SAN JOAQUIN COLLEGE OF LAW

SAN JOAQUIN COLLEGE OF LAW
1717 SOUTH CHESTNUT
FRESNO, CALIFORNIA 93702
VOL. 4, NO. 2 OCT. 30, 1975

dicta

Wanger Talks

Procedures And Policies Discussed

by Deborah Davis

The members of the *Dicta* staff believe that one of the functions of the newspaper should be to facilitate communication between students and the administration and faculty. Accordingly, this reporter collected from SJCL students questions concerning academic policies and procedures and conducted an interview with Mr. Oliver Wanger, Administrative Assistant Dean. The following is a summary of what was discussed.

Several students who submitted questions expressed concern with the school's standards for the selection and evaluation of teachers. Some students and evaluators have complained of the tardiness, rudeness, and lack of preparation that a few teachers have displayed. In response to these complaints, the administration has increased its efforts to provide qualified and enthusiastic instructors. Teachers are chosen by a process that begins with a recommendation of the Faculty Committee, which is considered by the administration before being taken before the Board of Trustees. The Faculty Committee demands that each candidate for a teaching position have a law degree and be admitted to practice in some state. The considerations which the Faculty Committee takes into account in the selection process include academic background, experience in teaching law, professional activities and stature, publications, and most important, the desire to make the commitment that teaching requires which, as Wanger noted, is substantial in the first years of a law school's existence.

This year the school's teachers will be evaluated not only by Dean Eymann, the administration, the students, and

See Procedures page 6

Compromise Reached on County Law Library Keys

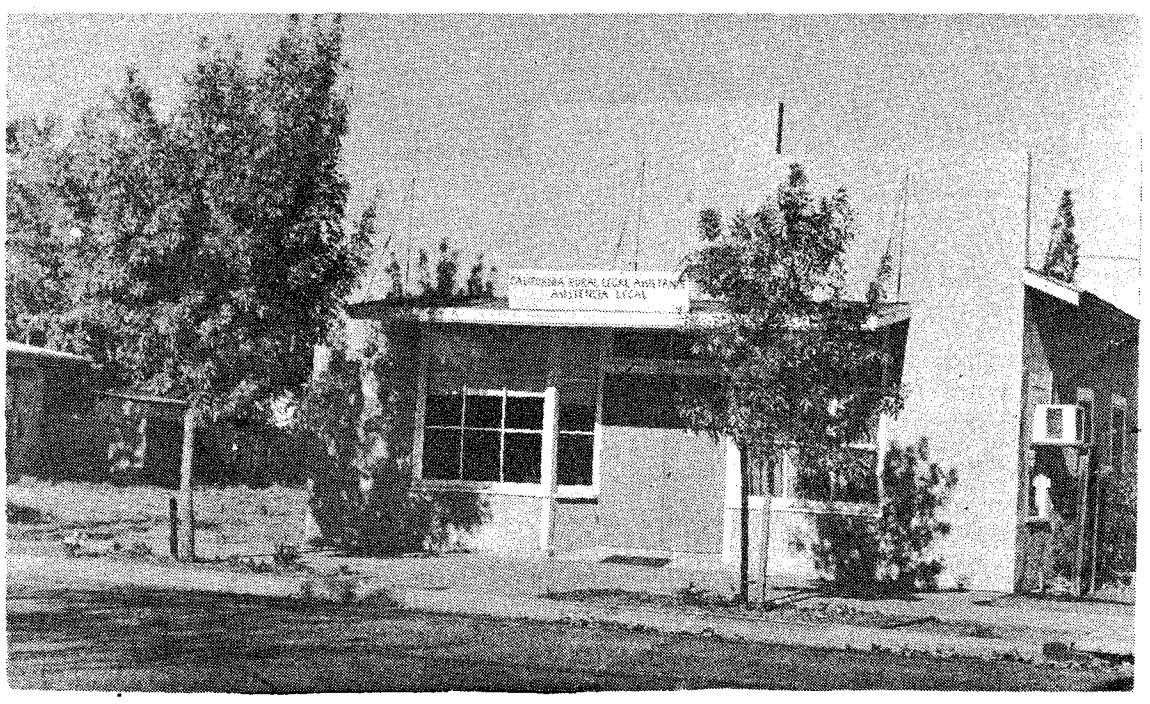
by Marshall Hodgkins

Because the County Law Library quit issuing keys to upperclassmen, without explanation, Student Association representatives have met twice with the Library Board of Trustees in an effort to remedy the problem. At the first meeting, which was attended by Dean Eymann, Association President, Gary Austin, and Vice President, Marshall Hodgkins, it was indicated that sometime back in 1974 the trustees passed a motion which had the effect of denying library keys to all future upperclassmen. No explanation was given as to why no notice was given of this change. However, an explanation of the "why" behind the motion was offered.

It seems that a large number of books have been stolen out of the County Law Library (a substantial number of which are C.E.B. books) and as a result the decision was made to keep distribution of keys to a minimum. The rationale being that if the number of keys is kept to a minimum, the quantity of stolen books will be minimized (this rationale needless to say is based on quite a few assumptions that are questionable). As a result, it was decided that all law students would bear the brunt of the new policy.

At the second meeting on October 7, at which a new proposal was presented (discussed below), Hodgkins questioned the Board as to whether it would be unreasonable for students to conclude that the above new policy carries with it an implied accusation that students are responsible for the theft of the missing books. The answer he received was "no".

With the realization that no law student would be able to get a key simply because he or she is a law student, Hodgkins requested keys for those students who are employed by an attorney and also an additional five keys, which can be checked out on a three day basis, to be kept with our Registrar. The Board accepted this proposal which is now in effect.



The California Rural Legal Assistance Office in Madera, one of nine regional offices in the state, is located at 529 South "D" Street. CRLA is a federally funded program designed to meet the legal needs of California's non-urban poor.

photo by Jim Swanson

Needs Exceed Resources

CRLA Attorneys Serve Madera's Poor

by Bruce Owdom

The Madera office of the California Rural Legal Assistance project is one of nine regional offices located in non-urban areas of the state to serve the legal needs of the poor. CRLA is a federally funded program. It was formerly administered under the Office of Economic Opportunity's, Legal Services Division. But since the dismantling of OEO the legal services programs were shifted to a quasi-public corporation, Legal Services, Inc. Several outspoken critics of legal services (for example, William Knecht, who led former governor Ronald Regan's attack on CRLA in the late 1960's) were nominated by President Ford to the Corporation's Board of Directors, but were subsequently rejected by Congress. Only two weeks ago, the full Board of Directors appointed Thomas Ehrlich, Dean of the Stanford Law School, President of the corporation.

So although it is certain that the legal services programs, including CRLA, will continue, the extent of its funding and the degree and nature of restrictions imposed on its work remain uncertain. For example, a recent directive prohibits CRLA from filing desegregation suits. But more severe limitations, such as a ban on suits against public agencies supported by Reagan, have never been adopted. CRLA attorneys are presently required only to contact the government agency, against which a complaint has been made by a client, and to attempt an out of court solution. But according to Ralph Lightstone, CRLA staff attorney in Madera, this is not a real restriction because any lawyer always does that anyway to save himself work.

Nevertheless, local public officials have charged in the past that Madera CRLA has not cooperated with them. In a 1973 incident, the Madera County District Attorney cited the failure of CRLA to work with the District Attorney's Office, the police, and the Grand Jury, on an allegation of police misconduct. But Lightstone insists the real reason for this and similar charges is that "they (County officials) do outrageous things, and we tell them so."

A recent example of the kind of thing that stirs the ire of Madera CRLA involved the federal food stamp Outreach Program. Federal law requires local agencies to seek out persons eligible to receive food stamps and advise them of their eligibility by advertisements and letters. Many local governments, including Madera County, have refused to adopt the Outreach Program despite the added impetus of a federal court order and the prodding of the Madera CRLA's Directing Attorney, Chris Hamilton.

