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CAVEAT

Vol. XIII, No. 9 Golden Gate University School of Law October 17, 1977

DO NOT LAW OCT 24 1977 GOLDEN GATE UNIVERSITY

SBA Working on Budget N.L.G. Criticized

SBA meetings have had a tendency of late to leave the most controversial matters for last. Ten minutes before the close of last Tuesday's budget meeting student David Rubinoff speaking for himself and other students questioned whether the school chapter of the National Lawyer's Guild should receive any SBA allocation in light of their national organization's stand in support of the Palestine Liberation Organization. David Cooper responded questioning whether the SBA would ever see it desirable to manipulate a student group's politics through the withholding of SBA funds. The problem was deferred to this week's SBA meeting when the budgets of the sports groups and the Third World Coalition will also be studied and final decisions will be made on all allocations.

Early in the meeting a question was raised concerning allocating money to the Women's Association which has a number of closed meetings. It was the general feeling of the people present that although men might be excluded from some of the Women's Association meetings that they were not excluded from the benefits of having an assertive women's association in the school. Also many of the Women's Association events and workshops are open to all.

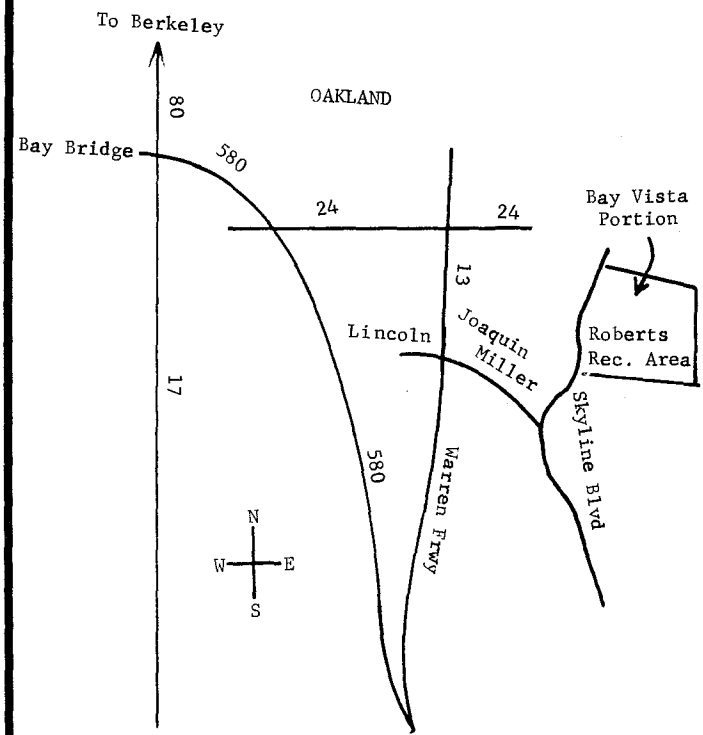
The tentative budgets so far are: Caveat $1400 plus $48 in check-off money. Gay Coalition received $70 plus $14 in check-off. The Women's Association was cut $200 to $665 plus $102 in check-off (much dissatisfaction with their refrigerator request). Lesbians in Law received $250 of $335 requested plus $20 in check-off. The basis for much of the trimming was the conclusion by many officers and representatives that too much of the total budget requests was going to films and speakers. The SBA reserved but did not exercize the right to exclude items from groups' budgets.

D.C.

School Picnic this Sunday

This Sunday, October 22, is the date for the annual Student/Faculty Picnic. There will be beer, soft drinks, cole slaw, burgers and dogs. Bring your friends, frisbees, footballs, baseball mitts, etc. (No Gilberts outlines please!)

Starting time is 11 AM. The Place is Bay Vista Portion of Roberts Recreational Area, on Skyline Boulevard in Oakland.



