

UCLA LAW MAGAZINE

The Magazine of the UCLA School of Law
Vol. 24 ▲ No. 1 ▲ Fall/Winter 2000/2001



30 Years of Clinical Legal Education



Thirty Years of Clinical Legal Education

The UCLA Clinical Program

“The Changing Face of Practice:
Perspectives from the Profession
and the Law School”

A Symposium to mark the
30th Anniversary of
the UCLA School of Law
Clinical Program

supported by the
Ann C. Rosenfield Endowment

April 20, 2001
UCLA School of Law

registration:
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The UCLA School of Law is a State Bar of California approved MCLE provider and certifies that this activity has been approved for 2.5 hours of general MCLE credit and 1.75 hours of ethics credit by the State Bar of California.

ON THE COVER:

The UCLA School of Law attracts top students from prestigious undergraduate institutions across the country. One reason is our Clinical Program—thirty years young and going strong; consistently rated one of the best in the nation. The program pioneered clinical education in state-of-the-art technical facilities. As much learning happens “in the field” as in the classroom—or the courtroom. We are proud to feature the Program in this issue of the magazine.

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UCLA Law Magazine

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FROM THE

This issue of the *UCLA Law Magazine* highlights important developments and milestones in the life of the UCLA School of Law that reflect the collective efforts of many people who have built, and continue to strengthen, a remarkable educational institution that is also an extended community of connection. On the occasion of the thirtieth anniversary of the founding of our pioneering and highly regarded clinical program, we feature a detailed look at the comprehensive set of offerings that now comprise the mature and innovative version of the program it has become, through the words of many of the people who are responsible for its success. Before whetting your appetite for more of the articles about the Law School and its people and their work, however, I would like to take a temporary but important detour to recognize the many and varied contributions of our alumni and our many friends who feel and display a sense of affiliation with us. Much of what is good about the Law School is the product of more than the committed and energetic efforts of faculty, students, and staff.

Participation by alumni, friends, and family of the UCLA School of Law enriches the academic and professional lives of our students. I am profoundly grateful to you for lending your time and talent to recruitment, mentoring, and career guidance—and for bringing opportunities for progress to our attention. I also deeply appreciate your significant and increasing—and urgently needed—contributions of unrestricted gifts and grants to the School. These funds are invested directly into the infrastructure of the core program of research, scholarship, teaching, and outreach—essential ingredients to insure the continuation of our tradition of excellence in an increasingly competitive environment among law schools across the nation.

Alumni and friends also have supported our enhanced visibility in the academic and professional communities by contributing, for example, to the establishment of prestigious educational opportunities memorializing extraordinarily popular and distinguished UCLA Law professors they may have known in the classroom or through their literature. This tradition began in 1985 upon the death of Mel Nimmer and the endowment of the annual **Melville B. Nimmer Memorial Lecture**, which, since 1986, has provided a forum for exceptional scholars in the fields of Copyright and First Amendment law. A decade later, the life and work of our “world-class teacher,” the much loved Julian Eule, who died at age forty-eight in 1997, was celebrated at a constitutional law symposium held in his honor and sponsored by alumni, students, family and colleagues through the **Julian Eule Memorial Fund**. And we have gathered twice recently to pay tribute to two of our late colleagues, Professors David Mellinkoff and Hal Horowitz. The teachings, publications, principle, humor, and decency of both David and Hal will be long remembered by all who were touched by them. Their families, colleagues, and friends have assured their legacy by endowing gifts in their name to benefit the UCLA Law community for years to come.

The new **David Mellinkoff Memorial Lecture** will honor our generous, puckish, and prolific professor and legal wordsmith, who died New Year’s Eve 1999, by creating a forum for distinguished legal scholars or other members of the profession to share their work with our students, faculty, and alumni. Because David’s talents and interests were rich and diverse, so will be the lecturers invited to share this platform in a fitting salute to him.

Sadly, several months after Professor Mellinkoff died, we also said good-bye to Harold Horowitz, who succumbed last July after a prolonged illness. To celebrate a life of principled leadership, historic prominence, and defense of the needy and those in need of civil rights protection, his family, friends, and colleagues have established the **Harold W. Horowitz Public Interest Fellowship**. The fellowship will support UCLA Law students as Harold W. Horowitz Public Interest Law Fellows in public interest law summer work that concentrates on combating poverty, discrimination, and abuse of civil rights: a fitting tribute to the work and passions so central to Hal’s life. We would welcome, of course, your added support for any of these funds established in tribute to these treasured faculty.

We are encouraged and enthused to see that alumni are reconnecting with the Law School in many ways and in record numbers this past year. Alumni are hosting students in their homes, firms, and elsewhere; providing insight into their practice; and offering sage advice. The Alumni for Life program is electronically connecting the community more than ever. Events that share scholarship, and those that foster fellowship, such as the football game tailgate party and Chancellor's luncheon this past fall, remind us that intellectual challenge as well as casual fun with our colleagues is a valuable gift that we share with others. Enjoy the events remembered here, and please join us for upcoming activities.

You may have followed our students and professors in the media as they were interviewed about the presidential election, and perhaps you read their commentaries in the major daily newspapers. We provide special coverage of that topic in this issue. One contributing scholar is our own Professor Cruz Reynoso, who is Vice Chair of the U.S. Commission on Civil Rights and has been participating in the investigation of possible civil rights violations and voting irregularities in Florida. In a separate photo essay, we spotlight this distinguished and beloved professor and former California Supreme Court Justice, who recently received the Presidential Medal of Freedom and the 2000 Hispanic Heritage Award for Education. His colleagues from the law firm of Kaye, Scholer, Fierman, Hays & Handler established a scholarship for UCLA Law students in his honor.

Our celebration of the thirtieth anniversary of the Clinical Law Program is an important milestone for all of us. The Program is among the best and most innovative in the country, and it improves every year. Our coverage ranges from course descriptions to an overview of clinical facilities. The School of Law marks this important anniversary with a spring symposium focusing on the present state of the legal profession and how legal educators are preparing our newest practitioners. Underwritten with the generous support of the **Ann C. Rosenfield Symposium Endowment Fund**, we anticipate that "The Changing Face of Practice: Perspectives from the Profession and the Law School" will provide incentive to visit us this spring.

Continuing the School of Law's dedication to important legal scholarship, please find topics as diverse as Delaware bankruptcy filings and identity in the workplace. And, as promised in the last issue of the magazine, we profile Professors David Sklansky and Tom Holm, winners of the University's Distinguished Teaching Awards. Join us, too, in extending our congratulations to Hugh and Hazel Darling Law Librarian Kate Pecarovich, who has been named the University's Librarian of the Year, out of a field of 120 campus librarians. And join the Law faculty in praising all of the Law librarians.

Become acquainted with our visiting and adjunct faculty. On the staff side, we have dedicated new leadership to existing, but crucial areas. We are delighted that Barbara Biles '80 has joined us as Executive Director of the new Environmental Law Center that houses the Frank G. Wells Environmental Law Clinic and the Evan Frankel Environmental Law and Policy Program. Learn more about other important new staff, such as Tony Tolbert of the Outreach Office; Thomas Skewes-Cox, Director of Institutional Research and Policy Studies; and Lisa Barash '96, an assistant director in the Office of Career Services.

Among the new offerings at the School of Law is the Concentration in Critical Race Studies, which is described by Professors Jerry Kang and Laura Gomez, who are co-directors of the Program. In news of another of the School's recent innovations, Professor Richard Sander, along with Joe Doherty and Kim McCarthy, report on the Empirical Research Group, which fosters empirical, policy, and interdisciplinary work among the faculty.

From the empirical we turn to the exotic. Ron Kaye '89 answered our request for alumni to submit to the *UCLA Law Magazine* a glimpse of their practice or passions. His travels to the kingdom of Bhutan to teach a seminar on the U.S. criminal justice system to many of that country's most prominent judges offers informative and colorful reading. While there, he spent as much time learning as he did lecturing; he writes about a judicial system based on the teachings of Buddha.

As you can see, the *Magazine* reflects the many, varied, and always interesting facets of the community we call the UCLA School of Law. Thank you for being such a vital part of it.



Jonathan D. Varat

Thirty Years of Developing Professional Skills through Clinical Legal Education

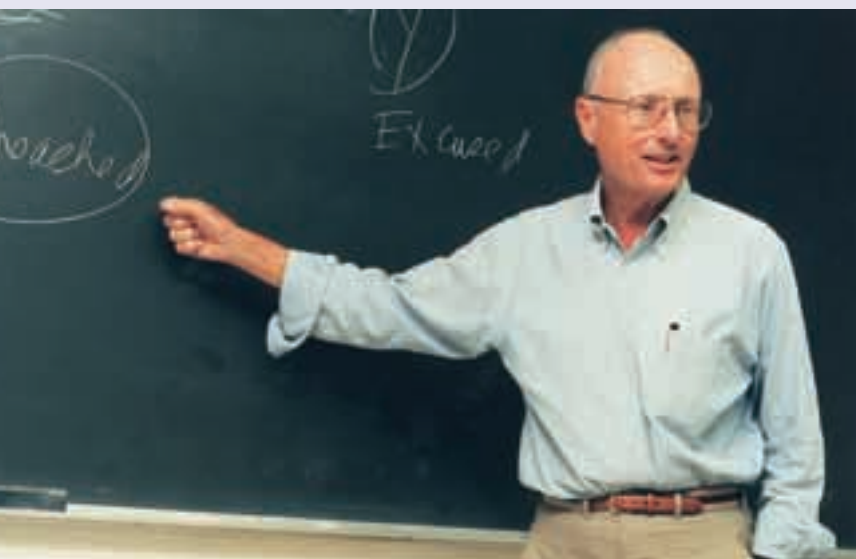
The UCLA Clinical Program: A Perspective

PAUL BERGMAN AND DAVID A. BINDER

This issue of *UCLA Law Magazine* celebrates a thirty-year history of excellence in clinical legal education. Always ranked among the top ten clinical education programs in the country, the UCLA Law Clinical Program has spawned numerous and widely acclaimed books and articles that are in use in law schools nationwide.

Since its inception, the Clinical Program has grown in size and areas of coverage. The initial curriculum consisted of three or four courses focused on litigation. Today's curriculum consists of nineteen separate courses, including seven that center on transactional matters. Every first-year student is required to take a foundational lawyering skills course and more than half of the second- and third-year students participate in clinical courses.

Over the past thirty years of growth, the Program's main educational goal has remained constant. Though we've never had a written "mission statement" of the type so much in vogue nowadays, our goal always has been to provide students with conceptual understandings that allow them to make reasoned strategic judgments and to execute their decisions in a professionally competent manner. This goal explains why UCLA has built a curriculum around important lawyering processes that cut across substantive law areas. Core clinical courses at UCLA are not focused on "juvenile law," "welfare law," or other specific areas of practices. Rather, clinical courses are



David Binder is one of the founders of the clinical legal education movement in the United States. He has authored some of the most widely used clinical texts in the country, including groundbreaking work on interviewing and counseling techniques, and more recent work on trial advocacy and discovery practice. He is presently working with Professor Albert Moore on a book on deposition questioning strategies and techniques. He has a particular interest in teaching complex litigation and the use of litigation support software in a law school setting. Professor Binder has received several awards for teaching excellence.

“process based,” examining the processes of interviewing and counseling, negotiation, drafting, public policy advocacy, fact investigation, deposition questioning strategies and techniques, and trial strategies and techniques.

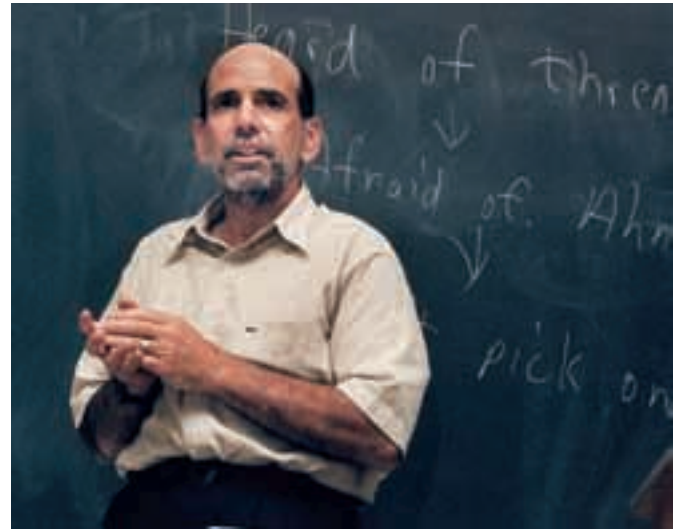
The early “field work” model, a popular early method of clinical training, in which students’ casework was supervised primarily by practicing lawyers in legal services offices, has largely been abandoned. In such settings, supervisors inevitably (and from their perspectives, quite properly) tended to emphasize case-specific issues rather than conceptual understandings applicable to similar process dilemmas over a wide cross section of situations. For example, if a case raised a problem concerning how to obtain information from a specific witness, outside supervisors tended to focus on how to deal with that witness as opposed to exploring the general problem of obtaining information from reluctant witnesses and how general principles of witness interviewing could be applied in such a case.

Moreover, litigation courses at UCLA are now based primarily on a UCLA-created “borrowing model,” in which clinical instructors supervise students as associate rather than as lead counsel on a variety of public interest cases. Clinical supervisors and students work on aspects of cases that mirror the processes that students study and simulate in the classroom. Casework in the *Depositions and Discovery* course, for instance, is largely limited to preparing and conducting specified depositions. This change helps us focus the students’ attention on general process principles rather than simply on case-specific predicaments.

Alongside these innovations in case supervision methodology, the Clinical Program continues to recognize that simulation has significant educational value. It provides students with the repetition and feedback they need to cement the concepts and techniques to which they have been exposed. It also allows faculty to introduce students to problems that cannot feasibly be undertaken in actual cases, such as those involved in various kinds of financing transactions (e.g., high-yield bond financing and commercial bank financing).

The common thread running through all the courses, whether litigation or transactional, live client or simulation, is that students examine common problems in process areas that are important and in which competence is typically not acquired simply through practice experience. For example, it’s unlikely that instructional time would be devoted to how to complete a Notice of Deposition properly. While that may be an important skill, it is one that most litigators quickly acquire in practice. Instead, precious law school instructional time is devoted to broader principles of lawyering that practitioners rarely have the time to examine systematically.

Two short examples illustrate how clinical courses focus on general principles and skills that students can apply across various substantive law settings to help solve legal problems. A discussion of fact investigation in a litigation course does not focus solely on what evidence to look for in a given case. Instead, the discussion begins with



Paul Bergman joined David Binder in pioneering the UCLA Clinical Program in the early 1970s. A highly creative teacher, Professor Bergman teaches mainly in the areas of trial advocacy and evidence. He also directs the Street Law Clinic in which students teach legal concepts to high school students. He, too, has received a number of distinguished teaching awards. Professor Bergman writes widely in the fields of trial advocacy, counseling and evidence, including groundbreaking work in the trial advocacy literature. He also writes books for the layperson that explain civil and criminal legal processes. With Professor Albert Moore, another pioneer of the UCLA Clinical Program, Professor Bergman has written the best-selling, *Nolo's Deposition Handbook*, an all-in-one how-to book that provides complete instructions, tips, and more on the art of the deposition. The book was included by Amazon.com on its list of 10 Best Law Books of 2000.

general principles for identifying potential evidence, and then students are given a chance to apply those principles as they attempt to identify potential evidence in a specific—actual or simulated—case. Similarly, a discussion of negotiation in a transactional course is not limited to potential problems likely to arise in a specific upcoming negotiation exercise. Rather, the discussion begins with an examination of general barriers to negotiating desirable outcomes, and common methods of overcoming those barriers. Students then have an opportunity to apply those concepts as they develop strategies for a specific negotiation exercise.

Over the years, the School of Law has contributed greatly to the Program's pedagogical goals by supporting a variety of physical and technological improvements. From our original (and at the time, quite innovative) single windowless classroom equipped with a reel-to-reel tape recorder, a TV monitor, and a black-and-white video camera, we have come to occupy an entire wing in the Law building, a wing which houses a simulated hearing room and a multitude of contemporary classrooms of different sizes designed for various purposes, ranging from teaching classes to conducting client interviews. These rooms are equipped with remote-controlled color cameras, so that instructors can both observe a student-client interaction as it unfolds and record it for later analysis. Moreover, office "laboratories" and workrooms allow students to work together as associates would in a law firm. The laboratories, with shared electronic files and communications networks, provide instructors with access to students' work and the opportunity to monitor and provide feedback.

Like many law teachers who are lucky enough to work intensively with relatively small numbers of students on real cases, our fondest and most vivid memories are of the terrific clinical students we've seen translate conceptual understanding into effective strategies and skills. At the end of the day, we celebrate their growth toward becoming reflective practitioners.

Year-long Trial Advocacy: 30 Years and Still Going Strong

ALBERT MOORE

As every trial lawyer knows, the vast majority of cases that go to trial involve hotly contested and conflicting versions of historical facts: Which party ran the red light? Who said what to whom during a loan negotiation? Did a supervisor make an inappropriate remark in the work place? To best prepare our students for the practice of litigation, the Law School, for the past thirty years, has provided a laboratory for testing and refining theories and techniques for resolving disputed questions of historical fact—the year-long trial advocacy course.

During the first semester, students are taught to construct the most persuasive and coherent arguments that both support their client's version of disputed events and undermine their opponent's version. These conceptual approaches are designed to provide them with argument construction skills that they can apply when trying cases in any substantive area, from a simple auto accident case to a federal antitrust action. Of course, a well-constructed argument must also be communicated effectively to a judge or jury at all stages of trial, from opening statement to final summation. So, students are also given repeated opportunities to learn and practice trial techniques. By the end of the semester, they have a chance to practice what they have learned in a mock jury trial, with community volunteers playing the role of jurors and witnesses.