Apparently, according to Lightstone, the Board of Supervisors takes the position that there are no hungry people, "which is not true." But the real irony lies in the fact that even if the Board viewed the matter from a purely economic standpoint, the County and all its residents would benefit from the distribution of federal food stamp dollars through local markets. Madera CRLA is presently monitoring the situation and hoping the state will compel the County's compliance with the federal court order.

Lightstone feels that criticism of CRLA from Madera County officials and others is not important except,

See CRLA page 8

ASB Party Set November 1

This Saturday, November 1, at 6:30 p.m., is the date set for the San Joaquin Associated Student's Fall Party.

This year, according to Michael Meyer, party chairman, the Stein Room at the Silver Dollar Hofbrau (near Fresno and Shaw) has been reserved for the event.

The Associated Student Body has allocated $150. for food and beer. Other drinks are no-host. Students and their guests are cordially invited to attend.

Letters to the Editor

I'm gonna sue !

MAYNE DAFFY
FRESNO COUNTY COUNSEL
4499 E KINGS CANYON ROAD
FRESNO CA 93702

Dear Mr. Duffy:

The lawschool newspaper staff is scurrying around willy-nilly to change your name on our mailing list from Daffy to Duffy. It's a bit "iffy," but we hope to get off our duffy and get your name changed before the next issue is mailed out. We hope we didn't put you offy too much. We're sorry for our dippy error, and we won't be dopey again.

— eds.

---

editor:

Kathy Hart, Associate Editor:

Your column entitled "Law Students of SJCL v. Pacific College" appearing on page 2 of the September issue of the Dicta was just great. It was just what I needed on a Friday to finish out the week. In my opinion you have a delightful sense of humor and a very professional way of expressing it.

Very truly yours,

BLUMBERG, SHEER, FLANAGAN & KERKORIAN
s/Stephen M. Blumberg

The *DICTA* encourages interested persons in the community to submit poems, letters, and articles for publication. / To insure publication, copy must be received at the *DICTA* editorial office by the 15th of each month. Address submissions to *DICTA*, San Joaquin College of Law, 1717 So. Chestnut Ave, Fresno, Ca. 93702.

STUDY

First I built my desk. An old door stretched across two filing cabinets, with rocks from my mountain adventures to make up for the difference in their heights. Then I luxuriated in all that desk space. That was before I lined up all my law books on one side, my reference folders in one corner, my pens and pencils and sharpener in the center, and my index card triple drawer file on the other corner. I set the typewriter up on the other side of the room and the study lamp anchors through the doorknob hole in my "desk". Made to order! Now I can get down to business. Although, I have to sit on the kitchen stool or my desk is too high.

OK, now . . . first read, every word. The one you skip is the one the case hinges are on. And, underline as you read. I still can't get used to writing in books; after all, my mommy said, 'good little girls don't write in their books'. Now go back and pick out the *issues, rules and reasons* and write up a brief on each case. Make flash cards of all new words and essential definitions and key elements. Look up all the Latin and legalese that is unfamiliar. Read the Hornbook and outline to clarify. Review my classnotes and listen to my tapes, then outline each unit as it's completed. Get up, get some coffee, water the plants, get back to my desk.

I've decided to keep track of the hours I study. It couldn't be as many as it seems. Son of a gun! It is. 12 of my hours I'm in class and 83½ hours of study in one week. That is a lot. Now I feel better. I think I'll keep track each week. At least I'll know why the dust is an inch thick on the furniture and I just let it sit there. I don't even feel bad about it. Sometimes the quiet closes in on me, especially at night. So I'm pulling out all my classical tapes and easy listening music to play for background sounds. Or, I try to squeeze in a tennis game so my muscles won't atrophy. Or, I go to the library at school where others are into the same struggle. Or, I treat myself and go find a friend to talk to who isn't a law student. But, mostly I STUDY, go to class, struggle with new concepts and feel amazement as it dawns on me that there are no right answers in law. Just a right way to think and analyze so you see all the possible answers. Studying law is really teaching yourself. And, that's what our professors told us. What do you know!

—Gay Abarbanell

PUBLIC UTILITIES COMMISSION — OFFICIOUS INTERMEDDLER

by Kathy Hart

In April 1975 the Public Utilities Commission ruled that a California lady who drove eight fellow employees from Orange County to Redondo Beach was operating a passenger stage corporation subject to PUC regulation. The poor lady thought she was operating not a passenger stage corporation, but a 12-passenger Dodge Maxivan carpool. She also thought she was conserving energy, doing her ecological duty, and providing low-cost transportation for herself and her friends.

It must have come as quite a shock to have a suit slapped on her by a for-profit bus corporation operating over roughly the same 77-mile round trip route, to receive a cease and desist order from the regulatory-happy PUC, and to have a $500.00 fine (later suspended) levied against her. Especially it must have come as a shock since her fellow passengers had originally been patrons of the bus corporation, but the bus service had switched to a smaller vehicle and told these same passengers it didn't have space for them anymore. The bumped passengers asked the Dodge Maxivan lady for a ride to work. She obliged, requested that they all share expenses, and for all her efforts was labeled a "common carrier." But everyone knows that common carriers, like common hussies, solicit their patrons. Our Dodge Maxivan lady did no such thing. The patrons solicited her.

The case attracted national interest and spurred the passage of corrective state legislation. The case, which had been set for rehearing on September 29, 1975, was rendered moot by the passage of Assembly Bill 918, which excludes commuter carpools of fifteen passengers or fewer from PUC regulation. However, the PUC decision (*Southern California Commuter Bus Service, Inc. v. Garlene Zappitelli,* No. 9797) makes interesting reading, if only to show the extent to which overzealous administrative bodies try to exercise legislative functions while making erroneous conclusions of law.

First, the PUC concluded that just about anyone who accepted compensation for transportation was operating as a common carrier. The term "compensation" was murkily defined as "reimbursement in excess of operating costs." "Operating costs" were defined as the costs of gas, oil, and parking, but *not* including the costs of the vehicle. Therefore, even if you weren't making any profit, but were using receipts from your passengers to help pay for the vehicle, you were subject to PUC regulation.

The PUC never really defined the term "common carrier." The Public Utilities Code isn't much help here. When you look up "common carrier," it says "See passenger stage corporation." When you look up passenger stage corporation, it says "see common carrier." There is a large body of case law defining the term as one who holds himself out to the public at large to provide transportation for hire, which definition excludes someone like the Maxivan lady who was not offering herself to the world, but simply to a few fellow workers.

Next, the PUC totally disregarded Section 654.2 of the Penal Code, which exempts persons who drive others to work from PUC permit requirements. Evidently the PUC was concerned only with the Public Utilities Code and thought all other California codes irrelevant to the case. Finally, in a burst of administrative excess — without holding any public hearings or requiring any environmental impact report — the Commission promulgated its own rules and regulations as to what constituted a carpool: "a vehicle operated by the owner to his place of employment only; maximum seating capacity of the vehicle to be nine passengers."

Meanwhile, the California Department of Transportation had received a nice fat federal grant to test and promote exactly the kind of Maxivan carpooling the PUC was trying to suppress. Incensed by the Zappitelli decision, the Department of Transportation filed a petition for rehearing, alleging erroneous conclusions of law and violations of due process. The rehearing was never held, since AB 918 excluded passenger vehicles of less than 15-passenger seating capacity — operated from places of residence to places of employment — from provisions regulating passenger stage corporations.

Thus our Maxivan lady can now cram her 12-passenger van full, charge them her expenses, and perhaps even solicit passengers without being demeaned as a "common carrier." But the new definition of carpool says nothing about transportation to shopping centers or transportation to educational institutions. Who knows? Those of you out-of-town students who are carpooling over the public highways to attend classes at San Joaquin may be operating as a passenger stage corporation. What's a passenger stage corporation? See common carrier. What's a common carrier? See passenger stage corporation.

