DuBOSE WINS PRESIDENCY

By Marda Walters

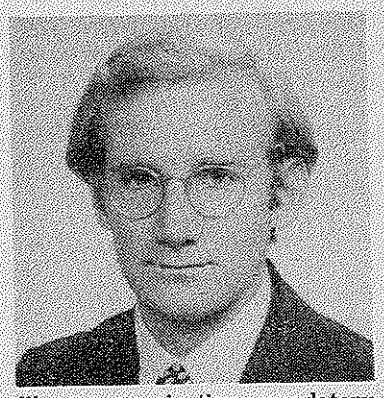
Cumberland political newcomer Dubose Porter was elected Student Bar Association president by a strong margin in a run off election here March 13.

Other newly elected officers include: Bill Brittain, vice president; Selena Cason, secretary; and Bill Lawless, treasurer.

Porter's 346 votes edged out current SBA Treasurer Lee Meadows by 176 votes, according to the official SBA Elections Commission tally.

"My being elected shows that the students are dissatisfied with the role the SBA has played in the past and that there are some substantive problems that need to be confronted," Porter said following the Monday election. Admittedly a dark horse candidate, the 24-year-old native of Dublin, Georgia credits his victory to those supporters who want a "more student-oriented governing body."

Porter, who will take office April 8 during Law Week activities, says his immediate goals include a more extensive teacher evaluation program, better



library organization, mandatory publication of grade distributions, a hometown news coverage program and a better working relationship with Samford administration and student government.

In the vice presidential race, Bill Brittain took 277 votes to Claude Rhea's 177 votes in the run off election. Selena Cason was elected secretary with 285 votes to Mary Jane Nettles' 214 votes. Bill Lawless, with 288 votes, won the treasurer's spot with opponent Becky Bozeman taking 208 votes.

Other election results include: Bill Malone, senior class president; Richard Mauk, senior class vice president; Judy N. Harris, senior class representative; Art Aspinwall, junior class president; Carolyn Thorne and Henry Penick, junior class representatives; Robert Cauthen, ABA/LSD representative; Tom Buck, Bob Echols, Anne Gibbons, Bureon Ledbetter, Rick Meadows and Michael Overstreet, senior representatives to the honor court; and Daniel Aaronson, John Bentley, Jim Carson, Ben George, Arthur Leslie and Carolyn Williams, junior representatives to the honor court.

Pro Confesso

Vol. VIII No. 6 Cumberland School of Law at Samford University March 17, 1978

Allen and Askew to speak

U. S. Senator James B. Allen (D., Al.) will address this year's Law Day Banquet on Saturday, April 8, on Samford's Campus. The noted senator from Gadsden has been a vocal legislator on many issues and is currently involved with the proposed Panama Canal Treaties.

The Justice Glenn Terrell Chapter, Law Student Section of the Florida Bar, will host a luncheon on Saturday, March 8, at 12:00 Noon honoring Governor Reubin O. Askew of Florida. Elected to the Florida statehouse in 1970, Governor Askew became the first governor in Florida's history to be re-elected to a second, consecutive four-year term in the 1974 general election.

The Trial Advocacy Program will sponsor several events during Law Week. Mock Trial Competition for both juniors and seniors will be held on the 6th and 7th as well as the annual Trial Advocacy Seminar to be held on Wednesday, April 5th. Featuring practicing attorneys from several states who are experts in the area, the Seminar will address the various aspects of a mock civil suit with the guest speakers participating and commenting on the proceedings. Participants will include Al Cone of Florida, Bill Smith and David Wininger of Alabama, and several other trial practitioners. The next issue of the **Pro Confesso**, to be distributed on April 3rd, will contain a complete listing and discription of Law Week.

Bakke: affirmative discrimination-Part I

by: Steve Allen

The Regents of the University of California v Bakke is one of the most important cases to come before the U. S. Supreme Court in years. It may alter the course of society, as did **Brown v. Board of Education**. The issues in **Bakke** go far beyond the legality of a program of preferential admission to medical school. A common characteristic of totalitarian societies is that they deal with people as members of groups or classes rather than as individuals; a common characteristic of free societies is that they deal with individuals. Almost by definition, "free" countries are individualistic; "individualistic" countries are free.