Second-semester students apply the argument construction and evidence presentation skills learned in the first semester to real cases. The Legal Aid Foundation of Los Angeles matches indigent clients with student-lawyers. Most of these cases involve employment matters, either claims for unemployment insurance benefits or for unpaid wages. Students interview clients and witnesses, perform legal research, and, using the same concepts and skills developed in the first semester, construct persuasive arguments, examine (and cross-examine) witnesses, and make closing arguments before the administrative law judge who decides the case. Students experience the satisfaction and sense of accomplishment that come from using their hard-acquired legal skills to help someone in need. In one case last year, student-lawyers successfully secured back wages for an in-home care giver who had worked for months at well below minimum wage.

The cases students work on during the second semester also provide an opportunity for the faculty to test and refine the curriculum. As our students work on real cases, we are forced to put our classroom hypotheses and theories about effective argument construction and evidence presentation skills to an empirical test. The feedback we get from the students tells us which approaches work well and which ones need to be modified, refined, or abandoned. What we have learned from this feedback over the course of more than two decades we have shared with students, other law school faculty, and the practicing bar in numerous presentations at conferences and colloquia, law review articles, and books about trial practice. We hope that our efforts will redound to the benefit of the public by improving the education and training of all members of the legal profession, the ultimate goal of clinical education.



Albert Moore teaches primarily in the civil litigation program, specializing in trial advocacy and fact investigation in complex litigation. He joined the Clinical faculty in 1983 and writes on developing systematic approaches to teaching persuasive trial and deposition strategies and techniques. He has co-authored a trial advocacy textbook with Professors David Binder and Paul Bergman. Most recently, he and Professor Bergman published *Nolo's Deposition Handbook*, an all-in-one how-to book that provides complete instructions, tips, and more on the art of the deposition. The book was included by Amazon.com on its list of 10 Best Law Books of 2000. He is presently working with Professor Binder on a book on deposition questioning strategies and techniques. Before coming to UCLA in 1983, Professor Moore was a business litigator at Riordan & McKinzie in Los Angeles.

The Clinical Program in the Year 2001

SUSAN GILLIG

The UCLA School of Law has been on the cutting edge of clinical training for law students since its inception thirty years ago. Now housed in a sophisticated clinical wing, the Clinical Program provides extensive and rigorous practical training for student-lawyers interested in litigation and transactional work. Through actual and simulated client contact, students learn skills such as interviewing and counseling clients, drafting legal documents, examining and cross-examining witnesses, negotiating commercial agreements and litigation settlements, depos-

ing witnesses, resolving disputes, and arguing before a judge or jury. Students interested in transactional practice can learn how to finance a start-up company, sell a private company, or manage a myriad of environmental issues that arise when selling a business.

Our faculty is well known both for innovative scholarship and excellence in teaching, and many have received the University's prestigious and highly competitive Distinguished Teaching Awards. Clinical subjects routinely receive the highest teaching evaluations from students. All first-year students are required to take an introductory lawyering course,

and nineteen separate clinical subjects are offered to upper-division students. Individual attention from faculty members is a key ingredient to the success of our clinics, so classes are kept small, ranging in size from eight to twenty-four students. Most upper-division clinical classes feature some work with actual clients under close faculty supervision, with students working in law school clinics or in public interest law settings.

Students can choose from a wide range of clinical subjects. Traditional classes in trial advocacy, negotiation, interviewing, counseling, and fact investigation offer a concentrated exposure to specific lawyering skills. These courses are driven by the notion that there are useful theories or "models" about what lawyers should do that can be broken down into constituent parts, analyzed, and then applied in either simulated or real cases. The Program is built upon two principles: first, that most legal skills are transferable across substantive practice areas, and second, that such skills are best learned through repeat experiences in increasingly more complex settings.



Susan Gillig (center) is the Assistant Dean for Clinical Programs. She joined UCLA in 1983 and works on curriculum, policy, and program development. She also teaches in the areas of interviewing, counseling, and negotiation. Before joining UCLA, Assistant Dean Gillig clerked for The Honorable Dorothy Nelson '53 on the United States Court of Appeals for the Ninth Circuit, and worked in private practice as a litigator and labor lawyer. She also supervises the Externship Program.

Alongside these skills-focused classes, the faculty has developed courses that reflect the increasing complexity of legal practice, the value of specialty clinics, the need for more sophisticated clinical training of students in business planning and transactions, and fundamental critiques of the legal system from a policy perspective. For example, the Clinical Program provides superb training in the areas of complex litigation. Some of our litigation projects involve the management of 20,000 to 30,000 documents, all of which are scanned, coded, and entered onto a database that allows the documents to be accessed by the clinic students, faculty, and associated public interest lawyers. Students then use these document retrieval systems in such matters as preparing a deposition plan or cross-examining a witness at trial.

The School of Law has recently developed in-house specialty clinics in the areas of environmental law and Indian law. The Frank G. Wells Environmental Law Clinic trains law students in pragmatic lawyering skills by combining classroom learning with work on real environmental cases, enabling students to contribute in a significant and meaningful way to environmental clean-up and quality of life in Southern California. Students in the Indian Law Clinic provide nonlitigation legal assistance to Native American tribes, with the main focus of the course being legislative drafting and cross-cultural representation.

Many of these clinics reflect the increasing focus at UCLA on the practice of public interest law and the importance of teaching students the value of pro bono legal work. *Public Policy Advocacy* is a course that focuses entirely on training students how to work, in collaboration with public interest lawyers and other advocates, on real public policy issues confronting people in Los Angeles. For example, students in this course have tackled problems ranging from slum housing in Los Angeles to “slum” conditions in some of California’s public schools.

Most recently, the School of Law has begun building a series of clinical courses with a transactional focus as part of the School’s Business Law Concentration. Topics presently include: renegotiating basic business contracts such as leases, junk bond indentures, and loan agreements; practical aspects of public offerings of equity and debt securities; practical issues encountered in mergers and acquisitions legal work; doing business in China; and environmental aspects of business transactions. We are also planning an expansion in our Criminal Clinical offerings to add classes that go beyond teaching trial advocacy, with the goal being to train students in the practical skills necessary to investigate and litigate a criminal case from beginning to end.

Much has been accomplished during the past thirty years. The range, depth, and sophistication of the present clinical course offerings are remarkable. For the future, we firmly intend to remain an innovative force in American clinical legal education. We must strive to increase clinical opportunities for more upper-division students by continuing to design new course offerings and by refining teaching techniques. We must continue to think creatively about ways to extend the live client aspects of our clinical work. Finally, we remain firmly committed to the importance of scholarly work on lawyering as a means to understand how best to represent clients and train law students to be competent lawyers.

Volunteer Witness Program



BUNNY FRIEDMAN

It would seem an impossible task to be given a week’s notice to schedule twenty-six mock-clients to be interviewed by law students about their feelings and experience in living near a toxic waste site. Yet, I am often called upon to do such a thing, as part of my role as Coordinator of the trail-blazing UCLA Witness Program. Clinical and other faculty members call on me to provide “actors” who might play a “witness” for a class on evidence, or a “client” for a negotiation about solving a real estate dispute, or a juror in an age discrimination case. In each of these settings the class needs a taste of “real life” in order for students to experience and learn about the lawyer’s role. While other law schools offer similar programs with paid

actors or fellow students, UCLA Law is one of the few that rely solely on a core of volunteer actors.

Of our 500 volunteers, most prefer to limit their activity to mock trial jury duty, but about 200 actively take part in playing witness or client roles. Who are these people who give so much of themselves and work so hard to bring the assignments to life when all they get is a parking permit and a bottle of water?

Our volunteers are quite a diverse group, some of whom have been with us for almost twenty years. This group includes retirees, housewives, business people, students, and, of course, aspiring actors. Often when a story involves someone with a particular hobby or occupation, I can find a particular match. The students and faculty appreciate the volunteers in the Program. A plaque with the names of those who have devoted more than five years to the Program was dedicated over ten years ago as a small token of our appreciation. That plaque has now grown to two and the second is almost full—we'll be starting a third soon.

We welcome you to join us in the Volunteer Witness Program; please contact me if you are interested.

Bunny Friedman administers the Volunteer Witness Program and can be reached at <Friedman@law.ucla.edu> or (310) 206-1193.

Taking your First Deposition: A Law School Experience

JILL BROWN '91

At first glance, the scene unfolding in one of UCLA's clinical classrooms one morning last spring appeared similar to what occurs in law firm conference rooms every day: a court reporter swore in the witness and a young woman in a dark suit began questioning him. But what made this deposition different was that the young woman in the dark suit was not a lawyer, she was a third-year law student enrolled in *Depositions & Discovery in Complex Litigation*, one of only a handful of law school courses in the country focusing exclusively on discovery, and in particular, on deposition-taking skills.

Each semester, students assume responsibility for depositions in several cases. Clinical faculty who teach the course become co-counsel with legal service organizations such as Public Counsel, Bet Tzedek Legal Services, and the Legal Aid Foundation of Los Angeles, and students become certified under State Bar rules to make appearances on behalf of clients at depositions. Students have taken depositions in recent years in cases ranging from home equity fraud—in which homeowners are bilked out of their home equity by unscrupulous lenders and home improvement contractors—to a class action alleging sex discrimination against the Los Angeles Fire Department. During the semester, students in the course practice deposition questioning skills extensively in class and in videotaped mock depositions before taking a deposition in one of the actual cases at the end of the semester.

The theory behind this clinical course is that although taking depositions is perhaps the most important and difficult task performed by civil litigators, lawyers typically receive little or no training before being required to take a deposition. And, unlike many civil litigation clinics that touch on discovery at a general level, the course focuses in detail on particular questioning skills that help a lawyer take an effective deposition. For example, students learn techniques for eliciting helpful admissions from a witness, different ways to undermine harmful evidence, and how to respond when a witness answers "I don't know" or "I don't remember" to an important question.

In addition to specific questioning skills, the course also focuses on how to prepare to take a deposition effectively. Building on concepts taught in the first-year *Lawyering Skills* course, students discuss methods for identifying evidence they hope to elicit during a deposition, and then focus on how to organize a list of potential evidence into a deposition outline. Students also review documents collected from clients and produced by other parties and learn how to use various litigation support software to organize the documents and retrieve them during deposition preparation.

Students leave the course not only with the experience of having taken a deposition, but also with a conceptual model that they can use for preparing for and taking depositions in years to come.

Jill Brown is the Litigation Director for the Clinical Program. She has primary responsibility for identifying suitable litigation matters for the Law School's various clinical courses. She also teaches *Discovery and Depositions in Complex Litigation*. Before coming to UCLA in 1997, she spent seven years litigating cases at a prominent law firm where her work focused on business litigation, white-collar criminal defense, and a variety of significant pro bono matters.



Jill Brown '91 joined UCLA School of Law in 1997 as Litigation Director for the Clinical Program. She has primary responsibility for identifying litigation matters for the Law School's various clinical courses. Brown also teaches *Discovery & Depositions in Complex Litigation* and assists with the Environmental Law Clinic. While attending UCLA she was articles editor of the *UCLA Law Review* and treasurer of the Public Interest Law Foundation. Before returning to the School of Law, Brown was a litigation associate at Heller Ehrman White & McAuliffe's Los Angeles office, where her work focused on securities litigation, class actions, accountants' liability, white-collar criminal defense, and a variety of pro bono work. She is the author of "Defining Reasonable Police Conduct: *Graham v. Connor* and Excessive Force During Arrest," 38 *UCLA Law Review* 1257 (1991).

A Student's Perspective

DEREK JONES '01

One of the principal factors that drew me to the UCLA School of Law was its reputation as a leader in clinical education. After participating in the Frank G. Wells Environmental Law Clinic last spring, I can personally attest to the high quality of the clinical programs at my law school, and to the positive impact that clinical coursework has had on my professional development.

In the Environmental Law Clinic, my eleven classmates and I worked throughout the semester with the American Civil Liberties Union, the Natural Resources Defense Council, and the National Health Law Project on "live" litigation concerning childhood lead poisoning—still a major environmental health issue in California. Professor Ann Carlson involved students in every major part of the lawsuit, including theory development, identification and selection of plaintiffs for the class action, and formal discovery. We had weekly contact with skilled practitioners and community activists from whom we learned the substantive federal and state laws at issue, the procedural

dimensions and strategic dynamics of complex litigation, and the evolving roles of lawyers working in the public interest.

Small groups of students in the Clinic also partnered for ten weeks with one of six other Southern California environmental advocates. For instance, a classmate and I coordinated the intervention of the Santa Monica BayKeeper in an action defending more stringent effluent limits for LA's wastewater treatment facilities. We researched the intervention process, strategized with first-rate environmental lawyers from around the state, and ultimately wrote a complaint for intervention and an answer to the City of LA's mandamus petition. Other students worked on mitigating the environmental impacts of Ahmanson Ranch development, saving the steelhead trout in Malibu Creek, and strengthening diesel emissions laws. A few of my classmates even testified before the Regional Water Quality Control Board.

Students also completed individual projects that typically involved two weeks of research and analysis of a timely legal ques-

tion on behalf of one of the Clinic's partner organizations. I prepared a ten-page memorandum for Heal the Bay on the efficacy of a promising legal hook on which to hang a water-quality lawsuit—Section 401 of the Clean Water Act.

In each of these capacities, Law School students provided valuable services to public interest environmental organizations that, in return, provided inspiring mentors and critical insights into careers in environmental law. Seven months after the conclusion of the course, I'm still keeping in touch with four of the attorneys with whom I worked. Some of my classmates are considering employment opportunities that came out of contacts they made through the Clinic, and every employer with whom I've interviewed has taken notice of my clinical experience. Perhaps most significantly, my participation in the Frank G. Wells Environmental Law Clinic has given me great confidence in my lawyering skills—skills which I hope to complement through another clinical course next semester, *Public Policy Advocacy*.

Wells Clinic Cleans Up

BARBARA BILES '80



I think it is critical that students learn to take responsibility for addressing a client's needs. They need to feel connected to the client and know that the work they are doing has real life applicability with real world consequences. If you don't have those skills after law school, you're finished. I highly recommend the Environmental Law Program because of the consistent interaction with nonprofit clientele dealing with modern environmental problems.



STEVE FLEISCHLI '94
EXECUTIVE DIRECTOR & BAYKEEPER

The Frank G. Wells Environmental Law Clinic ranks among the nation's most innovative and successful environmental law clinics. Founded only six years ago, the Wells Clinic has grown rapidly and now provides students an in-depth substantive experience with cutting-edge environmental problems. By teaming with nonprofit environmental organizations, students learn to apply the full range of legal skills to some of the most complex and important environmental issues of our day.

The mission of the Wells Clinic is threefold: to train law students in pragmatic lawyering skills by combining work on real environmental cases with classroom learning; to contribute in a significant and meaningful way to environmental protection and the quality of life in the western United States; and to develop a future generation of environmental lawyers. Twelve to fourteen students enroll each semester, and four paid students work during the summer as full-time law clerks, carrying out the Clinic's work.

The Wells Clinic is structured in a fashion that differs from many similar but more traditional law school clinics. Rather than serving as sole counsel on matters undertaken by the students, the Clinic uses a "borrowing" model that allows students to work jointly with attorneys from other environmental organizations on significant, often groundbreaking environmental cases. This approach provides students the opportunity to work on more sophisticated, complex cases with exposure to some of the nation's most important environmental lawsuits and projects and allows the Clinic to accomplish more than it could on its own. In turn, the Clinic supplements the often meager resources of nonprofit environmental organizations in their disputes with better-funded defendants.

Clinic co-directors, Professors Ann Carlson and Timothy Malloy, select work for the Clinic that will expose students to all facets of environmental law. Notes Professor Malloy, "The Clinic provides a unique opportunity to teach problem-solving skills and strategic thinking. Because the clients and problems are real, students are exposed to the dynamic, uncertain nature of actual lawyering in the context of complicated environmental matters." Moreover, as Professor Carlson points out, "Over the past several years Clinic students have contributed to some of the largest environmental litigation victories in Southern California." The complex nature of the



Ann Carlson (center, seated) is the Founding Director and now Co-director of the Frank G. Wells Environmental Law Clinic. She joined the UCLA Law faculty in 1994, after practicing law for five years at a leading public interest law firm in Los Angeles, where she specialized in public interest environmental consumer litigation. Her teaching and research interests are in environmental law and litigation and she has published an article on Supreme Court standing requirements on environmental litigation. She also teaches property. Her new article, "Recycling Norms," will be published in the October, 2001 issue of the *California Law Review*.

matters handled by the students helps prepare them to evaluate both litigation and nonlitigation options for resolving environmental problems.

The approach taken by Professors Carlson and Malloy has been highly successful. Wells Clinic students have assisted in both major litigation matters and regulatory projects that have shaped the direction of environmental law in California. Recently, students helped draft a successful summary judgment motion that required the South Coast Air Quality Management District to implement far-reaching provisions in its Clean Air Act State Implementation Plan, and they crafted remedial measures designed to help the Southern California region achieve compliance with national air quality standards. In one of the Clinic's early efforts, it served as co-counsel in *Natural Resources Defense Council et al. v. California Department of Transportation*, the first case of its kind under the then recently enacted stormwater provisions of the federal Clean Water Act. The case, which went to trial, resulted in a sweeping injunction against CalTrans that required it to institute one of the most comprehensive stormwater pollution management programs in the country.

The Wells Clinic also successfully co-counseled a case challenging the placement by a Huntington Park-based cement recycling facility of a sixty-foot mountain of concrete rubble just fifteen yards from a predominantly Latino residential community. Nearby residents began suffering from chronic and acute respiratory distress, headaches, and other medical problems—all symptoms that a leading toxicologist from UC Irvine testified were consistent with exposure to large amounts of concrete dust. Wells Clinic students represented a community-based envi-



Barbara Biles '80 practiced environmental law in California for nearly twenty years before joining UCLA in October 2000 as Executive Director of the School of Law's newly created Environmental Law Center. In her new position, she will divide her time between the Frank G. Wells Environmental Law Clinic and the Evan Frankel Law and Policy Program.