YMCA Pass Program: Off & Running

After a year of running around and negotiating, students Ricky Rosen and Michael Rosas have succeeded in getting the student body a 2 semester pass to the YMCA Physical Department at 166 Embarcadero between Mission and Howard Street. The 25 passes are good during all hours the Y is open: 7 AM - 9 PM, Monday to Friday, and Saturday, 12 - 4 PM. The way to get a pass is to go to the Faculty Center. Leave your valid student card with Jeanne Lawrence or Mary Selvy who will give you the pass which is due back 24 hours later. Passes issued Friday are due back on Monday. The Faculty Center is open 8:30 AM to 7 PM, Monday to Friday. The Center is only the temporary location for the passes. There is a possibility that in November the passes will be available at the law library which is open longer hours. Some faculty members are participating in the program too, but they must pay $25 for the privilege.

Facilities at the Y include basketball and handball courts, sauna, swimming pool and a weight room. For 25¢ you get a towel and lock for a locker which must be relinquished when you leave. Remember: you must bring your own shorts, swim suit, and gym shoes. To use the courts you must wear shorts (not long pants) and gym shoes (rubber soled street shoes are no good). Also remember: you have to take away everything you brought with you. So bring along a plastic bag for your swim gear.

D.C.

LetterS

LAW SCHOOL PICNIC

Dear Editors:

As I understand it, the real purpose behind the annual GGU Law School picnic/softball game is to afford the GGULS community an opportunity to socialize. The picnic/softball game is merely a vehicle for this purpose. Because baseball has traditionally been an activity boys became more familiarized with than girls, and because a good number of men in the US find it difficult to come to terms with the fact that they will never play professional baseball, it is a game more men than women are experienced in, and it brings out a competitive spirit in many men that one could perhaps characterize as desperate.

Seeing as that such an activity has been chosen for our annual school autumn get-together, I strongly suggest that those organizing and participating in the game implement the following so that women and men alike will have an enjoyable time:

The score for the game should be kept in such a way as to be meaningless.

In order for everyone to feel they are welcome to play it must be made clear that how "well" a person plays is not important. Eliminating any meaning to winning is the most effective way to accomplish this end. It invites those who have never played before to do so, allows players the freedom to "mess up" and not feel they have let anyone down, and keeps the eager beavers from "backing up" less experienced players (thereby robbing the latter of the enjoyment of participation in group sports).

(If some men are having a hard time understanding what I've written thus far and find themselves biting down on their baseball mits in anguish, just imagine how you would feel if it were the annual GGULS picnic/sewing bee you were going to attend.)

A good way to render the score meaningless and keep competitiveness and exclusion to a minimum is to give points to team B anytime a member of team A manifests a serious attitude towards the game. (Some umpires will be needed to rule on these manifestations.) Examples of such manifestations are: speaking or gesturing in a negative manner to a teammate who has "messed up" a play; and running out of one's position on the field to that of a team mate in order to catch or throw a ball for the other. The rulings on manifestations should be appropriately arbitrary. Ideally, between the arbitrary rulings and inevitable undeniable manifestations of seriousness, the resulting score will render the determination of who wins the game completely nonsensical. Hopefully all players will realize this fact early on in the game, relax, joke, be considerate of one another, and yes, yes, have a good time without worrying about success or winning.

Jenny Brown

P.S. I would like to make a plea for vegetarians in our school (as a former one myself) that some non-meat food be provided. The vegetarians helped fund this event too.

(I second that!! R.E.)

M.O.L.E.S. REPLY

Dear Editors,

I would like to request that the SBA serve raw meat and maraschino cherries at the upcoming picnic since that is the only food that M.O.L.E.s eat.

Eric Saffire, President in exile, M.O.L.E.s

DOES AFFIRMATIVE ACTION EQUAL PREFERENCE BY RACE?

(Michael Joseph is a recent graduate of GGU Law School. He wrote this letter to the Examiner and asked us to print it.)

There are, says Jesse H. Choper, constitutional law expert and professor of law, U.C. Berkeley, four constitutionally permissible theories by which the US Supreme Court could resolve the subject-problem of your 12 September 1977 Editorial: "As the Bakke case nears a climax".