Allan Bakke majored in engineering at the University of Minnesota, earning a 3.51 average on a four-point scale. Following graduation, he served four years in the Marine Corps, including seven month in Viet Nam. Following his release, he joined NASA, where he did research on the effect of space on the human body. Working as a hospital volunteer and taking courses in chemistry and biology in his spare time, he realized he wanted to become a medical doctor. In late 1972 and early 1973, Bakke applied to the Davis Medical School of the University of California. His grade point average from college was slightly higher than the average of those accepted to Davis at that time. Bakke's Medical College Admissions Test scores, the scores of those admitted on the normal track, and the scores of those admitted under the special program for minorities were as follows (expressed as percentiles):

	1973	1974
Bakke	96, 94, 97, 72	96, 94, 97, 72
Regular	81, 76, 83, 69	69, 67, 82, 72
Minority	46, 24, 35, 33	34, 30, 37, 18

The school official who interviewed Bakke recommended him for admission, declaring him "a very desirable applicant."

Bitterly disappointed by the rejection, Bakke checked into the school's admissions policy. A sympathetic university official helped him gather information which indicated that the "affirmative action" plan was responsible for Bakke's rejection. (It was later learned that

Cont. on pg. 3

State Political Forum held at Cumberland

The Student Bar Association is sponsoring a series of forums during March, which feature the candidates for the top offices in Alabama. Co-ordinating the events, Mike Griffin and Nancy Jones have done an outstanding job with logistics and with providing choice refreshments. The first program featured the Attorney General candidates. They are pictured above at left. They are from the left: Bob Morrow, Charles Gradick, Ray Acton, Bill Benton and Julian McPhillips. The second forum focused on the Lieutenant Governor's race. Above at right, they are from the left: Tom Drake, Bill King, Jamie Ethredge, George McMillian and Bob Hams. The third spotlighted the Gubernatorial race and featured every major candidate except Albert Brewer. The U.S. Senate race will be the subject of the forum which will be held this Tuesday evening at 7 P.M. All are urged to attend.

Soia league looks to playoffs

by Daniel Aaronson

Just a few weeks remain to the Cumberland three man basketball leauge, properly known as the Soia Mentschikoff League. The league was started seven years ago by Professor Riegert, and has continually grown ever since. Participants now include over 100 law students and a number of professors.

The purposes of the league are threefold: first, exercise for the law student, second, relaxation from the tensions of studying, and third, as Tony Abbott, a freshman member of one of the teams put it "a way to meet people, I think I've met more people through the league, than I did in all my classes".

The Soia Mentschikoff League this year has 26 teams, with each team having as many as six players, not including faculty, who do not count as far as total team members. A championship team will be crowned after the upcoming tournament. The teams will be broken down into three divisions, A, B, and C, with the best teams in the A bracket. Each bracket will hold a two out of three, 15 point, double elimination, round robbin tournament, to determine its champion. The winner of bracket A is the overall champion.

The teams are placed in their respective brackets by Doug Valeska, who is running the league for the second year. He tries to put teams of the same ability in the same bracket, in order to enhance competition and enjoyment.

This years championship team will receive a trophy, made possible by a $50 donation from a recent alumnus of Cumberland and the Soia Mentschikoff League. But the championship trophy is not the only thing that causes excitement in the league. There is also Top Ten Rankings each week, and schedule, posted by Valeska. And for the individual stars, of course, there is the Player of the Week and the Outstanding Player of the Year. This year's first Player of the Week was Dean Brad Bishop.

But with all these awards and trophies, the Soia Mentchikoff Placque is still the leagues' prize possession. The placque contains the names of all the team captains since the league began seven years ago.