Timothy Malloy is a highly experienced environmental lawyer who joined UCLA in 1998 to co-direct the Wells Environmental Law Clinic. His environmental legal experience includes five years at the United States Environmental Protection Agency, followed by three years as a partner at one of the leading environmental law firms in the Mid-Atlantic region. Before joining the EPA, he practiced tax law. He also teaches a course in transactional environmental practice. His research interests are in the areas of regulatory policy and organizational theory.



ronmental organization and neighbors of the recycling business in a trial that led to a declaration that the business was a public nuisance.

In addition to gaining experience on major litigation matters, students learn non-litigation approaches to solving environmental problems. Wells Clinic students have assisted several clients in various administrative proceedings, including rulemaking before the federal Environmental Protection Agency, the Los Angeles Regional Water



Quality Control Board, and the South Coast Air Quality Management District. In a significant permitting matter, the Clinic represented a local community group in negotiations with air regulators and an industrial facility over permitting requirements for the facility. Those negotiations resulted in the addition of significant changes to the operating permit for the facility that reduced allowable emissions and imposed innovative monitoring and reporting requirements.

The nonlitigation matters handled by the Wells Clinic are highly diverse. Students have assisted Heal the Bay and Santa Monica BayKeeper in the evaluation of a proposed Total Maximum Daily Load (Clean Water Act) for trash for the Los Angeles River. They also have worked closely with the Santa Monica Mountains Conservancy in an effort to prevent the Metropolitan Transit Authority from tunneling under and de-watering Runyon Canyon in the Hollywood Hills, which provides a habitat for mountain lions, bobcats, deer, and numerous native plants. In addition, students helped the Timbasha-Shoshone tribe in its efforts to reclaim land in the Death Valley/Mammoth Lakes



region. In part due to student efforts, the federal government agreed to set aside land for the tribe and will incorporate historical and cultural information about the Timbasha into Death Valley National Monument activities. Wells Clinic students also have assisted the Tucson-based Organization for Interamerican



Trade in evaluating how Mexico and California respond to hazardous waste emergencies with cross-border consequences, and have helped the Santa Barbara-based Environmental Defense Center in understanding the impact of recent amendments to the Marine Mammal Protection Act on dolphins.

Opportunities for students in the Wells Clinic will expand with the recent creation of the Evan Frankel Law and Policy Program. Due to the highly technical nature of environmental decision making at the legislative and regulatory levels, it is becoming increasingly important for lawyers to be able to understand and apply sophisticated scientific study and analysis. The Frankel Program will promote the interdisciplinary study of environmental issues by providing the resources necessary to bring students together with the larger scientific community at UCLA in particular and with the region in general.

The Frank G. Wells Environmental Law Clinic is an important component of the Clinical Education Program at the School of Law. By giving students the opportunity

to work with both leading environmental groups and local community groups concerned about environmental quality in their neighborhoods, students learn in the most concrete way possible that the knowledge and skills they develop at law school can be used to effectuate important changes in the quality of our physical environment.



Working with Indian Nations to Draft Constitutions, Laws, and other Regulations

CAROLE GOLDBERG

How often is a law student afforded the opportunity to draft the constitution for a nation? Or to participate in creating its court system? Or to write a statute that gets enacted into law? At the UCLA School of Law's new Tribal Legal Development Clinic, it happens every semester. Clinic students spend time in class honing their drafting skills and grappling with the challenges of cross-cultural representation. Then they take this learning out to Indian country, where they meet with tribal councils, administrators, and elders to find out about their legal needs. Back at UCLA, they work on crafting legal documents to meet their clients' requirements of accommodating both traditional tribal values and contemporary legal demands.

Last year, for example, Alexandra Livermore '00 helped the Wampanoag Tribe of Gay Head (Massachusetts) create a traditional court for the resolution of internal disputes. Students Jennifer Klein '00 and Kevin Burke '00 drafted a constitution for the Potter Valley Pomo Tribe of northern California, which had been terminated by the federal government during the 1950s and later restored to federal recognition. This semester, Lisa Hill '02 and Helen Wolff '02 are helping a southern California tribe create an intertribal court that can serve many of the small, culturally similar tribes near-



Carole Goldberg directs the Tribal Legal Development Clinic. She also directs the Joint Degree Program in Law and American Indian Studies and has written widely on the subject of federal Indian law and tribal law. A UCLA Law faculty member since 1972, Professor Goldberg's teaching and research interests include civil procedure, federal jurisdiction, federal Indian law, and tribal legal systems. During her career, she has also held senior administrative responsibilities in the Law School and the wider University.

Clifford Marshall (far left) teaches in the Tribal Legal Development Clinic. A former Judge with the Northwest Intertribal Court System in Western Washington, Judge Marshall brings a wealth of experience in Indian tribal legal systems to the work of the Clinic. He holds a dual appointment with the UCLA American Indian Student Center where he teaches fundamentals of nation building to undergraduates. Before becoming a judge, he held a judicial clerkship with the Hoopa Valley Tribal Court and practiced law at a Washington D.C. private law firm. Judge Marshall joined the Law School in 1999.



by that want to address child welfare and other pressing matters. Other Clinic students have traveled to Anchorage, Alaska to assist Alaska Native villages that want to use federal grants they received to establish tribal courts. Funds for the students' travel have been supplied by generous law school alums and other supporters.

As these examples suggest, requests for assistance from the Clinic come from Indian nations around the country. Although a few high-profile tribes have experienced major economic advances from gaming, most of the 106 Indian nations located in California, as well as hundreds of other tribes and Alaska Native villages, suffer from high unemployment, inadequate education, and poor health. Their inherent governmental powers and their federal status as "domestic dependent nations" afford them the authority to make and enforce laws, but their legal systems have been undermined and compromised by more than a century of federal domination, making it difficult for tribes to give effect to their sovereign powers. The result can be a complete vacuum of legal authority on a reservation. So, for example, some tribes have approached the Clinic because they need a legal mechanism to curtail traffic violations on reservation roadways or end pollution of tribal drinking water sources. Other tribes want to embark on economic development projects, but the absence of a clear constitutional structure impedes decision-making.

The Tribal Legal Development Clinic, which I initiated in 1999, is the centerpiece for the Law School's new Joint Degree Program (J.D./M.A.) in Law and American Indian Studies. Co-teaching the Clinic with me is Clifford Marshall, a former tribal council member of the Hoopa Valley Tribe of California, who has also served as a judge of the Northwest Intertribal Court System in Washington State.

The Clinical Courses *

Litigation

Civil Trial Advocacy (simulated)
Criminal Trial Advocacy (simulated)
Depositions and Discovery in
Complex Litigation
Interviewing, Counseling and
Negotiation in Litigation context
Trial Advocacy Clinic (year-long)

Environmental Law

Environmental Law Clinic
Environmental Aspects
of Business Transactions

Public Interest

Environmental Law Clinic
Indian Law Clinic
Public Policy Advocacy
Street Law: American Legal Education

Dispute Resolution

Interviewing, Counseling
and Negotiation
Interviewing and Counseling
Negotiation Theory & Practice

Transactional

Corporate Financing Transactions
Creating Value through
Renegotiating Business Contracts
Doing Business in China
Environmental Aspects of
Business Transactions
Mergers & Acquisitions
Transaction Planning
Public Offerings
Venture Capital Financing

*Some clinical courses overlap
between categories and are
therefore listed twice.

The Criminal Clinical Program: Criminal Trial Advocacy and Beyond

GEORGE CARDONA

The Criminal Clinical Program consists of a class on criminal trial advocacy, which teaches the basic skills necessary to try a criminal case while exploring the impact of considerations unique to criminal law and procedure on the decisions that must be made during a criminal trial. A planned expansion of the Program will add classes addressing other steps in the criminal process, with the emphasis remaining on integrating what students have learned in criminal law and procedure classes with the practical skills necessary to investigate and litigate a criminal case from beginning to end.

The core skills taught in *Criminal Trial Advocacy*—direct examination, cross-examination, opening statement, and closing argument—are not unique to criminal trials. In an approach shared with UCLA's other trial advocacy classes, however, this course focuses as much, if not more, on the strategic choices involved in selecting and constructing arguments to be conveyed to the jury (and in criminal cases, a trial virtually always means a jury trial) as on the performance skills used to communicate those arguments. Several factors render the calculus underlying these choices distinctly different in criminal cases. Five examples follow.

One factor is the burden of proof. Criminal defendants are presumed innocent, and a prosecutor may overcome this presumption only with proof beyond a reasonable doubt. Both sides must factor this high burden into their presentations to the jury, and it affects a myriad of decisions that must be made in the course of the trial. For example, should the defense make an opening statement at the beginning of trial, or wait and see how well the prosecution's case goes? By waiting, the defense gains an opportunity to evaluate the prosecution's case fully (after its witnesses have been subjected to cross-examination) before making a choice to rest on the high burden of proof or present a defense case. The defense may also put off the difficult decision of whether the defendant will take the stand. But waiting may also help the prosecution meet its high burden by allowing the jury to be overwhelmed by the prosecution's case before it even hears the defense's.

A second factor is the requirement of jury unanimity. Unlike civil cases, where acceptance of nonunanimous verdicts is the norm, both the Sixth Amendment and the Federal Rules of Criminal Procedure compel unanimous verdicts in federal criminal cases, and only a few states authorize nonunanimous verdicts in their own criminal cases. The prosecution, therefore, must select arguments with broad appeal, sufficient to convince each and every juror of guilt beyond a reasonable doubt. The

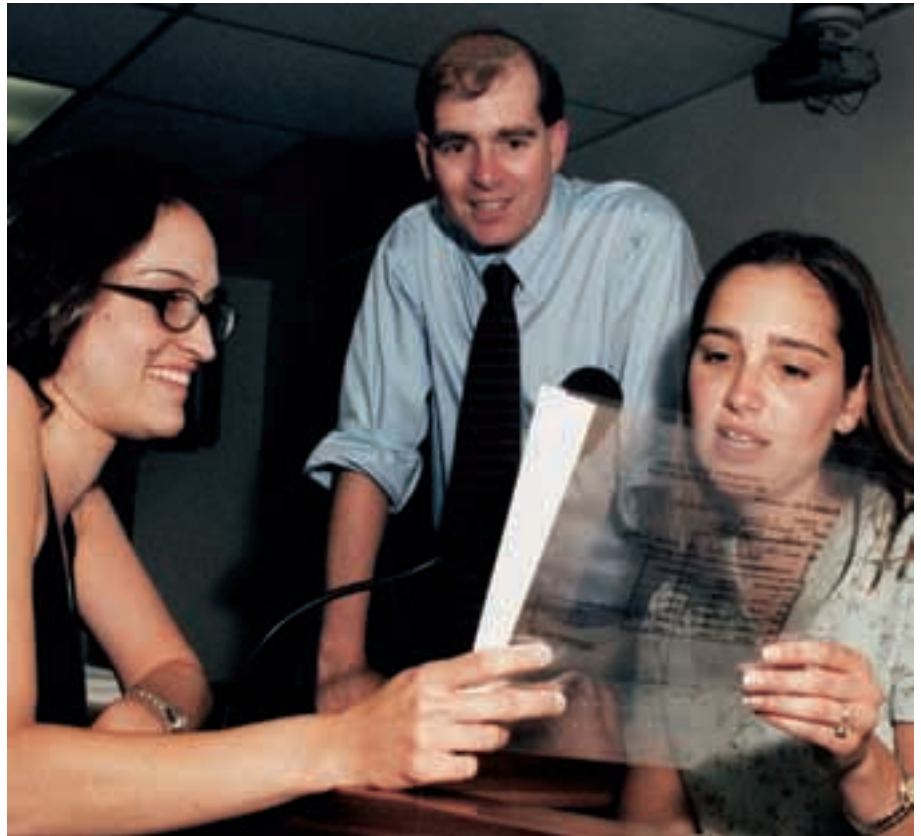
defense may choose arguments aimed at convincing only a single juror of a flaw in the prosecution's case.

A third factor is the nature of criminal investigations. The main prosecution witnesses may be criminals themselves, either participants in the charged crime who, after being arrested, choose to cut a deal and testify against their former accomplices, or informants, sometimes with lengthy criminal records, who, whether for money or leniency, choose to work with law enforcement. Prosecutors must work to stave off the obvious challenges to credibility while avoiding any action that might lead to challenges to their own conduct in sponsoring these witnesses. Defense attorneys must take full advantage of the opportunities offered by such witnesses.

Constitutional and ethical considerations mold a fourth factor. In civil cases, it is common to comment on a party's prior silence or failure to testify. In criminal cases, comment on a defendant's prior silence or failure to testify will, in many instances, violate the defendant's Fifth Amendment right to remain silent. The Fifth Amendment, Sixth Amendment, due process, and ethical considerations all contribute to a body of law defining "prosecutorial misconduct" that places significant limitations on the arguments available to prosecutors. Prosecutors must work within these limitations, while defense attorneys must use them to their full advantage.

A fifth factor is the distinct difference between civil and criminal discovery. In civil cases, witnesses are subject to pretrial depositions in which their testimony and demeanor can be tested by cross-examination, and discovery obligations typically are terminated before trial by a fixed discovery cutoff date. Criminal discovery ordinarily provides no opportunity for pretrial depositions, the result being that in many criminal cases some information is discovered for the first time at trial. Moreover, the prosecution acts under a continuing obligation, extending through trial and beyond, to recognize and produce to the defense any material evidence tending to negate guilt or impeach prosecution witnesses. As new information is learned at trial, the prosecution must constantly re-evaluate the case to ensure compliance with this ongoing discovery obligation.

Criminal Trial Advocacy teaches the basic skills necessary to presentation of any trial, but does so in the context of these factors, and others, unique to the presenta-



George Cardona joined the faculty in the fall of 2000 in order to develop a criminal clinical program. An experienced prosecutor, Professor Cardona came to UCLA from the United States Attorney's Office in Los Angeles, where he served as Chief of the Criminal Division and specialized in the investigation and prosecution of complex financial crimes including securities fraud, insurance fraud, and financial institution fraud. His research interests include the role of criminal juries and the mechanisms of criminal discovery.

tion of criminal trials. The approach is problem-based, with students confronting trial situations of increasing complexity that highlight the issues posed by these factors—and that also pose unanticipated ethical dilemmas

Although the course serves as a solid foundation for the Criminal Clinical Program, in the real world criminal trials fall closer to the end than the beginning of the criminal process. To address this issue, additional classes will be included in the curriculum as the Program develops. These courses will use the same problem-based approach to examine earlier steps in the criminal process, including criminal investigations (with emphasis on use of the grand jury) and plea bargaining, the focus remaining on the factors that render these processes distinct from their civil analogues.

Corporate Law Taught in a Clinical Setting

IMAN ANABTAWI



I think law students benefit from any clinical class in which they come in contact with real people with real legal issues. The gaps in mainstream legal education are most evident in new lawyers' poor interviewing techniques, lack of empathy for clients, and inability to write persuasive but literate pleadings.



WILLIAM LITT, UCLA JD '93



Corporate lawyers will spend most of their careers counseling clients and negotiating and drafting documents. The best will be effective interviewers, listeners, and advisors. In negotiations, they will be well prepared, will identify the parties' respective interests, and will maneuver to obtain the best terms that their bargaining positions allow. When reducing matters to writing, these lawyers will do so in plain language that is organized within a logical structure. Few will have developed these abilities in law school.

The traditional American model of law teaching is wonderful for developing in students the ability to read, understand, and apply cases and statutes. The case method leaves students skilled at applying the law to neatly summarized facts. But it is less successful in bringing that ability to bear on the day-to-day practice of law.

This is not to say that traditional legal education is unimportant. On the contrary, it is essential to the development of analytic thinking about the law. But traditional legal education is incomplete, and if we as educators are to better serve our students and the legal community, we must extend it in relevant ways.

Teaching corporate law in a clinical setting does just that. Clinical methods, long used in the litigation context, are a relatively recent innovation in the business law curriculum. Yet such methods are uniquely suited to teach students the skills that will be expected of them almost the moment they begin their careers. Clinical teach-



ing of corporate law typically involves a blend of many pedagogical methods, including traditional lectures, in- and out-of-class problems, and role-playing simulations.

In my experience, in-class problems are an effective way of illuminating issues. For example, in my mergers and acquisition clinic, I describe a fact pattern to the class in which a parent corporation (seller) is selling the stock of its wholly owned subsidiary in an auction setting. I present a draft of a representation and warranty from seller's initial draft stock purchase agreement. We run the provision against some hypothetical examples. Are these the seller's intended results? Are they acceptable to a potential buyer? How can we revise the provision to achieve different outcomes? No expository lecture and no case analysis could possibly produce the rich discussion that such exercises generate.

Out-of-class assignments give students time to analyze more involved problems, which often require them to call on interdisciplinary subject matter that they have studied previously. In these exercises, students might draft a memo to the "partner" analyzing the appropriate structure for an acquisition of their "client," taking into consideration issues relating to required approvals, tax consequences, and the transfer of liabilities. Or they might draft portions of a document to be filed with the Securities and Exchange Commission.

Role playing is another way for students to "learn by doing." When role playing, students may be assigned to play the part of a lawyer in a negotiating session. Their clients might be a hypothetical seller of a business or a representative of a buyout fund. In some cases, lawyers in the community serve as mock clients. In others, hypothetical clients give guidance to their "lawyers" in a memorandum. Students evaluate their clients' respective interests and positions and negotiate portions of an agreement. In my clinical classes, I ask students to perform their negotiation in front of the rest of the class, which enhances the "real world" element of the simulation and gives observers an opportunity to critique the performers.

