be over-emphasized. Ms. Evans obviously enjoys her work and feels rewarded in her profession.

After immersing herself totally in law school for four years, she says she is just now learning to appreciate extra-curricular activities. She finds physical release of energy and emotion in Art and Aerobics classes this year, and enjoys her time with friends.

Judy advises law students to "not get discouraged". Although competition is keen, there is plenty of legal work to go around. Also, business skills required of those just starting out in solo private practice are often overlooked and may make the difference as to the success of your venture. So, if you have the opportunity to get some experience before you graduate, she recommends it!

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