The Soia Mentchikoff League seems to get bigger and better each year with added attractions such as "The Sandlerinos" with their team jerseys, and of course the new championship trophy. The only thing that stands in the way of the league continuing to grow is the conflicts involved with the use of the Samford gym. But Professor Riegert is doing his utmost to obtain the use of the gym, even going to the Samford Administration, in order to keep the Soia Mentschikoff League an institution here at Cumberland.

Bakke: affirmative discrimination - Part I

cont. from pg. 1

Bakke was also discriminated against on account of age. He was born in 1940.)

He discovered that Davis had a two-track system for admissions. Of 100 openings, 16 were set aside for favored minorities. Race was the only criterion; no poor white had ever been considered for one of the 16 slots and blacks were included regardless of their position in society.

In June 1974, Bakke sued the regents of the University of California. A lower court found the program to be unconstitutional but did not order the school to admit Bakke. Both sides appealed.

In September 1976, the California Supreme Court, one of the most liberal in the country, ruled in a six-to-one decision that the admissions policy was unconstitutional. Additionally, it placed the burden on the university to prove Bakke should not be admitted.

Now the case is in the lap of the Supreme Court, which dodged the issue of preferential admissions when it decided that the **Defunis** case was moot. (DeFunis had been denied admission to law school in a situation similar to that in the Bakke case, but by the time the case got to the Supreme Court DeFunis had been admitted and was about the graduate. Interestingly, DeFunis filed an amicus curiae brief in the Bakke case for the conservative organization Young Americans for Freedom.)

An admission policy based on race violates both the 14th Amendment and 42 USC ⌐ 1981.

The 14th Amendment states, in part: "(n)or shall any state. . . deny to any person, within its jurisdiction the equal protection of the laws.' Although the argument has been made that the amendment was designed solely for the protection of blacks, its has been applied to all types of persons, including corporations. Examples include **Smith v. Cahoon**, 283 U.S. 553, 75 L.Ed. 1264 (1931); **Hines v. Davidowitz**, 312 U.S. 52, 85 L.Ed. 581 (1941); **Skinner v. Oklahoma**, 316 U.S. 535, 86 L.Ed. 1655 (1942); **Takahashi v. Fish and Game Commission**, 334 U.S. 410, 92 L.Ed. 1478 (1948); **Kentucky Finance Corp. v. Paramount Auto Exchange Corp.**, 252 U.S. 544, 67 L.Ed. 1112 (1923).

Further evidence that the 14th Amendment protects whites as well as blacks can be found in **Strauder v. West Virginia**, 100 U.S. 303 (1880):

> If in those states where the colored people constitute a majority of the entire population, a law should be enacted excluding all Whites from jury service,. . . we apprehend no one would be erred to claim that it would not be a denial to White men of the equal protection of the laws. Nor, if a law was passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment.

Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed. 2d 1018 (1967) established that a racial classification imposed by the state ispresumed to be violative of the equal protection clause. This applies to both negative and affirmative descrimination. (**Anderson v. San Francisco School District**, 357 F.Supp. 248 (1972); **Pennsylvania v. Glickman**, 370 F.Supp. 724 (1974) (D.C. W.D. PA))

The argument that "affirmative action" preferential admission is not discriminatory against whites as a group is irrelevant. In **Shelley v. Kramer**, 334 U.S. 1, 22, the U.S. Supreme Court said, "The rights created by the first section of the 14th Amendment are by its terms guaranteed to the individual. The rights established are personal rights."

The special admissions program at Davis was not designed to aid the disadvantages within Constitional standards; it was based solely and exclusively on the suspect criterion of race. No effort was made at any time to extend the program to poor whites or to exclude upper-class blacks.

Allan Bakke is also protected from racial discrimination through operation of 42 USC ⌐ 1981, which states in part: "All persons within the jurisdiction of the United States shall have the same right in every state or territory to make and enforce contracts... as enjoyed by White citizens..." Bakke sought to enter into a contract with the Davis Medical School, which refused him on grounds of race.