How do the students respond to the use of clinical methods in a corporate law setting? My experience is that they discover that their effectiveness depends on abilities different from what they had expected or had previously developed—substantive knowledge that cuts across numerous fields, interpersonal relations, and a quick wit, to name a few. Perhaps these students will approach the rest of their legal education differently, always considering how to apply what they learn to concrete problems. Certainly, they will begin their legal careers with the confidence that they have begun to bridge the gap between legal education and legal practice before confronting their first client.

Iman Anabtawi (left) recently joined the Law School as an Acting Professor. She teaches courses in the business law curriculum, with particular emphasis on our unique business transactional clinical curriculum. Before joining the UCLA Law faculty, Professor Anabtawi clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals



for the D.C. Circuit and then for Supreme Court Justice Sandra Day O'Connor. She then practiced law for eight years at O'Melveny & Myers, where she specialized in mergers and acquisitions, joint ventures and strategic alliances, funds and acquisition vehicles, and financial products, as well as general corporate representation.

Becoming a Business Lawyer

CAROLINE M. GENTILE



Caroline M. Gentile joined the faculty in the fall of 2000 to teach courses in the Business Law Transactional Program. She received her J.D. from the Law and Economics Program at Yale University, where she was a John M. Olin Scholar in Law, Economics and Public Policy and a teaching fellow in the Graduate School of Economics. She was also symposium editor of the *Yale Law Journal* and editor of the *Yale Journal on Regulation*. After receiving her law degree, and during the years before coming to the Law School, she practiced law at Cravath, Swaine & Moore, where she worked in the areas of mergers and acquisitions, commercial bank financing, high-yield bond financing and common stock offerings. At UCLA she teaches *Corporate Finance* and *Corporate Financing Transactions*.

Like many law students, I read and discussed numerous cases involving disputes arising from business transactions while I was in law school. And, like most law students who embark upon a career as a business lawyer following graduation from law school, I quickly discovered that I was not prepared to participate in business transactions. I not only struggled to apply the concepts that I had learned in law school to the business transactions in which I was involved, but I also strained to understand the role business lawyers play in business transactions.

Over time (and with the assistance of the training programs provided by the law firm at which I was a corporate associate), I was able to bridge the gap between theory and practice and to discern the nature of the services business lawyers provide to their clients. In addition, as I worked on a variety of business transactions, ranging from merger and acquisition transactions (including the merger of America Online, Inc. and Time Warner, Inc.) to financing transactions (including commercial bank financings, high-yield bond financings, and common stock offerings), I discovered that the skills I learned in one area of practice were readily transferable to others. In this way, by participating in business transactions, I became an effective business lawyer.

Transactional clinical courses provide law students with opportunities to begin the process of becoming effective business lawyers while they are in law school. In these courses, which typically involve a series of simulations, professors guide students in analyzing the intricacies of specific types of transactions within the context of an organizing framework. Transactional clinical courses thus provide students with both the experiences necessary to develop as effective business lawyers and a set of guiding principles for enhancing this development throughout their careers.

Recognizing the importance of transactional clinical courses in a business law curriculum, the Law School offers a number of these courses, such as *Mergers & Acquisition Transactions*, *Corporate Financing Transactions*, *Venture Capital Financing*, *Public Offerings*, *Environmental Aspects of Business Transactions*, *Creating Value Through Renegotiating Business Agreements*, and *Doing Business in China*. Each of these courses allows the professor to present theoretical concepts and practical applications in the same classroom so that students learn to apply the concepts they have learned in law school to business transactions. Each of these courses also provides a forum for the professor to articulate the services business lawyers provide to their clients so that students gain an appreciation of the role business lawyers play in solving problems and otherwise managing business transactions. Finally, each of these courses enables the professor to furnish students with rigorous exercises through which they begin to develop the skills that are used in (and transferable across) almost all practice areas.

Sports Law: Learning to Make the Deal

STEVE DERIAN

Each spring, some students who enroll in my *Sports and the Law* class are disappointed to learn that the course will focus primarily on the legal relationships between the various actors in professional sports leagues, with a particular emphasis on how antitrust and labor statutes affect those relationships. Some students enroll hoping that the course might consist of a succession of sports agents coming in to regale the class with stories of how the speaker negotiated his client's latest multi-million dollar deal. That doesn't happen. But for students who are interested in learning about how such deals are negotiated, there is an option. About one-third of the fifty or so students in the class take the course's optional clinical component, which consists of a one-unit clinical exercise. The exercises are simulated, but they come as close to the real thing as my industry advisors and I can make them.

My industry advisors, who generously donate their time, include Sam Fernandez, Senior Vice President and General Counsel of the Los Angeles Dodgers; Mark Rosenthal of Jeffer, Mangels, Butler & Marmaro, attorney for the Anaheim Angels; Dennis Gilbert, formerly one of the country's leading baseball agents; Mitch Kupchak, General Manager of the Los Angeles Lakers; former student Joel Corry of Premier Sports Management; and Deborah Spander '95—and Deborah's colleagues Marc Fein and Frank Sinton—of Fox Sports Net. These experts help me to devise and conduct a variety of negotiation and arbitration exercises, and each expert participates in a manner designed to enhance the simulation's verisimilitude.

For example, in the Dodgers' negotiation exercise, the students are given the playing statistics, salary history, and background of a fictional player. We don't use real players in the baseball exercise because the timing is wrong—the real players typically negotiate and sign their deals just as the semester is beginning, and it would be anticlimactic to negotiate a deal that had just been made. Through readings and lectures, the students learn about baseball salary negotiations and relevant portions of baseball's collective bargaining agreement. Next, the students draft a negotiation strategy memorandum and discuss it with me. The students then meet with an industry expert (Dennis Gilbert or Mark Rosenthal) to discuss strategy further. Finally, the students begin individual player contract negotiations with Sam Fernandez of the Dodgers. Although Sam can make the negotiations difficult at times, I've never had a student who didn't appreciate and learn greatly from the opportunity to negotiate with him.

Joel Corry negotiated with Sam in 1991. Joel has now built a career as a sports agent. He takes time out each spring to help a group of students learn to negotiate National Basketball Association player contracts. In the basketball exercise, students



Steven Derian joined the faculty in 1987 after four years as a litigator at a leading Los Angeles law firm, where he concentrated on employment matters. At UCLA, Professor Derian specializes in teaching the year-long trial advocacy clinic in which students represent clients in actual hearings. Professor Derian has won several awards for excellence in teaching, including the University-wide Luckman Distinguished Teaching Fellows Award.



When I visited the Law School I toured the clinical wing and saw the beautiful, technically equipped facilities. But I don't feel that I lost out, because students in my day share with students of today the treasure of an exquisite faculty. It's as true today as it was when I evaluated which law school to attend. UCLA's Clinical Law Program is among the best in the nation for teaching the practice of law.



RUTH JONES '83
ASSOCIATE PROFESSOR AT
McGEORGE LAW SCHOOL
WHO TEACHES CLINICAL SUBJECTS

negotiate directly with one another. After an initial indoctrination through readings and lectures, the "player agents" are advised by Joel, and the Lakers' team representatives are advised by Mitch Kupchak of the Lakers. The final negotiation session takes place at the Lakers' practice facility with both Mitch and Joel present. As the negotiation unfolds, the students are able to call "time out" to seek advice from their expert in an effort to make a deal before the deadline. Over the years, students have negotiated mock contracts on behalf of such Laker luminaries as Kobe Bryant, Robert Horry, and Glenn Rice. The students greatly appreciate Mitch's and Joel's input and watch with great interest as the actual negotiations involving the subject player unfold during the ensuing summer.

Another former student, Deborah Spander '95, is now Director of Business and Legal Affairs at Fox Sports Net. She and her colleague, Mark Fein, engage in mock negotiations on behalf of Fox with a team of students who "represent" the Pacific 10 Conference in selling the broadcast rights to its football games. Before the negotiations begin, the students meet with their client, the "Commissioner" of the Pac 10 (played by Fox Vice President Frank Sinton), who advises the students regarding issues that are important to him. He continues to be a source of information and advice for the students throughout the negotiations. We have been doing this particular exercise for two years; it has been a great addition to the program and a terrific way to acquaint students with sports media contracts.

Although these exercises are not intended as a substitute for a negotiation course, they do provide a memorable negotiation experience for students in a setting that supplies its own motivation. The students learn not only how legal rules—such as those contained in a relevant collective bargaining agreement—can affect negotiations, but also how their negotiation strategy is shaped by a combination of those rules, client desires, relevant objective criteria, and available alternatives. The exercises provide interested students with an opportunity to learn how those latest multi-million dollar deals are negotiated, and the students who take advantage of that opportunity are not disappointed.

The Clinical Facilities

In 1989 UCLA completed a ten-million-dollar addition to the law building designed specifically for clinical education. The main part of this addition is a three-story teaching wing that includes a hearing room equipped with jury box and judge's bench, three multi-purpose teaching rooms, and eight conference rooms that can be used for meetings between clients and student lawyers, simulated interviews, counseling sessions, or negotiations. All classrooms are fully equipped with video cameras, monitors, and

playback facilities. The cameras are operated from control rooms outside the classroom so that the equipment does not interfere with the teaching function.

Clinical students work in the law office that is adjacent to this teaching wing. The law office has the amenities of a law firm, in addition to critical teaching tools. The "office" consists of a small library, two large student work rooms, four faculty offices, two client interview conference rooms, and a support staff area, where case files are

located. All facilities are fully loaded with the latest in on-line technology so that students can gain access to files and information, including Westlaw and Lexis; use various evidence-tracking and other litigation software; communicate electronically; and record their findings. Shared networking allows faculty and students to review the same documents and progress together through cases and issues, thus simulating a working law firm, with the added benefits of teaching guidance and insight.

Teaching Lawyering Skills to First-Year Students

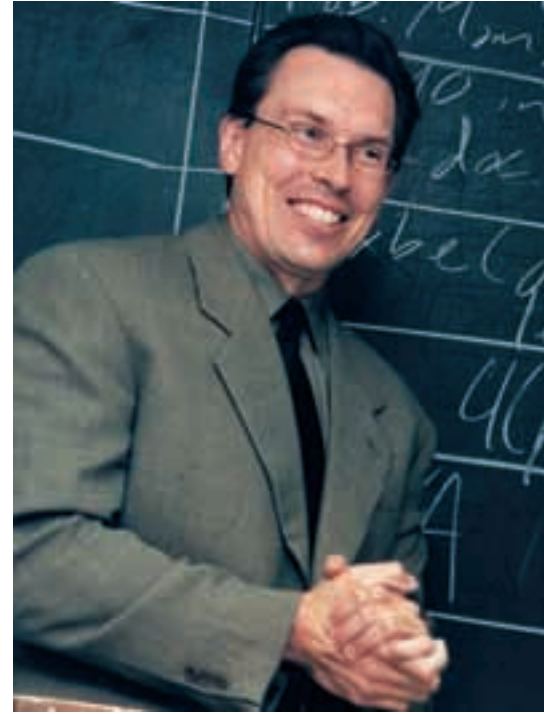
TOM HOLM

The UCLA School of Law is one of the few law schools to offer a foundational lawyering skills course to first-year students. During the course, students develop skills in legal writing, analysis, research, argumentation, statutory interpretation, factual development, and interviewing and client counseling. All these skills are taught using the clinical method, that is, with the client's perspective firmly in mind and with the students learning by acting as lawyers. Students learn that clients come to lawyers to seek solutions to problems, and that one of a lawyer's many tasks is to accomplish a client's objectives while working creatively and ethically within the constraints of the legal system. The course is designed to provide students with the practical grounding necessary to enable them to function immediately and effectively in their summer jobs and in their initial full-time jobs upon graduation.

The Law School puts a premium on hiring experienced practitioners to teach *Lawyering Skills*. Before teaching at UCLA, all lawyering skills faculty had significant practice backgrounds at major firms, the U.S. Attorney's Office, or notable public interest programs. Customarily, instructors worked as federal clerks after graduation.

The lawyering skills course serves two primary pedagogical goals in the fall semester. The first is to teach students how to approach and understand case authority. Learning how to extract the relevant facts, reasoning, and holding from precedent is arguably the hardest analytical task students face. Applying precedent effectively to a client's situation complicates their task. Thus, students are given a variety of in-class exercises designed to teach them how to extract principles of law from cases and analogize their client's factual situation to precedent. The second goal is to teach students how to convey their analysis in writing. The process of communicating legal analysis is not intuitive. Among other things, students initially struggle with organizing their analysis into distinct issues and presenting complete, yet concise arguments. Students learn these skills in the context of writing objective, or expository, memoranda. They are assigned three memoranda. Each student is given an extensive written and verbal critique of every memorandum completed.

The spring semester focuses on persuasive writing. Students write two more memoranda, and continue to build on the analytical and writing skills they learned in the fall semester. In addition, they are taught a variety of techniques designed to add persuasiveness and conviction to their analysis.



Tom Holm is the Director of the first-year Lawyering Skills Program and an outstanding classroom teacher. A member of the faculty since 1996, he received the UCLA Campus-wide Distinguished Teaching Award for the year 2000. Before joining the faculty, he worked as a litigator and corporate lawyer for four years at a highly regarded Los Angeles law firm and clerked for a judge on the Ninth Circuit Court of Appeals.

Students are also taught a wide range of other practical skills that they are most likely to use early in their careers. These skills include statutory interpretation as well as interviewing and counseling techniques. Students also learn never to approach a client's situation as a static one. Instead, they learn to approach client issues from a problem solving perspective, with the goal of developing additional facts to support a client's position.

Students are given a wide range of support throughout the year as they learn these skills. In addition to working closely with the instructor, each student works individually with a teaching assistant (TA). For each memorandum a student prepares, a TA reviews the first draft, giving the student a substantial written and verbal critique. The student then prepares a final version of the memorandum for the instructor's review. Thus, students receive much more extensive feedback than is given in most, if not all, legal writing programs. The TAs are thoroughly trained in teaching analytical thought process and legal writing to first-year students.

The results of the lawyering skills course have been very well received by both students and their employers. Students return from their first- or second-year summer jobs with a great appreciation for the things they learned in the course, and an understanding of how much more substantially prepared for "real" legal work they are, compared to students from other institutions. Similarly, judges, law firms, and other employers of UCLA students have told members of the law school administration that they fully appreciate the level of preparation UCLA students have for the practice of law.

The lawyering skills course is a "work in progress." While the main goal of the course, teaching coherent legal analysis and effective communication of that analysis, is consistently met, the instructors and I continue to review the curriculum to find new and creative ways of demonstrating and teaching the practical application of the law.

“

The most productive/exciting/memorable clinical law class that I took in law school was the Clinical Semester, with Gary Blasi and Carson Taylor in the spring of 1993. We functioned as an actual public interest law firm, with real clients, real cases, and real protocol for handling cases. We were able to help people directly, research innovative issues, and bring a few "bad guys" to justice—or at least to a videotaped deposition. The Clinical Semester cemented my desire to pursue a career in public interest law, and that is exactly what I've done.

”

WILLIAM LITT, UCLA JD '93

Other Clinical Faculty Members

Gary Blasi is an internationally recognized poverty lawyer. He joined the UCLA faculty in 1991, having spent twenty years as a practicing lawyer and advocate for the poor. As a UCLA faculty member, Professor Blasi continues to retain strong ties to the public interest legal community. At UCLA, he directs the Public Policy Advocacy Clinic and also teaches *Depositions and Discovery in Complex Litigation*. His research includes significant work on how novice lawyers acquire expertise and demonstrate creativity, how the legal system interprets and responds to social problems, and the impact of information technology on the organization and delivery of legal service. He has lectured widely on the use of litigation support systems and the use of computers to manage complex litigation. Most recently he researched and produced, with a dozen public interest law students, a white paper in support of an ACLU lawsuit calling for the State of California to take responsibility for the conditions of public schools. The paper is available on Professor Blasi's faculty page <www.law.ucla.edu/faculty>.

Kenneth Klee is one of the leading bankruptcy lawyers in the nation. He joined the UCLA Law faculty in July 1997 after teaching bankruptcy and reorganization law as a visiting lecturer beginning in 1979. For the Transactional Clinical Program, Professor Klee has developed the sophisticated, simulation-based course *Creating Value through Renegotiating Business Contracts*. A full profile of this class, nicknamed "Transactional Boot Camp" was featured in the Business Law Concentration section of the Spring, 2000 edition of *UCLA Law Magazine*, which is available at <www.law.ucla.edu>. He also teaches a variety of bankruptcy and business courses. The UCLA Public Interest Law Foundation named Professor Klee the recipient of the 2000 Fredric P. Sutherland Public Interest Award for his devotion to protecting middle class families through the federal bankruptcy act. Professor Klee was selected to receive the Emory Bankruptcy Developments Journal Second Annual Distinguished Service Award.

Randall Peerenboom teaches an intensive transactional clinical course in doing business in China, the only one of its kind in the United States. A Chinese law specialist, he joined the UCLA Law faculty in 1998 after spending four years negotiating international business transactions in Beijing. He holds a Ph.D. in Chinese philosophy as well as a law degree, and is one of only a few scholars outside of China who can read and analyze both classical and contemporary Chinese law.

The Externship Program: A Semester in Practice

In addition to the in-house clinical programs, UCLA has one of the best-established, most diversified student externship programs in the nation. Students can work as a law clerk to a federal judge, for approved government agencies, in public interest law firms, or for nonprofit organizations. Students in the judicial Externship Program work as full-time law clerks in the chambers of federal trial and appellate judges in the Los Angeles area. This provides a remarkable opportunity for them while still in law school to observe and participate in the judicial decision-making process and to study the inner workings of federal courts. Alternatively, students can work in public interest settings such as the ACLU or the Asian Pacific American Legal Center, or for governmental agencies located in Washington D.C., such as the Department of Defense or the Department of Justice, or with specialty agencies such as the FCC or one of the offices of the Natural Resources Defense Council. In addition to day-to-day supervision by highly experienced lawyers at the placements, students keep in regular contact with UCLA faculty through concurrent semester-long tutorials. Students regularly report that the externship experience deepens their understanding of the substantive material learned in the classroom, while providing a unique opportunity to develop lawyering skills in a sophisticated legal practice.