From all appearance, the UC Davis Administration will not be found to have purposefully discriminated against minorities - a class of citizens historically identified as Negroes - in the strenuous competition for seats in its medical school.

Consequently, in resolving UC Davis' appeal from the California Supreme Court's determination that Mr. Bakke's reliance on the 14th Amendment's Equal Protection Clause is appropriate, the US Supreme Court will be faced with the following alternatives: a) affirm Bakke's position because "the constitution is color blind" (as fate would have it, those words were first spoken in the dissenting opinion of a case affirming "separate but equal" treatment for Negroes); b) favor Davis' affirmative action , on a temporary basis as a part of a remedy - transitional benign discrimination - to accommodate those victims of past discrimination, in the same spirit as has been generously done for women (notwithstanding this class of citizens more than any other, can , if desired resort to extraordinary relief through the political process), and which is the position of the US Justice Department ("The Bakke Case" 25 September 1977 Examiner-Chronicle editorial); c) reverse the California Supreme Court because UC Davis had shown a compelling and highly desirable state interest in upgrading the pitiful number of Blacks in the medical profession (racial discrimination against Japanese-looking residents and citizens has been upheld because of a "pressing public necessity" generated by the pendency of World War II which required their confinement to concentration camps, on no other basis but ancestry); finally, d) the Supreme Court could, as it has done before, recognize the historical significance of the 14th Amendment noting that this legislation had been enacted primarily to carry into effect at least some of the objectives fought for in the Civil War, find that the Amendment's chief intention was to protect minorities against majority discrimination (since it controls the political process, the majority needs no such special legislation), and rule that majority persons like Mr. Bakke, and now another student whose Russian parents migrated to the US but seven years ago ("Second reverse discrimination suit at Davis" Examiner, 22 September 1977), cannot use the 14th Amendment to insure themselves a place in medical school on the sole ground their grade point average is higher than their minority competititors' (but this is not to say that these citizens or residents are without rights or legal remedies - it is just that they cannot use the 14th Amendment's Equal Protection Clause in that manner). Indeed, Justice Holmes' reference to equal protection as "the usual last resort of constitutional arguments" had, until recently, yielded to cases brought by minorities only.

Whenever it is possible, however, the Supreme Court construes or interprets state law or action in a manner which avoids questions of constitutionality. Your aforementioned editorials surrounded the term "preference" which construction or interpretation could given the Supreme Court a path out of the quadlemma present before it.

You noted retired Justice William O. Douglas had said, in his attempt to have the DeFunis "reverse discrimination" matter heard, that "there is no constitutional right for any race to be preferred". You also editorialized the California Supreme Court's holding that UC Davis' special admission procedures were violative of constitutional rights "because it affords preference on the basis of race".

(Continued on back page)

announcements

INTERNATIONAL MOOT COURT COMPETITION

Students interested in participating in the 1978 Jessup International Law Moot Court Competition please contact Joel Marsh at the Law Faculty Center or call (days) 626-4743.

This is a national and international competition providing law students with an opportunity to argue timely questions of international law. This year's problem concerns an international dispute raising questions of international human rights and the law of armed conflict. Teams of two to five students from each participating law school will present briefs and oral argument for both sides of the problem. The competition is sponsored by the American Society of International Law, and last year included teams from 150 law schools in 20 different countries.

NOTICE FROM THE CURRICULUM COMMITTEE

The Committee needs your input to evaluate whether or not a course on Water Law should be added to the curriculum. There are several sign-up sheets describing the course posted at convenient places on the second floor to assess student interest. Please try to respond by November 1.

JUSTICE COMMITTEE FOR HUEY P. NEWTOM & THE BLACK PANTHER PARTY AND THE LEGAL AID AND EDUCATIONAL PROGRAM

The Justice Committee will be working with the $100 million civil rights suit filed by the Black Panther Party against the CIA, FBI and IRS. Help is needed with pretrial preparation such as legal research to substantiate claims. Huey Newton's defense team needs help with pretrial preparation such as legal research and interviewing witnesses. The Legal Aid Program is concerned with community advocacy (help is needed with the effort to provide competent paralegal assistance and education for the Oakland community), research on police practices, and trial observation.