42 USC ⌐ 1981 affords protection to whites as well as nonwhites. In **McDonald v. Sante Fe Trail Transportation Co. (and Teamsters Local 988)**, 49 L.Ed. 2d 493 (Advance No. 2, August 20, 1976), the Supreme Court stated:

> ...(w)e cannot accept the view that the terms of ⌐ 1981 excluded application to racial discrimination against White persons. On the contrary, the statute explicitly applies to "all persons" including White persons.

Davis Medical School showed neither evidence of past discrimination nor a judicial decree requiring remedial measures. Thus, ⌐ 1981 serves to protect Bakke from racial discrimination in admission.

NEXT: A Look at Quotas

Classified

(1)
Frontier Mobile Home 12 x 65 AC, W&D, 2BR, LG FT KIT LR, DR, 6x12 Shed, Exc. Cond. Hoover-$4400 823-2213/933-2740

(2)
Prosser Horn Book, Gd Cond. $10/or best offer 326-6216 Also Fed. Inc. Tax Text; current Never Been Used-$10

Recent Decisions of Interest

by Donny Dunn, Research Editor

Compliments of AJTR

1. Board of Curators of the University of Missouri v. Horowitz, 46 U.S.L.W. 4179 (March 1, 1978). Plaintiff, a medical student in her final year before graduation, was dismissed from school for substandard academic and clinical performance. Plaintiff brought an action against the school, charging that her dismissal deprived her of the procedural due process guaranteed her by the fourteenth amendment of the United States Constitution. Plaintif maintained that she was deprived of the "liberty interest" of continuing her medical education. However, the United States Supreme Court declined to decide the issue of her "liberty interest" and concluded that plaintiff had been given the due process required by the fourteenth amendment. The Court rested its decision on the longstanding judicial recognition that academic dismissals, unlike disciplinary dismissals, have not required a hearing before school officials.

2. State v. Jones (S.C.) (unreported decision to date summarized in The Raleigh News and Observer). A Charleston, S.C. circuit court judge admitted evidence of bite marks in a rape case, comparing those found on the victim's body with the bite of one of the two defendants on trial for criminal sexual assault and other crimes. This evidence was introduced through the testimony of a forensic odontologist, who compared life size photographs of the teeth marks on the victim with plaster casts of the defendant's teeth. This decision, if upheld on appeal, would make South Carolina only the fifth state to admit such evidence in rape cases, joining California, Illinois, Pennsylvania, and Texas.

3. Blessing v. United States, 46 U.S.L.W. 1130 (1978). A United States District Court in Pennsylvania refused to dismiss a Federal Tort Claims Act suit against the government based on the negligent inspection of equipment by OSHA inspectors. Private employees contended that, because of the failure to inspect the defective equipment, no knowledge of these defects came to their attention, and hence no corrective action was taken. The government's defense was based on the discretionary function exception to the Federal Tort Claims Act, which excludes claims arising from regulatory activities. The court ruled that, in order to determine whether this exception applied, there would have to be a trial to decide whether the failure to inspect was a policy decision, barring the suit, or actionable negligence by the inspectors.

4. Northrup v. Northrup (unreported decision to date summarized in the Raleigh News and Observer) The New York Court of Appeals recently ruled that a man must continue paying alimony even if his former wife was living openly with another man, as long as she was not representing herself as her new boyfriend's wife. In a 5 to 2 decision, reversing two lower courts, and interpreting a 1938 law, the court said that, absent the woman's representation of herself as a wife, the courts have no power to rescind the alimony order. Mr. and Mrs. Northrup were divorced in 1974, and Mrs. Northrup was awarded $160 per month in alimony. Two weeks later, she began living with another man. Northrup then stopped the alimony payments. The dissenting opinion said that the majority's interpretation was unrealistic in terms of current social standards and practices, and added that such a decision left the court powerless to give the husband relief "no matter how unfair this (alimony) may be under the circumstances." The decision seems to encourage blatant cohabitation over marriage the judicial equivalent of the government's provisions regarding social security payments to elderly people.