**"The Changing Face of Practice:
Perspectives from the Profession
and the Law School"**

**A Symposium supported by the
Ann C. Rosenfield Endowment
to mark the 30th Anniversary of the
UCLA School of Law Clinical Program**

April 20, 2001

The year 2001 marks the thirtieth anniversary of the founding of the UCLA School of Law Clinical Program. To commemorate this important milestone, the Law School invites lawyers, judges, clients, law faculty, and law students to attend a symposium on "The Changing Face of Practice: Perspectives from the Profession and the Law School," followed by a reception and dinner in the Law School's Ralph & Shirley Shapiro Courtyard.

"The Changing Face of Practice" is underwritten by the Ann C. Rosenfield Symposium Fund, which is dedicated to providing, in perpetuity, an annual symposium to provide a forum for diverse audiences and to promote intellectual distinction for the UCLA School of Law.

The Symposium will address three of the most significant changes in law practice over the past few years—the escalating costs of legal services, fueled in part by recent hikes in associate salaries; the trend toward multi-disciplinary practice; and the perceived decline in professionalism and civility among lawyers. Panelists will examine these developments, focusing on their effects on law firm culture and the lives of newly minted associates, and will also consider what legal education should be doing to prepare students for the changing face of the practice of law.

The format for the Symposium will be a roundtable discussion among panelists who represent differing perspectives on each of the issues, followed by an open forum discussion with the audience. UCLA Law School faculty members will moderate each panel.

**Professor David A. Binder
will receive a lifetime
achievement award at the
anniversary dinner for his
thirty years of innovative
contributions to clinical
legal education.**

PROPOSED PROGRAM

- 1:00 Registration and MCLE signup
- 1:15 Welcome from Dean Jonathan Varat, followed by opening remarks introducing the themes of the conference
- 1:30–2:45 **Panel 1: “Fallout from High Salaries: What this Means for the Legal Profession”**
 The first panel of the afternoon tackles a controversial problem that has escalated during the past year: the impact of the recent major increases in associate salaries on law firm practice. The panelists will address the ramifications of increasingly high starting salaries on issues such as billable hour requirements, pro bono policies, firm retention rates, the ability of firms to offer a wide range of practice areas, and the overall atmosphere of firms. Other questions to be considered by the panel include: Will these increases in hourly billing rates provide business opportunities to a new level of entities that offer a limited range of legal services, such as legal research, at lower rates? Also, what is the client’s perspective on these increases and how is that being taken into account by the firms? And how can law schools better prepare their students to provide the services demanded by the higher salaries they command?
 Moderator: Professor Ann Carlson, UCLA School of Law
 Panelists: Joy Crose, Vice President and General Counsel, Nissan North America, Inc.
 Marc Fenster, Associate Attorney, Irell & Manella, LLP, Los Angeles
 Daniel Grunfeld, President and Chief Executive Officer of
 Public Counsel, the nation’s largest pro bono public interest firm
 Greg Nitzkowski, Managing Partner, Paul, Hastings,
 Janofsky & Walker, LLP, Los Angeles
 Dov Seidman, President of Legal Research Network
- 2:45–3:00 Break
- 3:00–4:15 **Panel 2: “Multidisciplinary Practice: A Change Whose Time has Come”**
 The panel on Multi-Disciplinary Practice (MDP) will examine how MDP is changing the face of legal practice. Panelists will consider how pervasive MDP is likely to become; which practices it is most likely to affect; and the driving forces behind the growth of MDPs. The panel will also discuss ethical tensions raised by an MDP practice—the present rules, how MDPs presently operate within these rules, and proposed rule changes—and how law schools and law firms should train students and young lawyers for an MDP practice.
 Moderator: Professor Timothy Malloy, UCLA School of Law
 Panelists: Mary Daly, Ethics Professor, Fordham University School of Law
 and ABA Reporter on MDP rule changes
 Joanne Garvey, Partner, Heller, Ehrman, White & McAuliffe,
 San Francisco, and the Liaison from the ABA Board of Governors
 to the ABA Commission on MDP
 J. Anthony Vittal, Partner, Vittal & Sternberg
 Prentiss Willson Jr., National Director of SALT Practice and Procedure,
 Ernst & Young, LLP
- 4:15–4:30 Break
- 4:30–5:45 **Panel 3: “The Decline of Professionalism: Fact or Fiction?”**
 This panel will address a growing perception among the public and the legal community of a decline in professionalism. This perception comes out of media portrayals of attorneys, consistent complaints from judges and practicing attorneys engaged in civil practice about a lack of civility between opposing counsel, and recent high profile criminal cases such as the suddenly aborted prosecution of Wen Ho Lee and the Rampart scandal. Questions to be addressed by the panel include: Is this perception accurate, that is, is the perception of a decline in professionalism fact or fiction? If fact, how should law schools respond to it, beyond holding ethics classes? Also, what should the profession be doing? If fiction, how do we diffuse a misleading perception that professionalism is on the wane?
 Moderator: Professor George Cardona, UCLA School of Law
 Panelists: James Brosnahan, Senior Partner, Morrison & Foerster, LLP, San Francisco
 Michael Emmick, Assistant United States Attorney, Los Angeles
 Larry Feldman, Partner, Fogel, Feldman, Ostrov, Ringler & Kleven, Los Angeles
 The Honorable Ann Kough, Los Angeles Superior Court
- 5:45 Closing remarks
- 6:30 Reception followed by the 30th Anniversary Gala Celebration Dinner and presentation of the Lifetime Achievement Award for Excellence in Clinical Education to Professor David A. Binder. Both reception and dinner to be held in the Ralph & Shirley Shapiro Courtyard.

Registration:
haro@law.edu.ucla
 or
(310) 825-7376



A close-up, high-resolution photograph of the United States flag, showing the stars and stripes in detail. The flag is waving, creating a sense of movement. The stars are white on a dark blue field, and the stripes are red and white.

We

the people

UCLA LAW - THE CONSTITUTION AND THE ELECTORAL PROCESS

Lawyering Lessons from Florida

DANIEL J. BUSSEL

Bush: 271. Gore: 266. To nonlawyers, results are of paramount importance. Thus the proper focus of most commentary is the political, policy, institutional, and constitutional law implications of this year's presidential election drama and George W. Bush's ultimate victory.

But we can learn more about law and lawyering from examining how the game was played than from speculations about the implications of the final score. From November 7 to December 12, the nation's top legal talent was given unlimited resources to mount a six-week legal, political, and public relations battle to determine who would be the next President. Was there anything that the lawyers did or didn't do that mattered? Was it inevitable that Mr. Bush would prevail given the strategic setting of the contest? Or could Mr. Gore's lawyers have made different choices that would have yielded different results?

I wasn't involved in the litigation and I haven't interviewed any of the key players. It seems unlikely that one could get candid on-the-record comments on these issues from those who were directly involved. But from what one can glean from the newspapers, the court opinions and arguments, and listening to the talk shows, one tantalizing possibility for Gore leaps out:

Assume that enough Gore dimples and hanging chads existed among the Dade, Broward, Palm Beach, and Volusia County undervotes to swing the election to Mr. Gore, and that the Florida Supreme Court was prepared to order the counting of every dimple as a matter of Florida law—judgments, or at least reasonable expectations of the Gore camp from election night onward, that subsequent events have validated.



Assuming further that Florida Secretary of State Katherine Harris was permitted to certify Governor Bush the winner on November 17 in accordance with state law, then Mr. Gore would have had two more weeks to pursue the contest—provided that the Gore team had (a) accepted the Florida trial court decision upholding Ms. Harris's decision to ignore late returns based on hand counts, (b) allowed her to certify results on November 17 without seeking relief from the Florida Supreme Court, and (c) then promptly commenced the election contest. In this case, the Florida Supreme Court would not have compromised its prestige and moral authority (and drawn rebuke from the Supreme Court of the United States) in extending the November 17 deadline. And just maybe, an eventual Florida Supreme Court decision ordering manual recounts as proper relief in the contest proceeding under Florida law would have stood up. Of course we can not know the reaction to *Bush v. Gore* of Justices O'Connor and Kennedy presented in this alternate posture—one where perhaps the

equal protection concerns could have been obviated. We have a pretty good idea that the four dissenters and the Rehnquist-Scalia-Thomas bloc would not have viewed this changed posture as decisive.

In any event, it is clear in retrospect that prosecuting the protest proceeding to the Florida Supreme Court, despite Mr. Gore's initial victory there, ended up hurting rather than helping his cause. He lost time, focus, and provoked a rebuke from an unsympathetic U.S. Supreme Court, and, as it turned out, the extension of the deadline he had won gained him nothing.

Perhaps it is unreasonable to expect that Mr. Gore's lawyers could have anticipated the hollowness of a protest victory in the Florida Supreme Court, even though they clearly knew that a contest and an unsympathetic U.S. Supreme Court majority lay ahead. Perhaps it couldn't possibly have mattered because the Florida legislature, Florida executive, and U.S. House of Representatives were all Republican controlled and ultimately would have negated any adverse decision of the Florida Supreme Court, even if the U.S. Supreme Court had not acted.

But it would be interesting to know what Mr. Gore's lawyers think now about their first victory in the Florida Supreme Court. Accepting an interim setback in the protest in order to get to the ultimately decisive contest might have been a wiser choice. In any event, good lawyering requires awareness of the possibility of pyrrhic victory.

Daniel J. Bussel is a professor of law.

Election 2000

DAN LOWENSTEIN

In October, 2000, if a questionnaire had been administered to a large sample of liberals and conservatives with questions like (a) whether a hand count of ballots with open, subjective standards introducing the possibility of bias is better or worse than a probably less accurate but unbiased machine count, or



(b) whether a presidential candidate who loses in a state that is pivotal in the electoral college by a minute margin should concede defeat or aggressively pursue all legal remedies, it would have been hard to get people to answer such uninteresting

questions. If they were paid enough to induce them to complete the questionnaire, it is unlikely there would have been a strong pattern of division along liberal-conservative lines.

Now, however, we find that beliefs on such previously arcane questions line up with amazing consistency along ideological lines. How has this come about? Do millions of people reason that they favor Gore or Bush and that therefore their view on any electoral question is whatever will benefit that candidate? Probably a few members of the candidates' teams and a few other super-zealous partisans reason that way, but it is unlikely that anyone else does.

Nevertheless, when one is presented with a new question (what is your opinion about whether a dimpled chad should count as a vote?), people do not reason abstractly from abstract principles, as some moral philosophers might recommend. Rather, I believe the process is much more analogous to (but by no means identical to) what John Rawls referred to as a reflective equilibrium. His idea was that a person goes back and forth between concrete circumstances and abstract ideas about justice in order to zero-in on an opinion. I see a reflective equilibrium between a gut feeling (to use the technical term) and the loose inventory of ideas and principles that each of us has floating around in our heads. The gut feeling of the Gore (Bush) supporter is going to be that my candidate (my candidate's opponent) needs to make up votes and the majority of dimpled ballots seem to support (oppose) my candidate. There are plenty of ideas and principles in the inventory that will support the gut feeling. Every vote should be counted (or, the rules shouldn't be changed after the game has been played).

While this internal process is going on, the individual hears the views of others. Most people are likely to discuss such questions with people whose political orientation is similar to their own. So they find that the people with whom they identify are expressing the same ideas and principles

that are in their own inventory and that support their initial gut feelings. And they hear the talking heads in the broadcast and print media. The good, reliable leaders like Cuomo (Pataki) are reinforcing the individual's own emerging views, while the devious, wrong-headed crooks like Pataki (Cuomo) are trying to mislead the public by relying on ideas and principles that the individual never gave much credence to or that just have no relevance to this situation. Eventually it becomes clear that "the rules shouldn't be changed after the game has been played" (or "every vote should be counted") is simply a demagogic slogan the other side is using as the basis for its deceptive propaganda.

Let this go on for a week or two, and views on dimpled chads become as fixed a part of liberal and conservative ideology as support and opposition to tax cuts ever were. This works in the segment of the general public that sees the world in ideological terms and is thereby supposed to be "sophisticated." I believe it also works with public officials, including judges. Why did the Florida Supreme Court and the U.S. Supreme Court divide by one-vote majorities and, in the case of the U.S. Supreme Court, along strictly ideological lines. (That was impossible on the Florida Supreme Court, because they are all liberals.) Is it because these judges said to themselves, by golly, I'll support my party or my candidate come hell or high water? I very much doubt it. But their minds are subject to the same process as other people who approach the world ideologically.

Professor Lowenstein has taught courses in election law, legislation, property, political theory, constitutional law, and law and literature. He was the main drafter of the Political Reform Act, an initiative statute that was approved by the voters of California in 1974. The Political Reform Act created a new Fair Political Practices Commission, and Professor Lowenstein was appointed as the first chairman of the commission. His textbook, *Election Law*, was published in September 1995 and is believed to be the first text on American election law to be published since 1877. He has published journal articles on campaign finance, redistricting, bribery, initiative elections, political parties, and commercial speech. He also has published a study of legal themes in *The Merchant of Venice* and other literary works. Professor Lowenstein has many diverse interests and areas of expertise. He has served on the national governing board of Common Cause and currently serves on the board of directors of the Interact Theater Company, bringing dramatic legal readings to the School of Law at least once each semester.

Voting Rights, a View from Florida

CRUZ REYNOSO, VICE CHAIR TO THE U.S. COMMISSION ON CIVIL RIGHTS AND HIS SPECIAL ASSISTANT, EFFIE TURNBULL '98

How can the right to vote be assured to each individual citizen? And how can that citizen be assured that each vote will

be counted? These are the basic questions being explored by the U. S. Commission on Civil Rights on which I serve as Vice Chair. The Commission conducted investigatory hearings on these voting rights issues in Tallahassee, Florida on January 11 and 12 of this year, and conducted further hearings in Miami on February 16.

In our country the right to vote is the most important tenet of our modern democracy. Sadly, that basic right has historically been denied to many: those who did not own property, women, people of color, and language minorities.

One of the first efforts of the Civil Rights Commission when it was established in 1957 was to assure the right to vote. There had been strong resistance, particularly by

many southern congressmen, to the passage of the 1957 Civil Rights Act which authorized the creation of the Commission. In fact, Senator Strom Thurmond was so opposed to its creation that he filibustered for over twenty-four hours in opposition to the legislation creating the Commission.

It took several additional amendments to the 1957 Civil Rights Act, extraordinary sacrifice and much hard work on the part of the American people, and numerous recommendations by the Commission to Congress before the 1965 Voting Rights Act was enacted. Prior to the Act's passage, the Commission held several hearings which investigated numerous schemes which had the effect of disenfranchising African American voters. Out of these hearings came specific recommendations by the Commission. The Act, which prohibits voting discrimination, was enacted under Congress' authority to enforce the



Cruz Reynoso

in order to form a more perfect union



Local and national media visited UCLA Law throughout the election and subsequent court hearings. Above, John Schwada of Fox 11 News interviews a student.

Fifteenth Amendment to the United States Constitution. The Act not only prohibits intentional discrimination, but also bars state regulations, standards, or practices which have the effect of denying citizens the right to vote. In other words, state officials may be in violation of the law if their actions or failure to act results in the denial of citizens' right to vote, regardless of whether such officials intended the result or not. This standard shows that Congress meant business when it adopted the Voting Rights Act. It places a great responsibility on the part of government officials to affirmatively ensure that a citizen's right to vote is carefully protected.

Unfortunately, while in Florida the Commission heard testimony from witnesses which suggested that this very important right was not being adequately preserved. Witnesses testified to practices, some based on law, which still result in disenfranchisement. Consistent with this testimony, we heard from several witnesses who gave accounts of how they were permitted to vote, but only after much persistence and vigilance. Local officials testified that once a voter is mistakenly dropped from the voter list, only extraordinary insistence will assure them a vote. Many will simply give up.

One African American preacher testified under oath that when he arrived at his designated precinct to vote with his family, a poll worker improperly told him that he was not on the voter list and therefore could not vote. The preacher was puzzled inasmuch as he had voted at the precinct during pre-

vious elections. A call to the county office revealed that his name had been stricken because he had been identified to be an ex-felon. The preacher, in fact, had no criminal record. It was only after he mentioned employing an attorney that a supervisor investigated further to find that the witness was improperly purged from the voter lists. He was then allowed to vote. The preacher's name had been stricken from the voting rolls based on a report by a consulting firm, with which the state had contracted, which identified him as a felon. Florida, like several other states, withdraws the right to vote from ex-felons.

We also heard from a witness representing the disability community who testified that voting precincts were not equipped to allow persons with disabilities confidential access to the polling booths. The witness testified that it was often times nearly impossible for persons in wheelchairs to use the polling booths. He described how the wheelchair-bound often had to try and hoist themselves up to the polling booth, precariously balancing themselves as they partially leaned out of their wheel chairs in order to vote. The witness himself, for example, was blind and needed assistance from a sighted person in order to vote. His vote was not private, and every time he goes to vote, someone else sees how and for whom he votes.

All of the officials who testified, from Governor Jeb Bush and Secretary of State Katherine Harris to county election officials, agreed that the statutes and practices had had an adverse effect on African Americans. The local practices caused this adverse effect.