ODE TO LAW SCHOOL STUDENTS

There is a very fine line between having drive and being driven. And, where other people are concerned, empathy can save the day. If conscious effort and personal goals motivate and move you, you have drive; can be an achiever; may go far, with self control. But, if you're propelled by some inner force, beyond control, beyond awareness, the struggle will be a long one, to find *self* and then control. For at the same time, energy must be diverted to learn of others and their needs.

"Being Driven" fits this person, not by others but by one's psyche. Not that one can't be driven by others, if you *LET* them drive you. To exhaustion! To Despair! To peptic ulcers and gray hair! Shades of Law School, First Year.

— Gay Abarbanell

SJCL DICTA

Editor — *Bruce Owdom*
Associate Editors — *Kathy Hart*, *Michael Marderosian*, *Dan Yohman*
Staff Writers — *Gary Austin*, *Peter Champion*, *Dale Dorfmeier*, *Richard Fairbank*, *Marshall Hodgkins*, *Rory McKnight*, *Dennis Mederos*
Advertising Director — *George Kayian*
Production Assistant — *Andrew Sorensen*

Warrantless Searches Based On Detection Of Cannabis Odor

by James Vance Henry

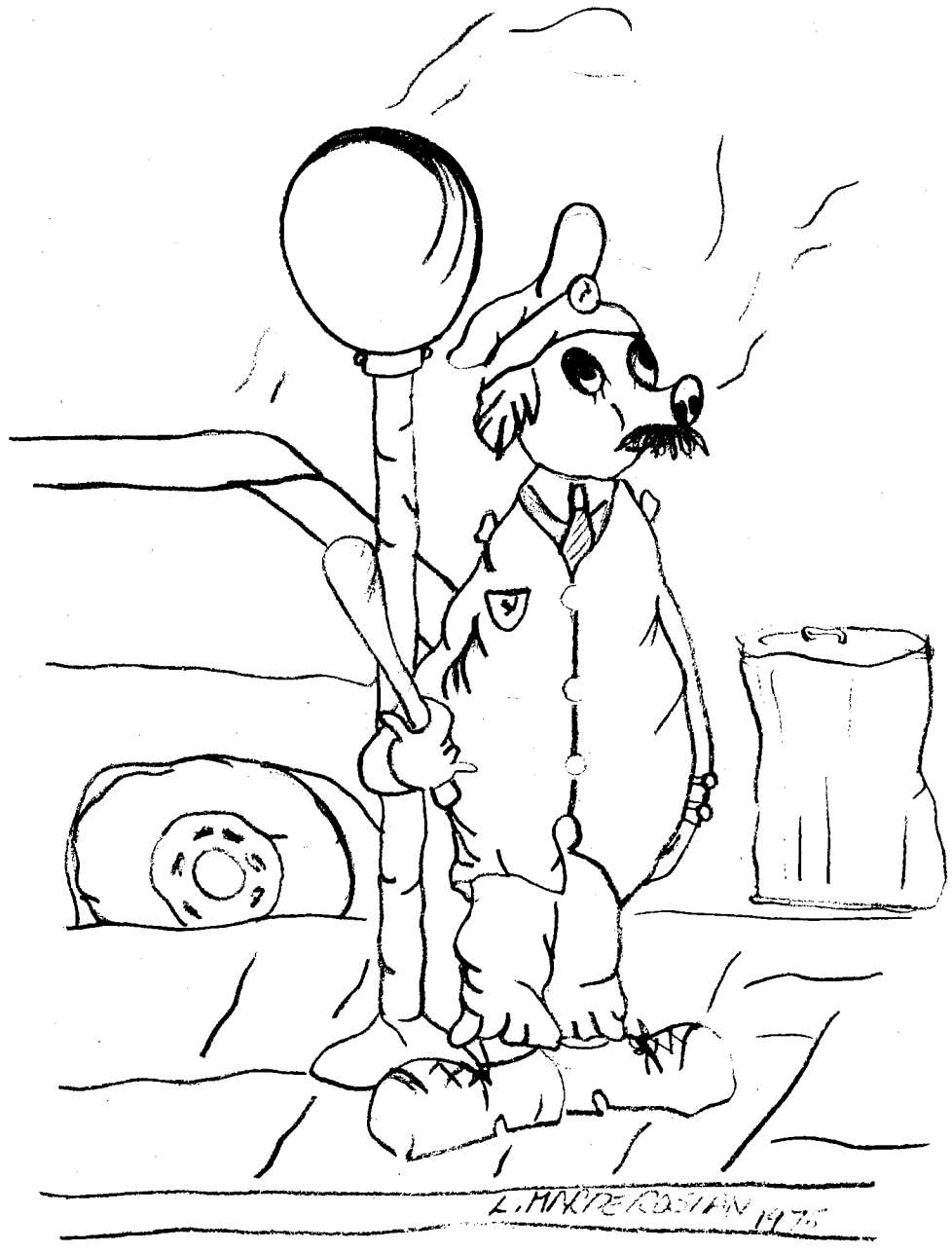
Numerous state court cases have approved searches without warrant based on the officer's alleged detection of the odor of cannabis. In upholding such warrantless searches, the state and lower federal courts have overtly or impliedly based their decisions on a series of questionable bootstraps: (1) marijuana and hashish have distinctive odors which may not be confused with any lawful substance; (2) police officers have the ability to detect this distinctive odor from a considerable distance; (3) the smell gives probable cause to believe a felony is being committed in the officer's presence; (4) therefore a warrantless search does not violate the Fourth Amendment. See, *e.g., People v. Miller,* 33 Cal. App. 3d 191, 108 Cal. Rptr. 788 (1973).

Editor's Note: James Vance Henry teaches Conflict of Laws at San Joaquin and practices in Fresno.

The earlier California case of *People v. Marshall,* 69 Cal.2d 51, 69 Cal. Rptr. 585 (1969) had held that there was no "plain smell" exception to the general Fourth Amendment requirement of a warrant for search. This was disapproved by *Guidi v. Superior Court,* 10 Cal. 3d 1, 109 Cal. Rptr. 684 (1973), upholding a warrantless search where the officer allegedly smelled hashish emanating from "baggies" in a brown grocery bag from a considerable distance.

The United States Supreme Court has never approved a warrantless search based on the odor of contraband. On the contrary, in *Taylor v. United States,* 286 U.S. 1 (1931), the Court rejected a warrantless search of a garage from which prohibition agents detected the odor of whiskey. The agents had also peered through a small opening and observed many ". . . cardboard cases which they thought probably contained jars of liquor." *Id.,* 286 U.S. 1, 5. Nonetheless, the fruits of the search were held unlawfully admitted. "Prohibition officers may rely on a distinctive odor as a physical fact indicative of possible crime; but its presence alone does not strip the owner of a building of constitutional guaranties against unreasonable search." *Id.,* 286 U.S. 1, 6.

Similarly, in *Johnson v. United States* 333 U.S. 10 (1948), the distinctive odor of burning opium was held insufficient for the warrantless search of a hotel room from which such odor was coming. The government buttressed its case with legal, medical and investigative committee reports of the distinctive character of opium odor. The Court noted that the odor of contraband ". . . might be evidence of most persuasive character . . ." in determining probable cause for a warrant, but that the prosecution had failed to show sufficient urgency to excuse the warrant requirment, reiterating the *Taylor* rule that odor of contraband alone does not authorize a search without a warrant.



In contrast, the court upheld the detection of the odor of fermenting mash in the vicinity of a dwelling suspected of being used for moonshining operations as partial probable cause for the issuance of a warrant in *Ventresca v. United States,* 380 U.S. 102 (1965).