Adam v. Eve Women in the law

Everyone has the same opportunity to succeed in law school, right? It's just that some folks carry the load a little easier than others. But there are some that claim the load is not evenly distributed.

While women make up 16% of the Cumberland body, their numbers are as much as twice this in the traditionally high performance groups.

Here are some current statistics for these groups at Cumberland:

Top 10%	71	29
"Booked" courses	65	35
Trial Advocacy	76	24
Law Review	69	31

The most marked difference is in those who booked courses. In actual numbers the ratio is even more defined, as several more men than women have booked more than one course. This means that 14% of all women students obtained the highest grade in their class, while only 4% of the men succeeded in this.

These figures, however, do not reflect an in-depth study and may be read more than one way. What is your opinion?

The Bakke Case: affirmative discrimination part II

by Steve Allen

Supporters of the Civil Rights Act of 1964 were careful to point out that under no circumstances would the act lead to quotas or "goals". Senator Hubert Humphrey stated that the act "does not require an employer to achieve any kind of racial balance in his work force by giving any kind of preferential treatment to any individual or group." (U.S. Equal Employment Opportunity Commission, **Legislative History of Titles VII and XI of Civil Rights Act of 1964**, U.S. Government Printing Office, p. 3005). Senator Joseph Clark stated that "Quotas are themselves discriminatory." (Ibid., p. 3015)

Aware that Congress would not approve the Civil Rights Act if there was any reasonable possibility of the imposition of quotas, Senator Clark and Senator Clifford Case, the floor managers of the bill, submitted a memorandum stating:

There is no requirement in Title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or refuse to hire on the basis of race. It must be emphasized *that discrimination is prohibited as to any individual* ... the question in each case would be whether that individual was discriminated against. (110 Congressional Record 7213, April 8, 1964.)

Along the same lines, the Justice Department took the position that:

There is no provision, either in Title VII or in any other part of the bill, that requires or authorizes any federal agency or federal court to require preferential treatment for any individual group for the purpose of achieving racial balance. (110 Congressional Record 7207, April 8, 1964.)

A case can be made for preferential standards if they are designed to benefit the persons who had previously been discriminated against, even if that benefit is to the detriment of the persons who had committed the unfair discrimination. But "affirmative action" programs with "quotas" or "goals" do not accomplish that objective. They do not cure the injustice; they merely shift an unjust burden from one group of innocent individuals to another. The punishment for past discrimination against blacks is not visited upon the administrators responsible for the discrimination or the government officials who enforced state-mandated segregation. (The price is not even paid by lawyers who would not have been admitted to law school if they had not been white.)

On the contrary, the burden is borne by the innocent.

Arguments in favor of racial quotas contain another serious flaw: It is assumed that all blacks have been disadvantaged, all whites advantaged. Yet there are far more whites living below the official poverty line than blacks. Is a poor white from the Deep South who lives in a house without indoor plumbing given advantages not enjoyed by a black child from Beverly Hills? In fact, there are at least 7 million U.S. blacks born middle-class, and at least 15 million U.S. whites born dirt-poor.

It is uncertain that preferential admissions policies help minorities in the long run. Many members of minority groups are given a false picture of their ability. As Edward Potts, associate dean of the George Washington Law Center says, "Every person who can't get through the bar exam means that you've encouraged someone falsely. It's a very bad thing to do, and it happened. For all the right reasons, but it happened."

A study of specially admitted black and Chicano law school graduates in more than a dozen states indicated that roughly 60% or more flunked the bar exam. (John H. Bunzel, "Bakke v. University of California," **Commentary**, March 1977, p. 63) The University of Washington, for example, reported a dropout rate for such groups three or four times greater than the overall dropout rate.

Another effect detrimental to minorities is that they are stigmatized by the incompetence of other members of that group who nonetheless, because of special treatment, received degrees. A minority group member may get all the way through a degree program uncertain whether he was given any special treatment. Prospective employers may be just as uncertain.