Florida, by way of example, has a local option (on the county level) regarding sample ballots. Each county decides whether or not to distribute sample ballots. Precincts which are poorer and have more persons of color are more likely to vote without the benefit of sample ballots. Fewer votes are disqualified in counties that distribute sample ballots. Additionally, the equipment varies from county to county. One county disqualified twelve percent of its entire vote, while another disqualified less than one percent. The older outdated machines, which are more likely to yield disqualified votes, are found in precincts which are populated predominantly by the poor and persons of color.

establish justice, insure domestic

There was no preparation, we heard, for the expected increased number of African American, language minority, and in particular, first-time voters. Indeed, the number of employees in the state division of elections had actually decreased over the last two years. And while the secretary of state had requested approximately \$100,000 for voter education, the governor had not included that figure in his budget request.

Barriers to the exercise of the fundamental right to vote must be eliminated wherever possible if we are ever to achieve the promise of true American democracy. Voters, too, have the responsibility to educate themselves on how the voting process actually works.

Officials and community witnesses had many suggestions on how to improve the process and ensure the right to vote for all Floridians, including to:

- ★ Utilize a provisional ballot which permits a citizen whose right to vote is in question, to cast a ballot. Later, the correctness of such a ballot may be determined.
- ★ Increase the hours that polls are open.
- ★ Allow persons standing in line at poll closing time the opportunity to vote.
- ★ Create voter education guides to instruct persons on what their rights are, what to do if they encounter difficulties voting, and how to properly execute their vote.
- ★ Provide increased and uniform training for poll workers.
- ★ Furnish voting booths which are accessible to the disabled.
- ★ Arrange for more voting places, particularly in rural areas.
- ★ Add sufficient staff at polling places.
- ★ Allocate more resources to voter education, voter registration drives, and get-out-the-vote efforts.
- ★ Eliminate legal barriers to allow ex-felons who have paid their debts to society the right to vote.
- ★ Distribute uniform sample ballots prior to elections to all registered voters within each county.

Unfortunately, voting irregularities are not new to the Sunshine State. Florida has a long and sad history of disenfranchisement of voters. Several counties are still under supervision by the U.S. Justice Department for violations of the Voting Rights Act. Such violations are unjust, hurtful, decrease confidence in American democracy, and may result in widespread citizen discontent, ill will, and voter apathy. Barriers to

participation should be eliminated wherever possible. More resources and attention need to be focused on voter participation. The governor has appointed a commission to make recommendations to improve voting practices. The U.S. Commission on Civil Rights will issue a report which also includes recommendations. It is now clear, with the eyes of all America and the world on voting practices, that Florida and the other forty-nine states need an in-depth examination resulting in needed changes. From a voting fiasco may come some solid improvements.

Effie Turnbull '98 is a current member of the California Bar and serves as Special Assistant to the Vice Chairperson of the United States Commission on Civil Rights—Professor Cruz Reynoso. Ms. Turnbull serves on the Board of Directors of the Ethnic Coalition and the Fair Housing Counsel of San Gabriel Valley, and is a member of the University of California Office of the President-Greenlining Partnership to increase diversity in minority contracting with the University of California.

Decision v. Reasoning, Bush v. Gore

CLYDE SPILLINGER



Clyde Spillenger

The case of *Bush v. Gore* has reminded us of something that students of law learn early, yet are apt to forget in the heat of the moment: Most legal arguments worth having admit of more than one reasonable answer.

Thus, the U.S. Supreme Court's final *conclusion*—that hand recounts must stop because of the inconsistent standards being applied in different counties (and within counties) in Florida—was not in itself “wrong.” Nor would a contrary conclusion have been “wrong.” As constitutional lawyers would say, one could have written an opinion either way that would have stood the test of reasonableness.

But this means that *how* an opinion is written—how it makes its conclusions persuasive, or at least acceptable, to those who disagree—is crucial. And in this task, the U.S. Supreme Court failed utterly, and to its discredit.

To understand why, one must consider the entire sequence of

Tranquility, provide for the

events. In its first order setting the case for briefing and argument, the Court noted its special concern with Section 5 of Title 3 of the U.S. Code (the so-called “safe harbor”) provision. As it emerged on reflection, the notion that Section 5 bound the Florida Supreme Court (FSC) in any meaningful way, or gave the U.S. Supreme Court any reason to act, was not credible—not even “serious,” as Justice Souter later pointed out.

In its next act, the Court remanded the case to the FSC, with a strongly worded admonition that Article II of the U.S. Constitution would forbid any “change” in the Florida legislature’s statutory election scheme, even one based on Florida’s Constitution. This, too, appears in retrospect to be a flawed argument. Neither logic nor precedent suggests that a state legislature must act unconstrained by the state constitution that created it, even in presidential elections.

Nevertheless, the Florida Supreme Court dutifully followed the Court’s admonition: It revised its opinion to clarify that it was simply interpreting the state legislature’s mandate. Moreover, in its final opinion, ordering recounts throughout the state, the Florida Supreme Court studiously avoided creating a uniform standard for counting ballots. It did this not because it failed to understand the importance of uniform standards, but simply under the compulsion of a Court opinion seeming to forbid the creation of rules and standards that the state legislature had not devised.

Finally, on appeal from this ruling, the Court overruled the FSC—on the ground that the Equal Protection Clause was infringed by a number of inconsistencies in the proposed recount process. This concern with the Equal Protection Clause



was a reasonable one. The Court, then, might have provided an opinion explaining how and why its conclusion fit in with previous decisions under the Clause, the most litigated passage in the history of the U.S. Constitution. It might have explained why its concern with equal protection does not equally apply to other election disuniformities that occur in every statewide or presidential election, including this one. But it did none of these things, and its final decision therefore has the quality of an

ipse dixit, in one of the most important cases it has ever decided. Worst of all, the *sequence* of its actions—first preoccupying the FSC with its views on Section 5 and Article II, then discovering at the eleventh hour the problem of equal protection while leaving the FSC with neither the time nor the legal space to address the problem—has left the Court vulnerable to the charge that it engaged in ill-concealed opportunism.

In perhaps its most remarkable observation, the Court said, “Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.” To many of us, this observation (especially ironic where the question of equal protection—treating like cases alike—is concerned) is the very antithesis of the rule of law. The Court’s authority to decide such momentous questions rests to, a great degree, on its ability to demonstrate that its reasoning is not just made for the occasion, but expresses a more universal norm. That is why, despite the fact that the Court could have made its conclusions persuasive, its actions instead constitute one of the sorriest chapters in its history.

Clyde Spillenger is a self-described whining loser.

common defence, promote the

Federalism and Preemption in October Term 1999 (EXCERPT)

JONATHAN D. VARAT

Seven Constitutional Law experts gathered at a Pepperdine University symposium last fall to analyze the U.S. Supreme Court's extraordinary 1999–2000 term. This article is a brief excerpt of the paper Dean Varat presented there.

The past term's preemption decisions all went against state power—a fact that at least invites reflection in the context of a Court that of late has been particularly solicitous of state power and particularly stingy about federal power. In four cases that asked the Justices to resolve whether certain federal laws, statutory and administrative, preempted state legislation or the application of state common law, the Court ruled in favor of preemption in each one.

Two of the preemption decisions were unanimous. The first, *United States v. Locke*, addressed regulations adopted by the State of Washington to prevent oil spills from tankers plying its waters. Notwithstanding provisions of the intervening Oil Pollution Act of 1990 (OPA) that explicitly preserved some state authority, *Locke* reaffirmed the Court's earlier decision in *Ray v. Atlantic Richfield Co.* and held that the federal Ports and Waterways Safety Act of 1972 (PWSA) preempted state regulations purporting to establish separate standards for tanker crew training, English language proficiency, navigation watch, and marine casualty incident reporting. OPA's text and "the established federal-state balance in matters of



Pepperdine's Odell McConnell Law Center held a symposium September 23, in honor of the inauguration of Andrew K. Benton as the University's seventh president. Some of the participants were Dean Jonathan Varat; Akhil Reed Amar, the Southmayd Professor at Yale Law School; Erwin Chemerinsky, the Irmias Professor of Public Interest Law, Legal Ethics, and Political Science from USC Law School, and a visiting professor at UCLA School of Law this spring; and Kathleen Sullivan, the Richard E. Lang Professor, Stanley Morrison Professor and Dean of Stanford Law School. Other panelists not pictured who participated in the review of the Constitutional decisions of the Supreme Court's October Term 1999 were Pepperdine Law Professor Douglas W. Kmiec, who hosted the event, Utah College of Law Professor Michael W. McConnell, and Harvard Law Professor Laurence H. Tribe. Additionally, Pepperdine Constitutional Law Professor Bernard James served as an interlocutor and question moderator.

maritime commerce" preserved separate state authority in the areas of liability and compensation for oil spills, but did not enlarge state authority in the area of design, operation, and staffing of oil tankers that was controlled by the PWSA.

The second, *Crosby v. National Foreign Trade Council*, held a Massachusetts statute limiting the power of state agencies to buy goods or services from companies doing business with Burma preempted by a subsequently enacted federal statute imposing sanctions on Burma. The state law was thought to be fundamentally at odds with the means Congress had embraced

General welfare and secure the

to achieve its diplomatic objectives—delegating “effective discretion to the President to control economic sanctions against Burma,” limiting “sanctions solely to United States persons and new investment,” and directing “the President to proceed diplomatically in developing a comprehensive, multilateral strategy towards Burma.”

Though the States fared no better in the other two preemption cases, the federal-state conflicts were quite different in character and the Justices were more divided. Both involved federal preemption of state tort law causes of action, rather than state statutes. *Norfolk Southern Ry. Co. v. Shanklin*, a state common law wrongful death tort action brought by the widow of a man driving a truck who was struck and killed by a train at a grade crossing, was premised on the alleged failure of the railroad to maintain adequate warning devices. A seven-Justice majority of the Supreme Court found that tort claim preempted by the Federal Railroad Safety Act of 1970 because the federally-funded signs at the crossing where the accident occurred fully complied with federal standards at the time of the accident.

The most closely divided preemption case of the term, *Geier v. American Honda Motor Co., Inc.*, similarly held a state common law tort action to recover for injuries sustained in an auto accident, this time based on a car manufacturer's failure to provide an airbag, preempted by the 1984 version of a Federal Motor Vehicle Safety Standard. Justice Breyer's majority opinion, addressing “whether a common-law ‘no airbag’ action...actually conflicts with” the federal standard, held that, unlike a rigid rule of state tort law imposing a duty to install an airbag on the decedent's 1987 Honda Accord, the federal standard deliberately allowed manufacturers a choice among different passive restraint mechanisms, and deliberately sought a gradual phasing in of passive restraints, so that the tort claim, if allowed, would have obstructed the “means-related federal objectives.”

In none of these cases was any question raised about the power of Congress to preempt the assertedly preempted state

law—only about whether Congress had in fact exercised a conceded power to preempt.

The 5-4 decision in *Geier* revealed the Court to be divided sharply on the applicability of the presumption of nonpreemption, as well as on the assessment of whether a state no-airbag tort claim conflicted with the objectives of the federal DOT's Safety Standard. The dissent by Justice Stevens, joined by Justices Souter, Thomas, and Ginsburg, found the majority's decision to be an “unprecedented extension of the doctrine of pre-emption” in derogation of state sovereign authority in an area historically within state police power, that would allow federal judges to limit the application of state tort law based, not on the intent of Congress, or the text of administrative regulations adopted pursuant to congressional authorization, but on judge-made rules stemming from federal agency commentary and the history of agency regulation.

How deep the fault lines in the *Geier* decision go is as yet unclear, but the opinions do seem to reveal divides within the Court about (a) the strength of adherence to the presumption against preemption in areas historically the province of the States, (b) the strength of adherence to the doctrine of frustration-of-purpose conflict preemption, (c) the degree of willingness to rely on federal agency views of the preemptive intent of its own regulations, and (d) the level of transparency of agency process upon which the Court will insist in order to enable the States to have their say in preventing preemption before it happens.

Because federal preemption of state law eliminates one source of regulation, just as rulings that Congress or the States lack constitutional power to regulate a particular field or subject do, those Justices inclined to curtail congressional power under the Constitution may not be inclined, when congressional power is clear, to interpret the preemptive intent of Congress narrowly in favor of preserving concurrent, or dual, state regulation.

Only one Justice—Justice Breyer—favors both maximum constitutional power in Congress and maximum readings of

Blessings of Liberty to ourselves

federal preemptive intent when that power is exercised. At least in this respect, he might be described as the most nationalist of the Justices.

Four Justices—Chief Justice Rehnquist and Justices O'Connor, Kennedy, and Scalia—favor restricting the constitutional power of Congress, but seem inclined to find federal preemptive intent readily. To some that may seem inconsistent with a general disposition of these Justices to favor state authority. In the preemption cases, however, it is not a case of federal *or* state regulation, but whether there will be state regulation *in addition* to federal regulation. Under those circumstances, what might be at work are both a general disposition to curtail federal authority and a general disposition to favor deregulation of the private sector, even if the deregulation disposition comes at the expense of state regulatory power.

Justice Thomas appears to favor both restricting congressional power under the Constitution and limiting the preemptive effects of federal law on residual state power. At least in these respects, he might be described as the most consistently state-power-oriented member of the Court.

The three remaining Justices—Justices Stevens, Souter, and Ginsburg—define a fourth combination that favors maximum congressional power, but also a presumption that it has not been exercised to limit state power unless that is made very clear. This group appears to favor a combination of flexibility and political accountability for congressional acts that would deprive the States of regulatory power, or, to put it another way, these Justices seem to subscribe to a strategy of managing the federal/state balance that gives Congress the power to nationalize policy uniformly if it believes that is appropriate, but assumes that, in cases of any doubt, Congress does not want to do so and thereby limit state variation and experimentation.

Perhaps the most interesting question left open among this series of cases is in the realm of tension between federal foreign affairs authority and state desires to withhold from disappointed foreign regimes financial support emanating from state coffers. Are there subterranean fault lines lying beneath the

THE SUPREME COURT'S "MOST EXTRAORDINARY" TERM

Among the topics covered at the Pepperdine Symposium were:

- ★ The reconsideration of the Constitutional status of the Miranda rule
- ★ The limits of Congress' legislative power
- ★ The regulation of tobacco products as drugs by the FDA
- ★ State immunity under the Eleventh Amendment
- ★ The scope of federal legislative power to define civil rights more expansively than the Court
- ★ Partial birth abortion limitations, grandparents visitation rights, the Boy Scouts, and the right of association
- ★ School prayer and federally financial assistance to religious schools
- ★ Student activity fees and compelled speech
- ★ Abortion clinic protests, campaign finance limitations, adult speech
- ★ State boycotts of foreign commerce and other state burdens on interstate commerce

surface of unanimity in *Crosby*—the decision invalidating Massachusetts' Burma sanctions law—that may fragment the common ground on which the Justices stood, when the permissibility of other state and local sanctions laws are brought before the Court again?

Did the Court intend that *no* exercise of state spending power at odds with otherwise valid federal legislation can claim constitutional immunity from federal control, or only that no exercise of state “spending” power that is effectively an exercise of state “regulatory” power can claim such immunity?

Might exercises of state spending power that are not arguably regulatory still claim a constitutional immunity from federal regulation as an instance of sovereign fiscal autonomy as to how to spend state revenues? State and local sanctions laws that directly withdraw, or initially refuse to make, financial investments in a foreign nation, without interrupting relationships between intermediaries and that foreign nation,

and our posterity, do ordain

THE FOURTH ESTATE

Prominent journalists who served as interlocutors for the Pepperdine symposium were Marcia Coyle, Washington Bureau Chief and U.S. Supreme Court Correspondent for The National Law Journal, Jan Crawford Greenburg, U.S. Supreme Court Correspondent for the Jim Lehrer Newshour and National Legal Affairs Correspondent for the Chicago Tribune, David Pike, U.S. Supreme Court Correspondent for the Los Angeles and San Francisco Daily Journals, and Nina Totenberg, Legal Affairs Correspondent for National Public Radio.

might be understood, not as regulatory but as “proprietary”—in which case they might have a stronger claim to fiscal constitutional immunity even from attempts by Congress to preempt them.

Any exercise of state spending power whose *purpose* is not simply to serve the residents of the state using their tax revenues, but is designed to influence the political behavior of other governments—foreign or even domestic—might be considered exercises of regulatory power. Exercises of state spending power that target particular foreign countries (or particular sister states) for pressure might be deemed more regulatory than those that categorically disadvantage foreign countries as a group (Buy-American or Buy-in-state statutes). Lines might be drawn between those state spending policies whose purpose is to influence foreign behavior but are likely to have little practical impact and similar spending policies that threaten to have substantial practical impact. It is even possible, moreover, that the level of complaints from allies and global organizations, much less our own State Department, about local sanctions policies (which seemed to play an important role in the decision in *Crosby*) might figure into the Court’s calculus of permissibility of even the most direct exercises of state spending power.

Still, I continue to believe that states and localities should have some constitutional freedom to decline to use their own

(not federal) revenues to make a statement in support of human rights, even abroad, so long as they do not sweep unwilling partners into their efforts. It remains difficult to accept the notion that Congress might mandate that state funds be invested in foreign regimes whose policies the states oppose, even if the federal taxes raised from the same taxpayers are so used; or that Congress might, “in order to stimulate foreign trade, demand that states provide subsidies to local businesses that trade with other nations;” or that Congress could forbid the States from using state tax revenues to criticize the behavior of foreign regimes, say, by paying for billboards decrying the human rights record of Myanmar.

All this is to say that, although the fiscal autonomy of the states and their subdivisions may be severely limited in the interest of having our foreign policy effectively be conducted by national representatives who can speak with one voice, that autonomy ought to be recognized as having some claim of constitutional stature. Ranking high among the reasons to preserve some residuum of state fiscal self-determination are the value of capturing the benefits of federalism’s creative tension between a multiplicity of state perspectives and the strong, uniform voice of the national government in foreign affairs, and the exercise of local democratic self-governance it would permit. In any event, the Court ought to insist on higher levels of absolute clarity of congressional intent to preempt than it otherwise might seek, the more invasive of state fiscal autonomy preemption would be. The more direct and strictly limited an exercise of state spending power is, and the more it represents a democratically chosen communal spending policy, the less it should be held restricted by the dormant interstate or foreign commerce clause.