Mr. Justice Douglas, in dissent, would have invalidated the warrant because the affidavit failed to specify the names and qualifications of the percipient officers, 380 U.S. at 115, 122. The majority was apparently content with a general description of the officers as Alcohol, Tobacco and Firearms agents to establish their olfactory ability.

A search of the literature as to marijuana odor reveals disagreement as to description of the allegedly "distinctive" odor. Oursler, *Marijuana — The Facts, The Truth* 3 (1968) states that it smells "like tea." Other descriptions are "agreeable odor and characteristic taste" (Drake, *The Connoisseur's Handbook of Marijuana* 155 (1971); "sweet aroma" (Southern, "Red Dirt Marijuana," *The Marijuana Papers* 219 [Solomon ed. 1966]); "not unlike mint" (Taylor, "The Pleasant Assassin: The Story of Marijuana," *The Marijuana Papers* 36 [Solomon ed. 1966]); and a "weedy, ropy odor which is intensified when ignited (Bloomquist, *Marijuana: The Second Trip* 8 [1971]). A police-oriented textbook describes the odor of marijuana which is not burning as resembling alfalfa, which could not be identified on the basis of smell (Williams, *Narcotics* 172 [1963]). An expert expresses skepticism as to any human ability to detect cannabis by smell at a distance. (Interviewed by Scott T. Steffen of Gary Cortner, California Regional Crime Lab at CSU, Fresno, Dec. 7, 1973). Scientific tests for marijuana do not include smell (Oteri, Weinbey & Pinales. *Cross Examination of Chemists in Narcotic and Marijuana Cases,* 2 Contemp. Drug Problems 225, 237 [1973]).

Notwithstanding the divergence in opinion as to the description of the cannabis odor, a defense attorney has noted, "Some officers are so trained in smell that they are known as 'olfactory heavies' in the trade. They can supposedly tell the difference between marijuana and hash odors in comparison to Turkish cigarettes, asmoroid which smells like marijuana, and other Forest Lawn ambrosia." Stepanian, *Pot Shots* -105-06 (1972).

Police critics claim that such testimony is exaggerated or perjurious, noting that the policeman is ". . . programmed to respond so as to legalize an arrest." Oaks, *Studying the Exclusionary Rule in Search and Seizure,* 37 U.Chi.L.Re. 665 (1970). See also, Comment, "A Case Study of the 'Failure' of the Fourth Amendment Exclusionary Rule," 13 Santa Clara Lawyer 256 (1972); Younger, *The Perjury Routine,* 3 Crim.L.Bull. 551 (1967); *cf.* Comment, "Police Perjury in Narcotics 'Dropsy' Cases: A New Credibility Gap," 60 Geo.L.J. 507 (1971); Oteri & Perretta, "Dropsy" evidence and the Viability of the Exclusionary Rule, 1 Contemp. Drug Problems 35 (1972). "Los Angeles recently had a rash of 'smell' testimony after one police officer successfully justified a search by saying that he had smelled marijuana on the defendant." Time, p. 79, Feb. 4, 1974, "Cop's Credibility."

It should be noted that Justice Stephens, author of the *People v. Miller* opinion, 'supra', which unquestioningly endorsed the "distinctive odor" theory, admitted in response to a query by this author that his opinion was based solely on the evidentiary findings by the superior court. "We do not make evidentiary findings on our own," (letter, Sept. 20, 1973). Justice Fransson, author of the unpublished opinion in *People v. Cook,* 5 Cr.No. 1585 (5th Dist. Ct. App. 1973) has stated, "Unfortunately, in most of the cases defense counsel do not pursue a vigorous cross-examination of the officer with respect to his qualifications and training concerning marijuana. Further, a defendant is usually unable to introduce expert testimony to the effect that marijuana does not smell much differently than any other vegetable. In particular, I find it difficult to believe that fresh marijuana packaged in baggies can be smelled any substantial distance away.

"As you well know, these matters must be pursued and decided in the trial courts. On appeal we have no alternative other than to accept the officer's testimony. . ." (letter to the author, Dec. 28, 1973).

It is suggested that the "plain smell" basis for warrantless searches is ill-founded. As Mr. Justice Jackson noted in dissent in *Brinegar v. United States,* 338 U.S. 160, 181, searches of the innocent are not presented to the courts. Since the exclusionary rule is based on a policy of judicial enforcement of the Fourth Amendment to protect the rights of the innocent as well as those of the guilty, appellate courts should recognize the questionable nature of odor detection, flatly reverse *Guidi, supra,* and reinstate *People v. Marshall,* which complies with the only extant United States Supreme Court decisions. (Acknowledgment is gratefully made to Scott T. Steffen, McGeorge School of Law, for his research in preparing this article.)

San Joaquin Graduates Enter The "Real World"

by Michael Marderosian

Whatever the reason, be it an over-glamorization on television, an over-educated society, or an exodus toward the"status" fields and positions, the legal profession is becoming an over-crowded profession. As a result, the job market for attorneys has become competitive and precarious to an extreme. Nevertheless, each year approximately 4500 applicants take the California Bar Examination with the hope of passing the exam and practicing law in this state.

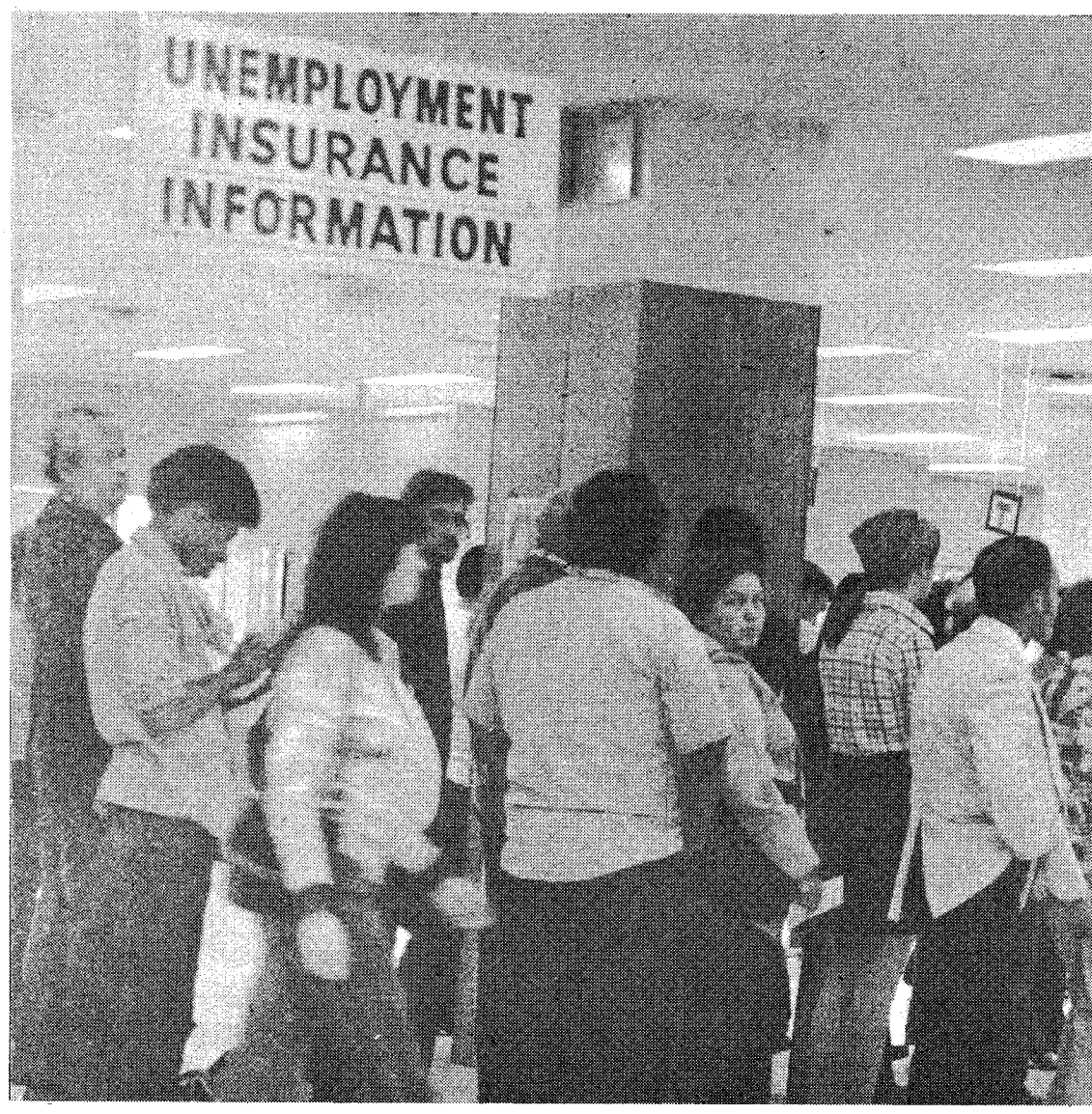
The phenomenon of applications in excess of available positions permeates public as well as private practice and leaves many "experienced" attorneys and recent graduates with more denials than acceptances of applications.