Justice Douglas states in DeFunis, supra, at 184:

A segregated admissions process creates suggestions of stigma and caste no less than segregated classroom, and in the end it may produce that result despite its contrary intentions. One other assumption must be clearly disproved, that blacks or browns cannot make it on their individual merit. That is a stamp of inferiority that the State is not permitted to place on any lawyer...

Theodore C. Miller, a young black attorney, told the **New York Times** (Oct. 25, 1977, p. 24), "If you graduated from certain universities in certain years, your degree is suspect."

Not only must we determine who can qualify as a member of a particular ethnic group, but we must also choose which groups are to be given preferential treatment and which will be put at a corresponding disadvantage. If special treatment is afforded the "Spanish surnamed," we must necessarily help those of Puerto Rican, Mexican, Argentinian, or Spanish ancestry at the expense of, say, Portugese- and Brazilian-Americans. If we help Irish ethnics, rich and poor, it will be at the expense of Polish ethnics, rich and poor. And so on.

Justice William Douglas' dissent in **DeFunis v. Odegaard**, 416 U.S. 312, 40 L.Ed. 2d 164 (1974), at 40 L.Ed. 2d 181, examines this problem:

The reservation of a proportion of the law school class for members of selected minority groups is fraught with ... dangers, for one must immediately determine which groups are to receive such favored treatment and which are to exclude, the proportions of the class that are to be allocated to each, and even the criteria by which to determine whether individuals are members of a favored group. There is no assurance that a common agreement can be reached, and first the schools, and then the courts, will be buffeted with competing claims.

Flaherty and Sheard, "DeFunis, the Equal Protection Dilemma: Affirmative Action Quotas," 12 Duquesne L. Rev. 745, at 785, follow the natural path of any policy of ethnic quotas:

The unfortunate aspect of any government sponsored benefit program is the natural tendency of everyone to demand benefits from the largesse. No doubt every racial and ethnic group can find some disadvantage, organize, and then demonstrate for recognition. Political expediency will require the acceptance of those demands, and the granting of appropriate benefits based on that discrimination.

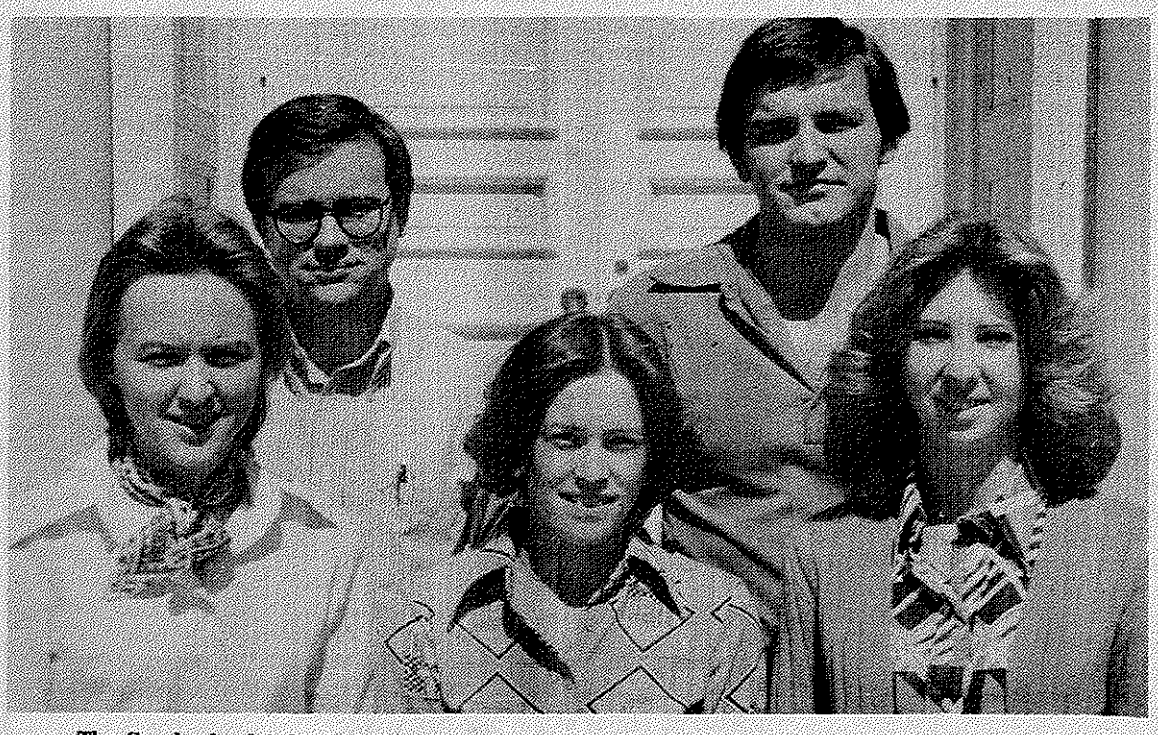
In the October 15 issue of the **New Republic**, Elliot Marshall reports that Los Angeles teachers who claim to be of an ethnicity other than that which they appear to be must face "ethnic review committees". The committees are composed of "two members from the ethnicity that people want to change from and three from the group they wish to change to."