Preemption is, in a sense, a microcosm of federalism and separation of powers debates, implicating attitudes about default rules that must choose between favoring federal or state authority, between judicial, congressional, or administrative dominance in managing the proper federal-state balance, and between dual or single regulation. Last term’s preemption decisions contain elements of all of these in kaleidoscopic nuance.

and establish this constitution

The Justices and Free Speech

OP-ED PIECE BY EUGENE VOLOKH '92

PUBLISHED (IN SLIGHTLY DIFFERENT FORM)

IN THE *NEW YORK TIMES*, OCT. 30, 2000

The Supreme Court was a hot issue in the Presidential campaign; both sides warned of evil days if the other got to name the next several Justices. But we should beware of too quickly assuming what views Democratic or Republican appointees will take on various issues. And this is especially true of free speech, which is usually—but, it turns out, sometimes wrongly—seen as a “liberal” issue.

Clinton appointee Justice Breyer, for instance, turns out to be the least likely of all nine Justices to vote for free speech claimants. The Justice who takes the broadest view of free speech rights is actually moderate conservative Justice Kennedy, followed by the two Bush appointees—archconservative Justice Thomas in a virtual tie with the more liberal Justice Souter. Not what some might expect from the conventional political labels.

To objectively evaluate where the Justices stand, I went through all thirty-three free speech cases that the Court has decided over the last six years—the time during which the Court’s membership has remained unchanged. I limited myself to cases involving the freedom of speech and of the press, and the closely related right to associate for expressive purposes. I then counted one point for each case where a Justice voted for the free speech claimant, adjusting up or down by one-third whenever a Justice joined a separate opinion taking a more or less speech-protective view than his colleagues did.

What were the results? Justice Kennedy voted for the free speech claimants an adjusted 74% of the time—hardly an absolutist (nobody really is one), but still a voice for especially broad speech protection. Justices Souter and Thomas were at 63%. The next group consisted of Justices Ginsburg and Stevens, pretty much tied at 58% and 57%. Justice Scalia followed at 52%; Chief Justice Rehnquist and Justice O’Connor were at 46% and 45%. And Clinton appointee Justice Breyer



Eugene Volokh

voted for the free speech claimant only 40% of the time.

These numbers are fairly objective and robust. I deliberately looked only at the bottom lines, without injecting my views about whether the Justices were right or wrong, and without trying to subdivide the cases along categories that would ultimately just reflect my own biases. And though the result might be somewhat affected by accidental

circumstances—such as the particular mix of cases that the Court has been facing—the number of cases (33) is large enough to mitigate such effects. My raw data is available at <http://www.law.ucla.edu/faculty/volokh/court.htm>.

Of course, there are often plausible (and sometimes politically predictable) reasons to vote against one or another free speech claim. Justice Ginsburg, for instance, often strongly supports free speech claimants, but thinks that religious speech and costly speech advocating the election of political candidates should be subject to more restriction. I may disagree with her, but she has thoughtful explanations for her positions.

Likewise for Justice Scalia, who believes in strong protection for private individuals’ religious speech and campaign-related speech, but thinks that sexually explicit speech deserves less protection. They are both honorable judges and in their own ways lovers of free speech, even though they support certain kinds of speech restrictions. Generalizing about where a Justice stands on “free speech” may be dangerous, precisely because in some situations different kinds of speech should indeed be treated differently.

But if we do generalize about the Justices’ general approach (as people in fact often do), at least we should generalize based on fact and not based on guesses or political preconceptions. And beyond this, trying to draw too many subtle distinctions among kinds of speech may be a mistake. Restrictions on one kind of speech tend to lead to restrictions on other kinds: The slippery slope is a real concern in a system like ours, which is

for the united states of America

founded on precedents and analogies. Those of us who do generally support a broad free speech vision should welcome more the views of a Justice Kennedy, Thomas, or Souter than of a Justice Breyer, even if we might disagree with the first three on some particular cases.

These numbers also show that we can no longer assume that the Left generally sides with speakers and the Right with the government. We've already seen this in universities with campus speech codes, but now we see it on the Supreme Court as well. Many of the strongest libertarian voices in favor of individual rights and against government power now come from conservatives at least as much as from liberals.

Eugene Volokh '92 is a professor of law.

Living Wages

RICK SANDER, DOUG WILLIAMS,
AND JOE DOHERTY

Economic inequality in the United States has been gradually but steadily increasing over the past twenty years. Most experts agree that there are a number of remedies that could reverse this trend over the long term: improve education, retrain more mid-life workers, reduce racial isolation in inner cities, and provide better child care and advancement opportunities for women. But what could be done now that would reduce inequality in the short term...like next year?

The national living wage movement, supported by unions, churches, the Green Party, and other groups, offers one answer. This movement has spurred dozens of local governments into enacting "living wage" laws, which mandate higher wages for all workers whose work is funded, directly or indirectly, from government sources. Both the City and County of Los Angeles have adopted such laws; in each case, they reach workers on government contracts, workers whose employers are subcontractors (e.g. parking lot attendants at LAX), work-



Rick Sander

ers whose employers lease space from the government (e.g., airport restaurants), and workers whose employers have received government subsidies (e.g., janitors at Staples Center). Mandated wage levels vary, usually between two and five dollars per hour above the federal minimum wage. Some specific benefits, like paid sick days and health insurance, are generally mandated as well.

The powerful moral premise of these proposals is that it is wrong for a full-time worker to make less than what is needed to raise her or his family above the poverty line. Therefore, living wage advocates argue, governments should at least make sure that their own workers, and businesses with whom they contract, should pay a wage that will keep full-time workers out of poverty.

Are these laws a good idea? Yes, to a limited degree. The mandated living wages increase worker incomes and reduce the ranks of the uninsured. Cities with such laws have less incentive to "privatize" public services, since a principal motive of privatization (to hire workers indirectly at lower wages than prevail in the public sector) is removed. Mandated living wages reduce worker turnover on these contracts, and they set a positive moral example for the private sector.

As engines for reducing inequality, however, the "living wage" laws are middling performers, at best. A great many "low wage" workers are not from low-income families, usually because they are the second- or third-earners in their families. (In Los Angeles, we estimate that 40% of workers benefiting from the existing living wage laws have above-median household incomes.) The laws are relatively complex and expensive to administer, and compliance with the regulatory overhead is burdensome. And although private firms theoretically bear the mandate of paying higher wages, they manage to pass at least half the cost on to the cities that impose the mandates, leaving less money available for other public programs.

Most importantly, the effects of current "living wage" laws are tiny. City contractors, subsidy recipients, and lessees account for a miniscule part of any local economy. The City of Los Angeles living wage ordinance only benefits a few thousand workers out of an area-wide workforce in the millions.

Activists in Santa Monica are cognizant of the limitations of the current living wage model, and want to expand it. They

have proposed that all substantial businesses in a portion of the city close to the Pacific Ocean be required to pay all of their workers at least \$10.69 per hour, and provide health and other benefits. In effect, their proposal would override existing minimum wage laws and create, in at least part of Santa Monica, a doubling of existing minimum wage levels. Our analysis of that city's businesses and workforce suggests that such a policy would be highly counter-productive.

In Santa Monica, the proposed minimum wage would reach about four thousand workers, ranging from hotel maids at the Radisson to affluent teenagers flipping burgers or working the rides on Santa Monica Pier. We estimate that 1000 of these jobs would be lost. Further, less than one-fifth of the beneficiaries live in households below the poverty line. Indeed, most of the workers targeted by the Santa Monica proposal have higher household incomes than the typical Los Angeles household in all of Los Angeles County.

Most businesses in the Coastal Zone are profitable and can afford the increases (though business values and thus property taxes would fall sharply). But enough businesses would probably close or move to change the economic dynamics that have fueled that area; imagine the Third Street Promenade without its major movie theatres and minus a department store or two. What sounds like a noble antidote to inequality ends up doing considerable economic damage and achieving almost none of its goals.

There is a better alternative: the Earned Income Tax Credit, or EITC. Over the past twenty years, political leaders of both parties in Washington have endorsed and gradually expanded the federal EITC, so that it is now the largest single anti-poverty program (barring Medicaid) in the nation. The EITC works by allowing workers to claim a matching tax credit for earned income (up to 40 cents per dollar earned) if the worker comes from a low-income household. (For households with incomes over \$13,000, the credit is very gradually phased out.) The EITC has three remarkable properties: (1) it encourages work, since it essentially increases the hourly earnings of workers; (2) it provides no adverse incentives to employers, since the cost is paid by government (and if anything, it encourages higher rather than lower employment levels); and (3) almost all of its beneficiaries are low-income

households. Last year, the EITC lifted 3 million families above the poverty line and helped millions of other households improve their living standards.

There are two things that state and local governments ought to do to complement the federal EITC. First, they should make some effort to make sure local residents eligible for the EITC actually claim it. One of us helped the City and County of Los Angeles begin an EITC outreach effort in 1998; at an almost trivial annual cost, the program has enrolled thousands of new families in the program. Second, local governments can piggyback on the federal EITC. Several states have adopted state-based EITCs, but no jurisdiction in California has. A California EITC could lift over 100,000 families out of poverty and help maintain the momentum of recent efforts to move welfare recipients into the workforce.

In most cases, a policy like the EITC that aims to redistribute income should be implemented at the state or federal level rather than the city level so that the burden of redistribution falls most heavily on the wealthy, who often concentrate in the suburbs. As a relatively wealthy city, Santa Monica is an exception to this general rule about redistribution policy and geographical breadth. Santa Monica could implement a coastal zone EITC that would be far superior to the coastal zone living wage in cost effectiveness. Of every \$1 transferred under the living wage proposal, only about 20 to 35 cents would go to someone living below 150% of the poverty line. In stark contrast, under the EITC proposal, over 90 cents for every \$1 transferred would go to someone living below 150% of the poverty line.

With the federal EITC and a California or Santa Monica piggyback (one-half match) EITC, a worker earning \$6 per hour would be effectively lifted to \$9 per hour, if she or he were the sole family earner. A wage of \$7 per hour would translate to an effective wage of \$9.80. Much more needs to be done to address inequality over the long-term, but the EITC is by far the best short-term path to a living wage.

Rick Sander is Professor of Law at UCLA and Director of the Law School's Empirical Research Group. Doug Williams is Assistant Professor of Economics at the University of the South. Joe Doherty is Associate Director for Research at the Empirical Research Group at UCLA. All three recently released "An Economic Analysis of the Proposed Santa Monica Living Wage."



faculty honored

DAVID MELLINKOFF

The late Professor Emeritus David Mellinkoff, in one of his last and greatest personal and professional acts, carefully selected among the most treasured books in his vast library, from Francis Bacon's *The Works* to Thomas Jefferson's papers, and a first edition of *Webster's Dictionary*. He then donated them to the UCLA Hugh & Hazel Darling Law Library, the most valuable donation of its kind to the School. In his transmittal letter, dated August 16, 1999, Professor Mellinkoff spoke of his "love for the Law School and its people." And the feeling is more than mutual.

Professor Mellinkoff, best known for his 1963 classic, *The Language of the Law*, as well as *Mellinkoff's Dictionary of American Legal Usage*, died December 31, 1999. Last year two anonymous donors established the David Mellinkoff Memorial Lecture to "preserve the memory of David's remarkable and original contributions to the legal profession." Since it has been established, friends, faculty, students, and alumni have stepped forth to contribute. The annual lecture will provide a forum for prominent legal scholars and practitioners to address the "larger legal world of students, faculty, and alumni." Dean Varat calls the Lectureship a "wonderful way to remember David, who was a dear friend and colleague to so many."

We welcome your contribution to the
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Harold W. Horowitz Public Interest Fellowship.

Please send a check made payable to the *UCLA Foundation/Law*
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Thank you in advance for your consideration.

HAL HOROWITZ

Our community gathered this past November to memorialize and celebrate the life of Professor Hal Horowitz who died July 28 of complications from Parkinson's disease. He was 77. Joining Dean Jonathan Varat, faculty, and friends, were Professor Horowitz's wife, Elizabeth Horowitz, and their children Lisa Schwartz and Adam Horowitz, grandchild, Alexi Horowitz, Professor Horowitz's sister, Madelyne Sklar and her husband, Sanford Sklar, as well as Mrs. Horowitz's sister, Norma Pizar. In his eulogy, Dean Varat remembered Professor Horowitz as a man of "rock-solid integrity, meticulous fairness in process and substance, compassion and patience almost to a fault, wit and sparkle in the eyes, keen intelligence wisely applied."

Several dignitaries reminisced about Hal's humor, grace, and legal passion, especially in defense of those whose freedom of speech was threatened, or for those who could otherwise not afford an advocate. The Honorable Dorothy Nelson '53, recalled the many years of friendship and legal interests she and her husband, Jim, shared with Liz and Hal Horowitz. Judge Nelson and Professor Horowitz were faculty members at USC in the 50s then worked together in the Western Center on Law and Poverty. His colleague from Washington D.C., the esteemed Lisle Carter, came to know Hal in the Kennedy Administration of 1961, when Mr. Carter was Deputy Assistant Secretary of HEW, and Hal served as Associate General Council. His recollection was of a young, heroic Hal Horowitz using unbridled ingenuity, strength of character, and legal brilliance to move civil rights forward in a bold and vital time.

Professor Horowitz taught courses on administrative law and conflict of laws at UCLA and served with distinction for sixteen years as Vice Chancellor for Faculty Relations. UCLA Academic Senate Chair Stephen Yeazell chaired the campus Committee on Academic Personnel during Professor Horowitz' tenure as Vice Chancellor for Faculty Relations. They also served together on the law faculty. Professor Yeazell lauded Vice Chancellor Horowitz for his compassion and evenhandedness in dealing with volatile faculty issues, and credited him with creating an effective system of communications between faculty and the administration. Law Professor and Vice Chancellor of Academic Personnel, Norm Abrams, who succeeded Hal in that job some ten years ago, spoke of the sense of calm and clarity Hal brought to campus during the volatile 70s and 80s and reminded the gathering that it was Hal Horowitz who defended the rights of Angela Davis.

At the funeral, August 2, Kenneth Karst, a law professor emeritus and Professor Horowitz's frequent collaborator on the casebook, *Law, Lawyers and Social Change*, said, "Hal was not just an excellent legal scholar and teacher, but also a man of action in the cause of justice." Law Professor Herb Morris said simply, "And never has the expression, 'sweet reasonableness' so fittingly applied to someone I have had the good fortune to know."

The Horowitz family has asked that donations be directed to the Fellowship they have endowed in his honor to promote public interest work among the law students at UCLA. The Harold W. Horowitz Public Interest Law Fellows will work in areas that were important to

Hal during his lifetime. Dean Varat commented, "This is the first endowment of these summer stipends for public interest legal work since the creation of our Program in Public Interest Law and Policy, and we are pleased beyond measure that it carries Hal's name."



THE FAILURE OF
PUBLIC COMPANY BANKRUPTCIES
IN DELAWARE AND NEW YORK:

EMPIRICAL EVIDENCE

EXCERPTS FROM AN ARTICLE BY PROFESSOR LYNN LOPUCKI AND SARA D. KALIN '00
VANDERBILT LAW REVIEW, MARCH 2001 (REPRINTED BY PERMISSION)

Since edging out New Jersey in the 1920s, Delaware has been the jurisdiction of choice for the incorporation of large public companies. For almost half that long, legal scholars have debated whether Delaware won its victory in a “race to the top” or a “race to the bottom” among the competing states....

Although large public companies incorporated in Delaware have been free to choose the Delaware bankruptcy court for their reorganizations since at least 1979, only a single one did so during the 1980s. That changed abruptly in the early 1990s. Delaware suddenly replaced New York City as the jurisdiction of choice for the bankruptcy reorganization of large public companies. Delaware’s ascendancy was swift, reaching its peak in 1996, when twelve of the fourteen large public companies that filed for reorganization in the United States did so in Delaware. Threatened with a political backlash from bankruptcy lawyers and judges throughout the remainder of the United States, the Chief Judge of the Delaware District Court intervened to slow the filings in January 1997.... Today, over 60% of the bankruptcy reorganizations of large public companies filed in United States are filed in the Delaware bankruptcy court....

Re-filing constitutes a failure of the bankruptcy process. First, the Bankruptcy Code condemns the necessity for re-filing.... Second, bankruptcy reorganization is an expensive and disruptive process. For a large public company, the direct cost is probably about 1.5% to 6% of the entire value of the company.... The indirect costs are generally assumed to be much higher and include damage to the reputation of the company, distraction of management, the loss of key employees, and the necessity to sell or abandon promising projects. When bankruptcy is repeated, these costs are incurred a second time....

In this empirical study of the outcomes of the bankruptcy reorganizations that took place before and during this historic shift, we tracked the 188 public companies that emerged from bankruptcy reorganizations in the United States from 1983 through 1996 and determined the frequency with which they re-filed for bankruptcy.... Re-filing rates for companies reorganized in the Delaware bankruptcy court, and to a lesser extent, the New York bankruptcy court, were much higher than the re-filing rates for companies reorganized in other bankruptcy courts. We conclude that these higher re-filing rates were a product of inter-court competition based on four sets of

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findings. First, Delaware produced high rates of re-filing during its period of competitive success in the 1990s. Second, New York produced high rates of re-filing during its period of competitive success in the 1980s. Third, the New York re-filing rates declined after New York's period of competitive success. Fourth, the judge that made New York competitive in the 1980s had higher re-filing rates than his colleagues on the New York court.

Elevated re-filing rates do not, in and of themselves, indicate a malfunctioning of the reorganization process. Efficient reorganizations may, and probably would, produce companies that have a higher probability of re-filing than do public companies generally. But the percentage of re-filing in Delaware, the magnitude of the difference between the rate of re-filing in Delaware and other districts, and the nature of Delaware's failures suggest that the rate in Delaware during the period of this study was probably well above the efficient rate....