What type of impact have these conditions had on starting salaries? The answer is becoming more obvious every day. Applying a few economic principles, what happens when supply outweighs demand? The answer to this question is that there is only one way for salaries to go, and that is down. Various sources have indicated that some starting salaries in the Bay Area have been as low as five and six hundred dollars a month.

This information is not new. Many lawyers and law students have been aware of these conditions for quite some time. The real purpose of this article is not to give you the cold hard facts concerning the decline in the legal job market, but rather to find out how San Joaquin graduates are doing in this world of hard legal knocks.

This reporter contacted some recent graduates to find out (1) how they have put their legal education to work in such a competitive profession; (2) how the poor job market affected their chances of landing a job; and (3) once a job was located, what some of the experiences were that they as recent graduates and bar admittes encountered.

The articles below were submitted by Mio D. Quatraro, Fresno County Deputy Public Defender, and Jerry Henry, who is in private practice in Fresno. Both Ms. Quatraro and Mr. Henry are members of the first graduating class of San Joaquin College of Law.



"From Frying Pan Into Flames?"

by Jerry Henry

Becoming a lawyer through night law school. . . Is it the rags-to-riches story we all wait for, or is it a case of jumping from the frying pan into the flames? Let's examine.

Struggling to campus night after night, having a half hour to eat after work, failing to fully understand that last nuance the teacher tossed out just before break, burning your tongue on the coffee and listening to a friend tell another friend about the latest evidence of the decline of the legal profession, worrying about the final in this class and periodically being overwhelmed by surges of anxiety at the thought of the absolutely impossible bar exam — all of this is clearly rags.

Then come the high points. Standing on the lawn in cap and gown in front of highly respecteds who laud and praise you, banging your way through that last bar question knowing you have come in high or not at all, the swearing in, the certificates, the endless handshakes, the job with a public agency, your first trial, the second and third, learning the ropes, standing up in front of 12 people and telling them what it is, watching them come back in 10 minutes and agree with you — no question about it, emotional riches of the finest quality and more down the road.

Then you move off into the ideal — what you did it all for — private practice. Nice office, good associates, well-received by the legal community in general, feeling good but nervous. Problems emerge from all possible quarters, even if you try to specialize. Research is necessary for every step of the way. The lawyers that you bump against are playing for keeps, every motion, every step is crucial. You are gripped in what that forest-dwelling writer called quiet desperation.

Rags again? Not necessarily. But then it's not exactly riches either, emotionally or monetarily. Rather, it's just a matter of facing one task after another, but unlike any other profession or trade.

Opportunities are available, despite the current "gloom and doom" feeling among the profession about itself; but they are not rampant. Becoming an attorney is no longer a magic transition, if in fact it ever was.

The outlook can become particularly grim during that long wait from bar exam to receipt of results. Finding steady work as a law clerk is difficult to come by, although it happens to a few. But there still is piecemeal research. It comes in slow because many firms and individual lawyers are hesitant to trust an outsider. But once a good piece of work is turned in, more will start coming your way. Investigation is another source of income and experience, but be careful of this one: you cannot do investigative work for more than one firm without being licensed. So pick only one firm, and if you get even piecework type assignments for investigation, don't seek similar assignments from other firms. Of course, all the while you are seeking research and related assignments, you are getting to know people in the field.

After the results come in almost everyone tries the public agencies. Again there are no guarantees of landing a spot because the public agencies are no longer forced to beg for applications. In fact the reverse is now true. But there still is a turnover; most of our class managed to fit into the public agencies, and the experience is tremendous.

I managed to get into private practice sooner than most because a rare opportunity arose as a result of research work I had done prior to going into the District Attorney's Office. Had it not happened the way it did, I probably would still be with the District Attorney's Office and in fact may have made a career of it. One could do worse, and in fact more new attorneys appear to be considering public agency careers than was the case in prior times.

And what of private practice with all the talk about legal malpractice suits and the demise of the tort system, etc.? Like the uncertain weather forecaster, who is viewing the dawn of a new day, I must say it's too early to tell. One factor appears certain: there are a lot of people with a lot of legal problems, but at the moment the problem seems to be one of frustration caused by too much to do and too little time to do it in rather than the reverse.

"Attorney at Law"

by Mio D. Quatraro

"Attorney at Law." The title for which I had put up with four years of law school, a nightmarish bar exam, and seemingly unending months of waiting, was finally mine. Mine to put on a name plaque, on a desk, somewhere — but where?

In preparation for eventual work, during my second year of school I'd been a Student Professional Worker for the Fresno County Public Defender's Office. I knew I liked criminal law. On the other hand, during my third year I'd done a voluntary internship with a private firm, and while waiting for the Bar results I'd earned some money doing freelance research for several local attorneys. I also liked civil work.

My choices, therefore, were to associate with a group of established attorneys, which takes money for the overhead, or to go into public practice, which requires an opening and an offer. The opening came before the money, and I accepted Mr. Nitz's offer to become a Deputy Public Defender.

I have learned that the law school "casebook" method did nothing to prepare me for my work. With a load of 30 to 40 cases set per week, I find that the ability to talk fast and to get around the courthouse quickly outweighs the ability to spout case names. Client empathy and control is much more important than keeping up with advance sheets. Basically, keeping track of my files, my clients, and my sense of humor becomes my daily goal.

Trials are, of course, exciting, but for the most part our "good" cases never make it before a jury. Frustration is the rule, with satisfaction the exception.

I think the biggest shock to me came when I discovered that to the public in general, I was the "bad guy" defending criminals instead of the defender of constitutional rights I'd envisioned myself to be.

My "Attorney at Law" plaque does sit on my desk on the fourth floor of the courthouse. Apparently it impressed the mother of one of my clients so much that she used it to take a swing at my learned head — accusing me of hiding her son in said desk, among other things.

Nevertheless, I still enjoy criminal law, and if I've learned anything since law school, it's how much more experience and self-confidence I still need before Melvin Belli or F. Lee Bailey have anything to fear from me.

Law Clerks— A Real Value?

by Bill Armbruster

Law clerks — are they of value to attorneys?

Is the experience worthwhile for law students?

With time and effort from both sides, the answer can easily be "yes."

Student law clerks can provide attorneys the chance to save time in some of the routine — but necessary — tasks at the office. These include research, preparation of briefs, serving subpoenas, filing documents with courts, reviewing files, interviewing witnesses and investigating factual situations.

Clerks can also prepare rough drafts of letters to clients, pleadings, and in some cases, contracts — providing the supervising attorney supplies the final terminology.