Columnist George Will says this indispensable role -- determiner of race -- was once taken by Hermann Goering:

When Goering wanted Erhard Milch, whose father was Jewish, appointed the Third Reich's Secretary of State for Air, Goering allowed Milch's mother to sign a declaration that she had conceived her son with a non-Jewish lover. Goering declared, "I decide if anyone is a Jew."

To attack racial classification and preferential admissions is not to argue that schools should not seek out minority group members. Often there is a cultural bias in admission tests; professional schools tend to over-recruit from the upper levels of society. Many law schools, for example, continue the despicable practice of giving admissions preference to children of alumni, of contributors, or of politicians. But any policy to correct this injustice must be based on non-racial criteria.

The alternative is a future in which professional schools–and certain jobs– are filled with advantaged whites and disadvantaged non-whites. Is there any doubt that the cycle of racism would begin anew, with politicians once more riding into office on the backs of the downtrodden and the different?



The Cumberland School of Law Research Board for 1978-79 are shown above. Fromthe left, they are Dawn Clenney, Roy Gibbons, Ann Irwin (Editor), Glenn Estess, Beth Richards, (not shown-Mike Curto.)

West law computer Terminal to be demonstrated

Are reshelving reporters becoming obsolete? Are reporters themselves a thing of the past? Cumberland students can make their own decisions when David Macintyre, a Westlaw representative, brings the latest in electronic legal research systems to our campus on Thursday, April 6th of Law Week.

Through the efforts of the library and the Research Board, Westlaw's computer terminal will be temporarily installed in the Research Board Office, Room 211, with telephone hook-up to the research banks of West Publishing. Mr. McIntyre will demonstrate the operation of Westlaw as well as the advantages and drawbacks of electronic research for the practitioner. For the most effective presentation, he suggests 12-15 students at each of the 2 or 3 demonstrations beginning Thursday morning at 9:00 A.M.

Interested students should contact Allen Crow, Research Board.

Corley cites recent grads for leadership

The Dean will award citations during this year's Law Day observance, to selected members of the class of 1977 in recognition of their outstanding contributions to Cumberland while they were students. The awarding of the Certificates of Appreciation is an annual event of Law Day, consisting of Awards to the prior year's graduates who exhibited a high degree of leadership in all phases of the school's programs. This is one of the highest honors which a graduate can be awarded.

The recipients from the class of 1977 are as follows: Mary Louise Ahearn, Ronald D. Ashby, William T. Coplin, Jr., Susan O. Hamilton, Stephen D. Heminger, Henry T. Henzel, Dennis L. Hupp, Michael G. Kendrick, Robert S. Ogletree, Robert M. W. Shalhoub, James A. Sullivan, Thomas L. Virkler, and William M. Young.