Third World students are particularly encouraged to participate in these programs. Write to 9502 East 14th Street, Oakland, or call 635-8037 or 562-5261.

FREE DEMONSTRATION ASSERTIVENESS TRAINING

A free assertiveness training demonstration for men and women will be held on Tuesday, October 18 from noon to 1:30 in Room 207. Deborah Weinstein, M.A., M.F.C.C. and Becky Jenkins will show how assertiveness can be the key to effective lawyering. A subsequent six-session course will be offered at sliding scale fees.

No obligation. Bring your questions. Bring lunch. Bring a friend.

THIRD-WORLD COALITION MEETING

Another Third-World Coalition meeting is coming up! Tuesday, October 18, 5:45 pm to 6:45. HAPPY HOLLOWEEN!

SBA MEETING

Meeting on Thursday at 3:30 in Room 207. First half of meeting will be regular SBA business. The second half of the meeting will be budget finalizing as to the Sports Committee, Third World Coalition and NLG.

PROPOSED CHANGE IN EXAM SCHEDULE

The proposed change in the exam schedule to move the Con Law exams from Dec. 9 to Dec. 8 has been met with objections from a great many students. The schedule will remain as is. However, those of you who are enrolled in both Stickgold's Con Law and Wills & Trusts may take the Con Law exam on Friday, Dec. 9, from 5:15-7:15 (it will be a two hour exam) instead of at the later hour. A sign-up sheet will be passed around in Stickgold's day and night Con Law classes this Wednesday, Oct. 19. Those of you who want to take the exam at the earlier hour must sign-up at this time or by seeing Sharon Golub in the Deans' Offices during the week of Oct. 17. This option is available only to students who are enrolled in both Stickgold's Con Law and Wills & Trusts.

FIRST YEAR WOMEN

Phyllis Beesley, a GGU graduate, who recently passed the Bar, will be here on Tuesday, October 18th to share with us some of her ideas on how to get through the first year, including how to prepare for Bar Exams. Bring any questions you may have to Room 203 at 3 PM.

FROM WALLY'S OFFICE

The Corporate Law Section of the SF Bar Association is sending representatives to speak to interested students on Tuesday, October 18 in the 5th floor auditorium from noon to 1 PM. Bechtel, Pacific Telephone and Telegraph, US Steel, Union Bank, Travelers Insurance, and California Canners & Growers will be represented. All students welcome.

EVALUATIONS

Student evaluations of classes will be conducted during the weeks of October 17 and 24. Students who are enrolled in classes that do not meet regularly (e.g., clinics) will receive evaluation forms in the mail. Evaluations are important and you are urged to participate.

LIBRARY TOURS

Optional tours will be given for first year Writing and Research students this week by Joyce Harmon, Reference Librarian. Tour times are:

Tues, Oct. 18: 8:30 AM, 9 AM, 5:30 PM
Wed., Oct. 19: 8:30 AM, 9 AM
Thur, Oct. 20: 8:30 AM, 9 AM, 5:30 PM

CORRECTIONS TO LAST WEEK'S SBA/FSC ARTICLE

There are 14 SBA class reps, two from each year's day section and two from each years night section.

There are seven student members on the FSC. They include one from each committee (except clinic) and the SBA president.

The Dean is a voting member of the FSC.

The Budget Committee is composed of 3 students and the Dean only.

The Evaluations Committee does not report to the FSC. Their decisions are final.

(Affirmative Action letter, continued from page 2)

The question I offer, is whether the procedure is in fact a preference based on race. It is not; because racial categorization (by quota) is incidental to the procedure's non-racial goal, e.g., accessible medical care for the entire spectrum of the multi-ethnic US citizenry, the presence of racial preference is ostensibly deducible. Actually, as the procedure in question achieves its objective all racial categorization shall proportionately decline. This is due to the existence of a primary racial categorization manifest in those social conditions which necessitate the implementation of the procedure. Consequently, removal of those conditions necessarily diminish the racial categorization which describes them.