These are some of the general advantages student law clerks can provide. Other advantages will depend, of course, on the particular area of law that is being practiced.

Many smaller law firms may believe their attorneys do not have the time to train a student law clerk. And yet, time is what law clerking is all about.

It is somewhat analogous to the old saying "You have to spend money to make money." In the case of law clerking it would be "You have to spend a little time to be able to save time."

Let's look at some examples where attorneys would profit from having the services of a student law clerk available.

Say an attorney is in court when an unexpected issue arises. It may not be major enough to continue the trial, but who does he call?

If the other members of the office are busy, he's out of luck. Even if the issue is major enough to warrant a short continuance, all that is done is putting the trial onto another crowded day.

In either case, the busy attorney loses.

Another case is when an attorney has a client coming into the office and discovers a motion must be filed immediately.

Does he call the client and reschedule the interview? Again, that would mean continuing the meeting to another, probably already overcrowded, day.

These examples illustrate some of the areas in which law clerks may be especially valuable. They could provide the needed extra hand around the office to take care of these matters.

Some attorneys may feel that during the so-called training period they will be paying a clerk who is still learning the ropes and who may have long gaps of time between assignments.

One answer to this is what a number of San Joaquin College students are doing — volunteering their time and services during the training period.

In this way the student gets valuable experience, and by the time he is added to the office payroll the attorney is getting an experienced law clerk.

Procedures and Policies

the educational consultant from the Committee of Bar Examiners, but also by an evaluation committee which is appointed by the Educational Committee of the Fresno County Bar Association. The members of the committee have no connection with the school. The review proceeds in accordance with standards determined by the Faculty Committee; teachers are evaluated with reference to their organization, preparation, clarity of approach, use of effective examples, and quality of interaction with the class.

Wanger believes that the faculty needs to be judged by persons not associated with the school so as to avoid the tendency to pat each other on the back, as occasionally occurred during the school's first years. He and the administration appreciate the conscientious service of the evaluators, but Wanger feels that the criticism which has been received may not be the most incisive and qualified that could be obtained. Wanger regrets that there are no disinterested, experienced law school professors in Fresno to act as evaluators. He stated, "I think that this is an area in which we could use some helpful suggestions, and could gain by having qualified people perform more of an outside review of faculty performance."

In the first five years of SJCL's existence, there was no direction of teachers with regard to how class time was spent or how students were tested. However, Wanger noted that this year the procedure will change: "Dean Eymann has ceased to teach and is in effect doing nothing more than auditing and reviewing the faculty performance on a continuing basis. He is meeting individually with each faculty member early in the year and later in the year . . . and there is an attempt to talk about grading, class preparation, and class performance by the faculty in advance." Another new procedure being instituted this year is a review by the Faculty Committee of examinations both before and after the exams are given. This reporter hopes that the preliminary appraisal will eliminate the occasional weaknesses of past examinations, such as needless duplication of material, an excessive number of issues, and the use of questions from old bar exams or from published learning aids.

With respect to the type of examination questions to be used, Wanger said, "There has not been any active effort to try to prescribe a particular form of question. The educational consultant from the state bar has a very strong disinclination for multi-choice type questions where those are developed other than by a committee almost; his preference is that at least one other objective person review such an exam, and his preference is that they just not be developed by local law schools; although, I think that it's important that the student have experience with that kind of exam because you're going to see it on the bar and probably in other contexts. We are continuing to give them despite that admonition."

The method of testing is restricted in one respect: where there is more than one question on an examination, the professor must give his students notice at the time they receive the examination if questions are to be weighted other than equally.

Several students have complained about the relative mediocrity of their first-year grades. "There is no doubt that at least in the first three years, if not in the first four years of operation, the first-year grades were low," commented Wanger. However, he indicated that there is neither a policy to give low grades to the first-year students nor a conscious effort to do so. Wanger thinks that the phenomenon may be explained by the hesitancy of new instructors to give high grades and by the concern of teachers in the school's first years of existence that their evaluation of students' performance correlate with the standards employed by the state bar. In any case, the grades have been approved by the bar and are consistent with bar standards.

In several instances involving new professors, the Faculty Committee has reviewed the grades given to students. There have been attempts to influence particular teachers to re-evaluate their grades when grades have been too high or where there has been too narrow a range of grades. In these cases, it was felt that the instructors needed to measure performance less with respect to a curve and more in accordance with the absolute standards employed by the bar committee.

Students have requested that instructors be prompt in grading the examinations. Wanger stated that the faculty was encouraged to finish the exams as quickly as possible, but he indicated that it is not likely that the process will accelerate; in fact, this year the Faculty Committee's evaluation of the tests and the grading will probably slow down the grading procedures. In any case, the grades will be available before the start of the next semester; grades for the first and fourth years will be completed before summer school and graduation respectively.

Should a student fail an exam, his petition for relief is determined by the Faculty Committee. The decision rests in that body's sound discretion; for a student to prevail, there must be a showing of good cause, such an emergency, illness, or acute personal problems. It is then up to the Faculty Committee to decide whether the relief will take the form of a mere re-examination or will involve the repetition of the course. The factors entering into this decision (which is likewise discretionary) are the history of the student's performance in the course, participation in the classroom, the recommendation of the instructor, and any other relevant factors peculiar to the situation in question. Possible fault of the school or its agents, the degree of hardship to the student, and basic considerations of fairness are also always in issue in such determinations.

The instances of erroneous computations of students' grades and grade averages continued last year, each occurrence causing at the least embarrassment and at worst serious inconvenience to students in the pursuit of a legal education. Aware of the possibility of error, the school has responded to this situation by delegating the task of computation to the registrar and by

See Procedures page 8

2nd Annual Law Bowl

Dumpers Thump Humpers 39-0

Humphreys Law School kicked off the Law Bowl '75 to opposing San Joaquin College of Law at 2 p.m. Sunday, October 19, 1975, at Pacific College's Christian Marpeck Stadium. But the contest was anything but Christian as the gods turned thumbs down on Humphreys, 39-0.

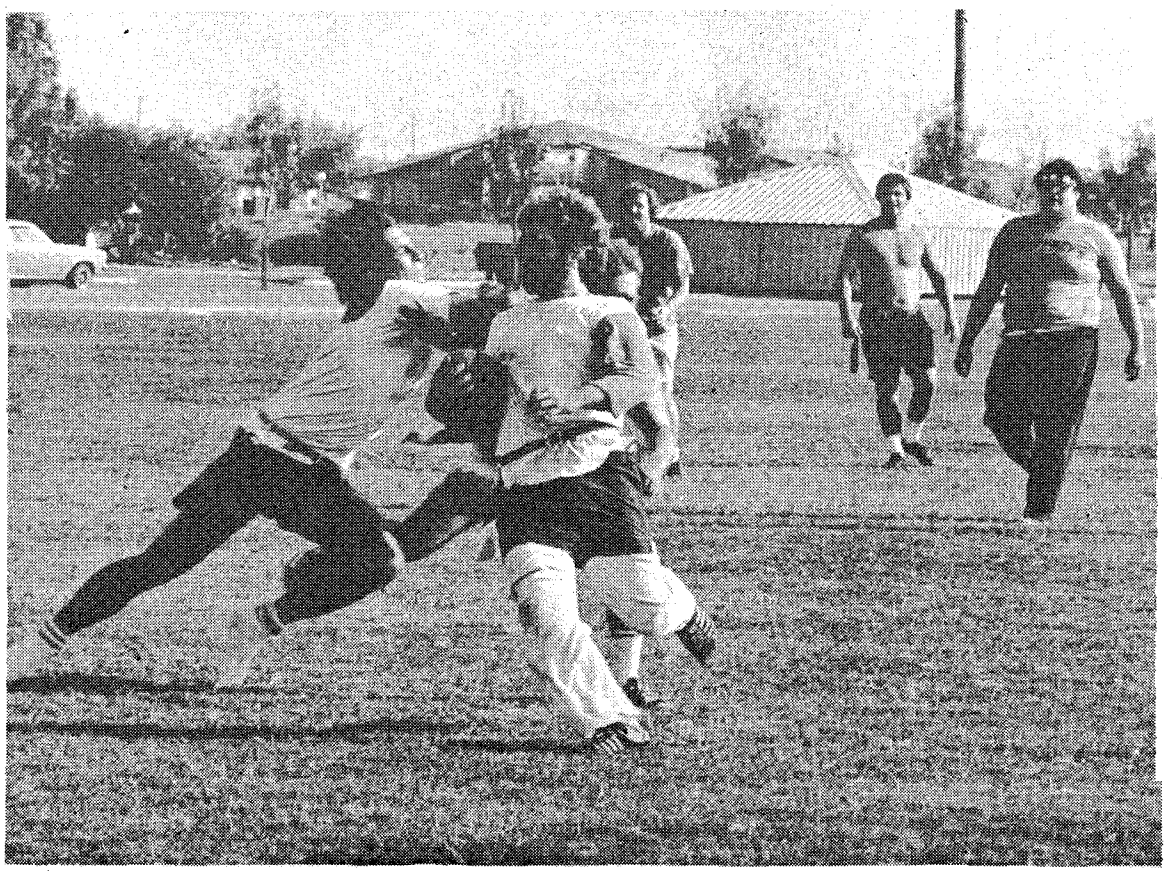
Despite a disappointing recruiting program this season, Humphreys arrived with a full squad of 25 players including men and women, and a contingent of delicious cheerleaders. It was learned from reliable sources inside the recruiter's office that the scholarship budget was slashed late last spring because of more urgent needs in the faculty slush fund. In an attempt to compensate for these substantive deficiencies, the team was bedecked in attractive orange and black uniforms in a bald, pantheistic move to appease Great Pumpkin. But the trick, not the treat, was theirs in this year's trouncing.

From the first kickoff to the final gun, San Joaquin dominated the action. Though a more motley crew could not be found, with a minimum of practice and a maximum of morphine and wine, the SJCL toughs perfected skills which take the pros years to develop.

The Dumpers' offensive and defensive squads complemented each other with precision. The Hump was soundly bumped by SJCL's brick wall defensive line and held to just 73 humps (er, yards) both on the ground and in the air. Offensively, two big touchdowns were pulled off in the early stages of the contest by John Suhr (second year veteran standout). Other T-D's by Mac Stewart, Gary Austin, Dan Koontz, and Rory McKnight ran up the score without mercy. McKnight's T-D on a brilliant interception was called back after the referee (a Pacific College theology major) involuntarily lapsed into prayer for Humphreys when an unidentified San Joaquin deep safety executed a perfect left hook on the jaw of the Hump's wide receiver. Mike "Crazy Legs" Castro booted the extra points.

Not a little help came from Athletic Director Paul Storey who provided the yard and down markers and flags. Paul should receive an added cheer for his cool cunning in distributing to Humphreys specially prepared flags, which (unlike SJCL's) were not permanently attached to the belts. In fact, Paul revealed in a post-game interview, that the Humphreys flags were designed literally to fall from their belt whenever the wearer broke into a run. Great work, Paul!

Coach Marni Lasker, in his first season at SJCL, was pleased with his team's ruthless tenacity in blanking the Hump. As Coach Lasker pointed out, one of the first things the players learn at San Joaquin is that how you play the game isn't important, and that winning is everything. Marni hinted that SJCL's Dumpers would be authorized to compete in the prestigious Pac-8 conference next year. But later the Coach, his tongue sufficiently lubricated by post-game conviviality at a near-by pizza house, boldly predicted his team would blister their Rose Bowl opponents to a "wilted lily."



San Joaquin College of Law's prestigious offensive unit battle and bruise its way to a stunning 39-0 rout over Humphreys College, School of Law.

photo by Jim Gray

How's Your Law Latin

Listed below are some Latin phrases painstakingly culled from Black's Law Dictionary. Choose the English answer which best describes the meaning of the Latin phrase.

1. *Ignoranit facti excusat:*
   a. ignorance is the excuse of fascists
   b. ignorance of fact excuses
   c. ignorant factions are excused
2. *Crimen trahit personam:*
   a. the crime carries the person
   b. traitors are carted to Crimea
   c. a person is traced by his crime
3. *Corpus delicti:*
   a. A delectable corpse
   b. the body beautiful
   c. body of the crime
4. *Jus tertii:*
   a. turtle juice
   b. third party rights
   c. tertiary justice
5. *Non compos mentis:*
   a. of sound mind
   b. not meant for compost
   c. no men on campus
6. *Moota canum:*
   a. mother of Cain
   b. pack of dogs
   c. moot case
7. *Cruce signati:*
   a. signed with a cross
   b. crucial signature
   c. crux of the matter
8. *Lata culpa:*
   a. last gulp
   b. cup of milk
   c. gross fault
9. *Res ipsa loquitur:*
   a. everything in its place
   b. the thing speaks for itself
   c. things which are locked
10. *Cul de sac:*
    a. end of the rope
    b. bottom of the sack
    c. blind alley
11. *Literae mortuae:*
    a. dead letters
    b. literal death
    c. literate mortician
12. *Curia comitatus:*
    a. curious commitment
    b. county court
    c. committee of curates
13. *Nulla bona:*
    a. No bone
    b. little good
    c. no goods
14. *Terra culta:*
    a. cultivated land
    b. terrorist cult
    c. torn with guilt
15. *Lite pendente:*
    a. hanging light
    b. light pendant
    c. pending suit
16. *Nudum pactum:*
    a. crowded nudists
    b. bare agreement
    c. packed and stripped
17. *Nolo contendre:*
    a. never content
    b. will not contest
    c. no midget contenders
18. *Vel non:*
    a. not well
    b. well known
    c. or not
19. *Jura regalia:*
    a. royal rights
    b. the law rejoices
    c. a regal jury
20. *Collatio bonorum:*
    a. Cher's collateral
    b. collective well-being
    c. joining together of goods

Answers:

1-b; 2-a; 3-c; 4-b; 5-a; 6-b; 7-a; 8-c; 9-b; 10-c; 11-a; 12-b; 13-c; 14-a; 15-c; 16-b; 17-b; 18-c; 19-a; 20-c.

Score: 18-20 correct: worthy of Virgil and Cicero
15-18 correct: Needs to improve
Below 15: Et tu Brute!

CRLA

perhaps, in the sense that it is a barometer of CRLA's effectiveness in representing the interests of the poor. In contrast to the turbulent opposition of the Reagan years, Lightstone doesn't feel the constant pressure of criticism. "It's better now that CRLA is not the issue. The issue should be the problems of the poor."

Probably, two factors contributing to CRLA's effectiveness is the willingness and ability to file a lawsuit on behalf of clients. "This type of currency pays off," remarked Lightstone. In a recent case he persuaded the California State Food and Drug Commission to comply with the notice and hearing requirements of the Due Process Clause. The Commission, which had licensed his client to operate certain machinery, revoked the license without notice and opportunity to be heard. Lightstone was prepared to file a lawsuit to get the hearing. After "two very threatening letters" to the Commission and after the state officials had consulted the Attorney-General's Office, the hearing was granted.

But the ability to litigate is equally essential to the effectiveness of CRLA. As Lightstone noted, CRLA clients, unlike those on the otherside, don't have to pay the bill. The practical advantage is that the opposition may not, for financial reasons, want to litigate the issue. Instead they may decide to settle favorably out of court. The disadvantage is, however, that although the immediate client's interest is served, the issue remains unlitigated and undecided.