Preference presupposes parity; its sense - "pre" meaning to put before, and "ference" meaning to have classified objects to a general category - is to choose or esteem above another belonging to the same category. Illustrating: a person having a serious illness will be referred to a doctor as between a paramedic and the doctor (the general category), but as between an older experiences doctor and another somewhat younger, the more experiences would more likely be preferred. Preference, therefore, could not occur if the objects of concern were of different categories.

Similarly, the US Supreme Court, as a precondition to equal protection resolution, first ascertains whether the challenged classification drawn by the state law involves similarly situated persons as defined by the challenged law. Indeed, a "reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law". Consonantly, a classification which excludes all persons not similarly situated with respect to the purpose of the law is reasonable.

Mr. Bakke and his minority competitors are not similarly situated with respect to the purpose of the special admissions procedure. Whites (Bakke) and Negroes (minorities) are not equal nor similar in political or economic terms. Since they could not be referred to the same category (other than as students which are in fact subclasses of their primary race classes) with respect to the purpose of the special admission procedure, preference is not the appropriate term to characterize UC Davis' procedures.

Of course it can be said that Blacks and Whites are equal before the law. But that statement would not meet the difficulty of the question. Conceivably, Blacks could be blamed for their higher rate of infant mortality, and while doing so, we can add their shorter longevity span to the charge. It is difficult, however, to hold Blacks responsible for the reality that but one percent of the national wealth is in their possession. It is even more difficult, I suggest, to blame them with having but 60% of the earning power of their white counterparts. These conditions are as real as Bakke's grade point average.

Without regard as to whom those conditions are imputed, disparity, not parity, describes the chasm between the social, political, and economic class from whence came Bakke and the one for which those minorities are attempting to immure some semblance of social, political, and economic significance.

In a nutshell, UC Davis; special admission procedure refers (benign discrimination?) minorities to the medical profession. When, under this program or by any other manner, the number of minorities in the medical profession reaches the racial proportions of the US citizenry-parity (which, hopefully, will be self sustaining by the interactions of such phenomena as role-modeling and esteem radiance which tends to dull presumptions of inferiority) - further reference based on disparity would (of course be erroneous) by definition, be a preference based on race (invidious discrimination?). Thus, the honorable words of Justice Douglas and California Supreme Court;s outstanding Justice, Stanley Mosk, will continue to be truthful and desirable, while minorities replace their previously rungless ladder with a practical tool with which to climb from the quagmire of inequity.

And into the presumed equality which the 14th Amendment's Equal Protection Clause seeks to protect by prohibiting the unequal protection thereof.

TRIVIA BRINGS BIG MONEY

The Caveat received this letter in the mail this week.

$2,500

R E W A R D

For the headnotes of a case that was ordered to be placed in the advanced sheets of the Southern Reporter on a one time basis. One of the Federal Advance sheets also reported in the annual pocket parts of the Florida Digest for the year 1962 but could be in the pocket parts for 1961-63 or 1964. The file was ordered to be sealed, fictitious names were to be used. The case involves an order declaring a purported assignment invalid which involved property deeded to a man's grandson or put in trust to be delivered when the grandson reached a certain age. A stipulation was made between the attorneys that the trust would not be paid until the death of the father who had the purported assignment. The father sold the Court on the idea that he had a drinking problem which was responsible for his conduct, that the family was very close, etc.

The Court also ordered that if the case was reported, it was to be indexed in a special way. The headnotes also appeared in the decenial digest. The Court was requested not to report the case, but ordered it reported on a limited basis because the father had involked venue. The case could be a Federal District Court case transferred to Florida for trial.

The property is probably in Georgia. All Florida Courts, Federal and State have been contacted. The case was probably decided in approximately 1960. This reward is payable only one time and to the first person or persons furnishing the information.

Contact:

INGRAM
P.O. Box 4921
311 West Monroe St.
Jacksonville, Fla. 32201