The only real limitation burdening the CRLA is the shortage of time and resources. Since the goal of CRLA is to benefit as many people as possible with the limited resources available, establishing priorities is necessary. Following broad federal guidelines, the Madera CRLA does not take domestic law cases. Lightstone acknowledged that a divorce or child custody dispute is very real for the people involved, but the effectiveness of the legal services expended is limited to those two parties alone. But if a landlord, who owns several rental units and who wrongfully evicts his tenants, is successfully opposed, much more will have been accomplished in a quantitative sense.

Case priority has traditionally been a source of criticism for CRLA. Those who have objected to legal services in general and to CRLA in particular have claimed that if CRLA were genuinely concerned with the legal problems of the poor, it would serve those with immediate legal needs, including domestic problems. But Lightstone dismisses this as a deliberate ploy to dilute the efficiency of CRLA. The unstated theory advanced by critics is that if CRLA can't be completely eliminated, then its efforts should be diverted to less damaging and more time consuming tasks, such as divorces.

Though CRLA doesn't accept divorce cases, on the Madera office's open interview day every Tuesday, an attorney is willing to advise a person interested in initiating proceedings. On Tuesdays the attorneys do nothing but interview prospective clients on a no-appointment basis. On Wednesdays the attorneys have a case meeting which Lightstone personally feels is a valuable tool in the operation of the office. At this meeting, the staff lawyers discuss the merits of the cases presented in Tuesday's interviews, and decide which cases will be accepted. The case meeting also provides an opportunity to learn from each other and to instruct new lawyers starting on a particular case.

As a result of the case selection process, Lightstone estimates that only one out of twelve persons who seeks legal assistance can be served by the Madera CRLA. Yet, each of the four attorneys in the office maintains a caseload of fifty cases.

Moreover, because there are incredibly low eligibility requirements for CRLA services, only the people with the very lowest incomes qualify. Then limitations of time and resources further restrict CRLA's service to about one-tenth of the poor population in the Madera area. "People with very low incomes are shocked when they learn they're not eligible for legal services," remarked Lightstone. This, he said, is a major failure of the bar. With 95% of the profession attempting to serve 5% of the population, the bar, itself, made jobs more difficult to find and in some cases has priced itself out of jobs.

And unfortunately, the poor who don't qualify for CRLA services in Madera have no alternatives available. There is no referral service and no standard agreement that bar members will take any *pro bono* cases or any number of them. Lightstone conceded, however, that some lawyers do more than others, but there is no system under which local attorneys will take a prescribed number of indigent cases.

Despite the shortage of manpower and other resources, CRLA has achieved some significant reforms. A major accomplishment of CRLA, statewide, was getting the state to adopt the requirement of an affirmative action hiring program, which led to the implementation of a comprehensive plan in the Madera School District and a threefold jump in the number of Chicano teachers. Educational opportunity reform is high on the list of priorities for the Madera CRLA. Lightstone believes that throughout the San Joaquin Valley, school districts are dominated by farmer interest groups whose intent is to deprive large numbers of Chicano children of an adequate education in order to provide a continuous source of cheap labor.

Even today, the dropout rate for minority children in Madera schools is 50% *before* high school. Until educational opportunity for minority children is improved, Lightstone doubts any other attempted reforms could be very effective.

Another subject presently high on Madera CRLA's list of priorities (and a burgeoning source of cases) is the Supplemental Security Income (S.S.I.) program, through which monthly payments are made to the aged, blind, and disabled poor. Two years ago, Congress decided to remove the program from local government to the Social Security Administration. The results have been "disastrous." Nonpayment, underpayment, and even overpayment are common problems. "It's a shame it takes an attorney for blind persons to get their checks from the government. But it does," said Lightstone.

Since the inauguration of the national program in January, 1974, thousands of people around the state have been overpaid. Now the Social Security Administration is demanding repayment. Although there is a provision for applying to have the repayment waived, that information, included in the demand letter, is difficult to understand, and if the appropriate papers are not filed within thirty days, the waiver is denied. According to Lightstone, people are nervous wrecks when they come in, frequently, being unable to sleep after receiving the demand. But what worries Lightstone are those cases which haven't been brought to CRLA's attention.

Another current project pursued jointly by CRLA and Mary Louise Frampton (a professor of constitutional law at SJCL) is an action, which is based on constitutional and statutory grounds, filed against Madera County to compel improvement of jail conditions and development of rehabilitation programs. Lightstone was reluctant to discuss the matter in detail because litigation is pending.

Procedures and Policies

reducing the procedure for computation to written form. It is hoped that these actions will produce reliable calculations. However, should students suspect an error, Wanger emphasized that each student has a right to review his transcript and indeed may obtain a copy of it upon request and payment of any necessary fees.

The administration and faculty are worried about the disappearance of examination questions and answers, which occurred last year in two instances. Although still not totally satisfied with the arrangements for storage, the school has increased the security. Exams are now stored in space rented in a building in Fresno. Only authorized persons will be given access to the exams.

Several students asked questions about the operation and membership of the governing bodies of the school. Basically, matters of academic policy originate with the Faculty Committee and require the concurrence of the administration; policies set by these bodies are operative until modified by the Board of Trustees, except for policies relating to faculty selection, classification, and termination, which are modified only by action of the Board of Trustees.

The Faculty Committee meets at least once a month; the administration meets at least twice a month and participates in an additional monthly meeting with the president of the student association, the sole purpose of which is to discuss problems and proposals as they relate to students. The Board of Trustees meets quarterly on the second Tuesday of the months of December, March, and September, and on one day in June. The Board reviews all changes of policies and in effect makes all of the final decisions in matters relating to the school. In some cases, the participation of the Board in the decision making process is active; in others, such as selection of faculty, the Board's activities involve a more passive form of approval.

The members of the administration who are active in determinations of policy and procedure are Dean Eymann, Assistant Dean John Loomis, and Wanger; the registrar has not yet been given a policy-making role. The Faculty Committee is comprised of adjunct professors, who are defined in the school's policy manual (Section II [B] [3]) as instructors in substantive courses who have three or more years of law school teaching experience. The present members of the committee are Loomis, Wanger, and Mr. Melvin Nitz, who is the chairman. According to Wanger, these three faculty members are the only teachers who have achieved the status of adjunct professor, and thus are the only possible members. Eymann is an ex officio member with no voice and no vote.

It is apparent that the extensive powers of the administration and the Faculty Committee, as governing bodies of the school, are in fact exercised by substantially the same people by virtue of the overlapping membership. A reading of the school's policy and procedure manual indicates that most important policy changes require the agreement of these two bodies, and the existence of two separate bodies would support the conclusion that it was intended that the two groups check and balance each other. The overlap in membership, however unavoidable it might be, dilutes the operation of checks and balances, and decreases at some stage of proceedings the range of ideas and points of view so important to the formation of sound policy.

Perhaps it is because of such circumstances that Wanger stresses the importance of student involvement in the school. "I have personally been concerned that it's very important for students to give input into the teaching process and the teaching system. We need to know from the students if there are problems, what the problems are, and if there are things they need and want.... It's important to get the message." Wanger said that if students do not believe that the faculty and administration are getting the message, that there should be action on the part of the students to correct the situation. Wanger indicated that the administration has appreciated the interest of students in the past, and that had students not intervened in some of the controversies which have arisen, the school might have faced serious problems. He believes that the school relies heavily on the members of student government, and he hopes that they will present to the administration all points of view. He believes that the continued success of the school will entail the enfranchisement of every member of the student association. He suggested that if students think that more communication is needed, the school might institute an open townhall-type meeting where all members of the administration would be present to speak with students and answer their questions.

for sale

BOOKS

SHEPARDS CITATIONS — GIL OLESON, Rep. 910 15th St., Sacramento, Calif. 95814. Phone (916) 444-6796.