Paradoxically, large public companies in need of bankruptcy reorganizations seem to be flocking to the courts least likely to reorganize them successfully....[We] conclude that the excessive rate of bankruptcy re-filing by emerging companies is the product of a wasteful competition among courts. Competing courts attract filings by applying lax standards for plan confirmation that lead to the excessive re-filing rates.

During the period covered by this study, Delaware established itself as the bankruptcy reorganization capital of the United States and positioned itself to become the bankruptcy reorganization capital of the world.... Experience tells us that once such a legal monopoly is established, it has tremendous inertia and thus can be exploited by the monopolist without risking its destruction. In addition, the monopolist may be able to retain its monopoly even after abandoning the practices necessary to create it. Thus, we would not be surprised if Delaware, having captured the reorganization business by inefficient practices, were now to retain it by abandoning the most egregious of them. If Delaware can do that, it means that jurisdictions can succeed in competitions by opportunistically offering inefficient, yet superficially appealing, alternatives and then adjusting as critics bring the inefficiencies to light—a classic race to the bottom....



Lynn LoPucki, who joined the faculty in 1999, is the Security Pacific Bank Professor of Law at UCLA. He received both his B.A. and J.D. from the University of Michigan and his LL.M. from Harvard. Professor LoPucki practiced law for eight years before he began teaching commercial law and bankruptcy at the University of Missouri-Kansas City in 1980. Since then, he has taught those subjects at the University of Wisconsin, Washington University, Harvard Law School, the University of Pennsylvania, the University of Texas, and Cornell, where he was the A. Robert Noll Professor of Law.

Professor LoPucki is best known for his study (with Whitford) of the bankruptcy reorganization of large, publicly held companies and he maintains an extensive database on the subject. Recent articles by Professor LoPucki have stirred debates in Yale, Stanford, and Michigan Law reviews. His casebooks on secured credit (with Elizabeth Warren) and commercial transactions (with Elizabeth Warren, Daniel L. Keating, and Ronald J. Mann) are used in law schools throughout the country. He also served as Senior Advisor/Data Study Project to the National Bankruptcy Review Commission in 1997–98.

He is currently working on *Information Law: A Systems Approach*, a set of teaching materials for his course on that topic.

“RACE TO THE BOTTOM”

WHAT OTHER LEGAL SCHOLARS ARE SAYING ABOUT THE LOPUCKI/KALIN STUDY

The LoPucki/Kalin article has received considerable attention in the bankruptcy bar and has been the subject of lengthy articles in *National Law Journal* and *BCD News and Comment*, the bankruptcy law journal. Following are excerpts from a *BCD News and Comment* article on scholarly reaction to the study, reprinted with permission from Bankruptcy Court Decisions, copyright 2000 by LRP Publications, 747 Dresher Rd., Horsham, PA 19044-0980. All rights reserved.

UCLA Law School Professor Ken Klee said he has absolutely no doubt about the validity of the data or about the importance of this finding. However, he also said: "It's not valid to jump to the conclusion and say, 'Delaware must be bad.' You have to ask why the system in Delaware doesn't work as well as elsewhere if you're measuring success in terms of re-filing statistics...are investors and debtors [filing in other courts] different? Are they striking less leveraged deals? Are [other] judges exerting more pressure? Delaware provides speed, which is a huge advantage to a vulture looking to flip an investment. But the downside is that there might not be enough information generated about the turnaround plan for it to be fine tuned or to see if the projections on which it is based are realistic."

"From my standpoint," Klee says, "the exciting information in Lynn's study is what it says dynamically about the players in the system and how the market will adjust when it gets this information. I think lawyers might have to advise their clients ethically that if they file in Delaware, there is a higher failure risk. Managers have to decide if it makes sense [to file in Delaware], compared to elsewhere, based on this data. At the end of the day, should judges make an independent feasibility determination and require companies to have less leverage in the capital structure—a lower debt/equity ratio?"

Harvard Business School Professor Stuart Gilson, whose specialty is bankruptcy, called the results of this study "fascinating." Although he had no answers, he did suggest where researchers may want to go from here. "If a company fails after going through a reorganization, it has to be because of one of two things," he said. "Either the business problems were not adequately addressed or it [exited bankruptcy] with an overly leveraged capital structure. So companies that reorganize in a debtor-friendly court are either less effective in dealing with their business problems or they have more debt. You wouldn't expect debtor friendliness to

result in higher leverage. If debtor friendliness is responsible, it must be because business problems aren't addressed as

thoroughly. Whether [the explanation is that] firms that reorganize in the Delaware courts are any less able to deal with their business problems than firms that reorganize in other courts, or [that] the court's approach to dealing with business problems is different than other jurisdictions raises some interesting questions."

Yale Law School Visiting Professor Douglas Baird, who calls LoPucki's research "good work," said a person can't read this study without changing the way they think about Delaware filings. But he also asks this question: Is what you're seeing a Delaware or New York effect—or is it a Balick/Lifland effect? (The latter refers to former Delaware Bankruptcy Judge Helen Balick and S.D.N.Y. Bankruptcy Judge Burton Lifland.) He says the latter wouldn't be as interesting since Balick retired and Lifland is in recall status.

Working Identity (excerpt)

DEVON CARBADO AND MITU GULATI

Working within an organization necessarily entails negotiating and performing identity. We can most easily illustrate what we mean by “negotiation” and “performance” with examples. Take a hypothetical organization that values effort and awards promotions to those who demonstrate it. Assume also that the work is such that individual effort is difficult to monitor. In response to this difficulty, the employer sets up an incentive scheme offering attractive promotions to those employees who demonstrate that they are exerting the highest levels of effort in order to induce employees to work with a minimal amount of monitoring. Under these conditions, individual employees seeking promotion have an incentive to engage in acts that signal to the employer that they are the ones exerting high amounts of effort.

For example, an employee engaged in casual conversation at the workplace might mention how tired she is as a result of having had to work all through the previous two nights. Or an employee might cultivate a harried and tired look to suggest that she is very busy. Or the employee might leave her jacket in the office and her lights on when she leaves the office early so as to suggest that she was at work later than

she was. And when she does work late, she might send an E-mail or phone message to her supervisor before leaving, the subtext of which might be: “I was working until 1:00 a.m.” The list of effort-suggestive actions, or “signaling strategies,” goes on. The point is that, in contexts in which individual identity characteristics are difficult to observe, employees have an incentive to work



Devon Carbado is editor of the recently published book *Black Men on Race, Gender and Sexuality* (New York University Press, 1999), foreword by Kimberlé Crenshaw.

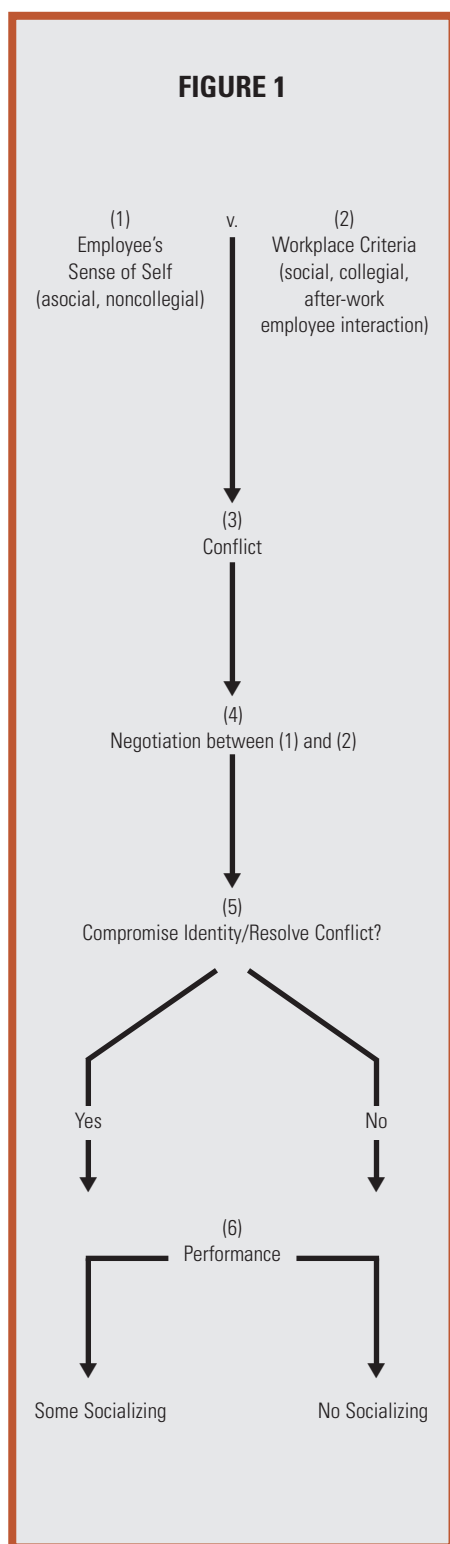


Devon Carbado joined the faculty in the fall of 1997 and teaches *Criminal Procedure*, *Criminal Adjudication* and *Critical Race Theory*. He received his B.A. from UCLA and his J.D. from Harvard Law School, where he was editor-in-chief of *The Harvard Black Letter Law Journal*, a member of the Board of Student Advisors, and winner of the North East Frederick Douglass Moot Court Competition. After receiving his law degree, Mr. Carbado joined Latham & Watkins in Los Angeles as an associate before his appointment as a Faculty Fellow and Visiting Associate Professor of Law at the University of Iowa College of Law.

Professor Carbado writes in the area of Critical Race Theory. His scholarship focuses on the relationship between the conceptualization of identity in law and social policy and the performance of civil rights. He has published widely (including in the *UCLA Law Review*—“Black Rights, Gay Rights, Civil Rights”) and is editor of the recently published book *Black Men on Race, Gender and Sexuality* (New York University Press, 1999).

He was elected Professor of the Year by the UCLA School of Law Class of 2000 and was recently awarded the Distinguished Alumni Award from Harvard Law School’s BLA.

FIGURE 1



their identities in ways that suggest to the employer what otherwise might not be readily apparent.

The question becomes: What actions will the employee take? That is, if the employee is interested in signaling to the employer that he exhibits a certain characteristic, how will he do so? The answer turns on a negotiation and, more specifically, on how the employee chooses to negotiate his identity at work. Consider a shy and reserved employee who enjoys his job. He is happiest when he goes to work and performs his duties with little or no non-job-related interactions with his co-workers. Moreover, he does not enjoy, and thus would rather not attend, official or unofficial after-work social events. He is aware, however, that his organization values and encourages collegiality. Indeed, he believes that, because many of the people considered for promotion have the same credentials and overall work product, collegiality is an important criterion for promotion.

If the employee is interested in advancement, he will probably make a decision about how to remain happy at work while maximizing his opportunities for advancement. He is likely to engage in a negotiation. The negotiation is between the employee's sense of self and his sense of the institutional values involved (here, collegiality). The employee may decide that, in the end, he cannot "compromise" his sense of identity, that he needs to be happy at work, and that engaging in office small talk or attending after-work events interfere with that happiness. He may not explore other ways of maximizing his opportunities for advancement.

Alternatively, the employee may decide to "compromise" his sense of identity. That is, he may decide that, while he would rather not socialize with his colleagues, he should nonetheless do so to improve his chances of promotion. Whatever the employee decides, he will take a series of actions (engage in a series of performances) to reflect his decision. These actions reflect a negotiation because they are the product of a conflict resolution. The employee seeking advancement has an incentive to resolve the conflict between his sense of his identity and his sense of the identity he needs to project to signal to his employer that he exhibits the characteristics the employer values. Figure 1 describes this negotiation process.

Point one in Figure 1 represents the employee's sense of self. This sense of self allows the employee to distinguish between two kinds of personal conduct: identity-affirming conduct that comports with his sense of identity, and identity-negating conduct that runs afoul of the employee's sense of self. This identity-affirming/identity-negating dichotomy is reflected in common expressions, such as "I sold out," "I compromised my beliefs," and "It was so unlike me to do X."

At point two, the employee forms an impression about the criteria that the institution values: in this case, collegiality, which is measured in part by after-work social interaction. At point three, the employee realizes that a conflict exists between his antisocial identity and the criteria that the institution values, sociability. At point four, the employee engages in a negotiation of points one and two. At point five, the employee decides whether and how he wants to resolve the conflict. He may decide, like Sammy Davis, Jr., that “I’ve gotta to be me.” Or, like Polonius in *Hamlet*, his existential mantra might be: “[T]o thine own self be true.” In this case, the employee’s performance will reflect this negotiation—he will not engage in after-work socializing. On the other hand, the employee may decide to compromise and socialize after work. This resolution will cause the employee to engage in some after-work socializing. The extent of the employee’s performance of socializing will depend on the degree to which he is willing or feels the need to compromise his identity.

The basic concepts of signaling and identity performance are familiar to most. This article applies those concepts to explain the workplace behavior and experiences of outsider groups, such as women and minorities. It argues that, because members of these groups are often likely to perceive themselves as subject to negative stereotypes, they are also likely to feel the need to do significant amounts of “extra” identity work—“shadow work”—to counter those stereotypes. Depending on the context, that extra work may not only result in significant opportunity costs, but may also entail a high level of risk.

Additionally, the article argues that both the nature of the work and the pressure to do it, the “working identity” phenomenon, is a form of employment discrimination. Heretofore, antidiscrimination law has not identified, let alone addressed, this problem. Absent from antidiscrimination law is the notion that outsiders do not passively accept workplace discrimination and stereotyping; they employ a variety of strategies to counteract both. These strategies function as coping mechanisms. This article categorizes them to illustrate the specific ways in which they burden outsider employees. This article concludes by suggesting that, to the extent that antidiscrimination law ignores identity work, it will not be able to address “racial conduct” discrimination. Racial conduct discrimination derives, not simply from the fact that an employee is, for example, phenotypically Black (i.e., her racial status) but also from how she performs her Black identity in the workplace (i.e., her racial conduct—whether, for example, she is perceived to be a “good” or a “bad” Black).



Gaurang Mitu Gulati joined the faculty in fall 1997 to teach *Business Associations* and *Securities Regulation*. He received his A.B. from the University of Chicago, his M.A. from Yale, and his J.D. from Harvard Law School. While at Harvard he received the Harvard Human Rights Fieldwork Fellowship and the John M. Olin Research Fellowship. He was also editor of the *Harvard Law Review*, fieldwork editor for the *Harvard Human Rights Journal*, and a student attorney with Harvard Legal Aid Bureau. After graduating from law school, Professor Gulati worked for a year as an associate with the law firm of Cleary, Gottlieb, Steen & Hamilton in New York, where he focused on structuring debt transactions and securitizing receivables. He then clerked for the Honorable Sandra L. Lynch of the United States Court of Appeals for the First Circuit, Boston before serving as law clerk to the Honorable Samuel A. Alito Jr. of the United States Court of Appeals for the Third Circuit in Newark, N.J.

“Working Identity” (which appears in the *Cornell Law Review*) is part one of a trilogy of articles written with Professor Carbado. The second in the series, “Conversations at Work,” appears in the *Oregon Law Review*. The third, “The Fifth Black Woman,” is forthcoming in *The Journal of Contemporary Legal Issues*. Professor Gulati’s other publications include several for the *UCLA Law Review*, among them, “Connected Contracts” (with William Klein and Eric Zolt) and “When Corporate Managers Fear a Good Thing is Coming to an End: The Case of Interim Nondisclosure.” He is also the author (with Catherine McCauliff) of “On Not Making Law” published in volume 61 of the *Journal of Law and Contemporary Problems*. He and Professor Kenneth Klee recently co-wrote “Sovereign Piracy” which was published in the Feb. 2001 *Business Lawyer*.

COMMENTARY:

Invasion of SWAT Teams Leaves Trauma and Death

OP-ED PIECE BY SHARON DOLOVICH

PUBLISHED IN THE *LOS ANGELES TIMES* SEPT. 22, 2000

Alberto Sepulveda is no Elian Gonzalez. When eleven-year-old Sepulveda was shot and killed last week by a SWAT team member during an early morning drug raid on his parents' Modesto home, the story barely made the papers. Yet, as did the Immigration and Naturalization Service raid on the Gonzalez home in Miami in May, the killing of Alberto Sepulveda highlights a troubling trend in law enforcement: stealth raids on the homes of sleeping citizens by heavily armed government agents.

Such raids are the hallmark of police states, not free societies, but as a growing number of Americans can attest, the experiences of these two boys are by no means isolated incidents.

Just ask the widow of Mario Paz. She was asleep with her husband in their Compton home at 11 P.M. in August 1999 when twenty members of the local SWAT team shot the locks off the front and back doors and stormed inside. Moments later, Mario Paz was dead, shot twice in the back, and his wife was outside, half-naked in handcuffs. The SWAT team had a warrant to search a neighbor's house for drugs, but Mario Paz was not listed on it. No drugs were found, and no member of the family was charged with any crime.

And then there is Denver resident Ismael Mena, a forty-five-year-old father of nine, killed last September in his bedroom by SWAT team members who stormed the wrong house. Or Ramon Gallardo of Dinuba, Calif., shot fifteen times in 1997 by a SWAT team with a warrant for his son. Or the Rev. Accelyne Williams of Boston, seventy-five, who died of a heart attack in 1994 after a Boston SWAT team executing a drug warrant burst into the wrong apartment.

SWAT teams, now numbering an estimated 30,000 nationwide, were originally intended for use in emergency situations, hostage-takings, bomb threats and the like. Trained for combat, their arsenals (often provided cut rate or free of charge by the Pentagon) resemble those of small armies: automatic weapons, armored personnel carriers and even grenade launchers. Today, however, SWAT units are most commonly used to execute drug warrants, frequently of the "no-knock" variety,

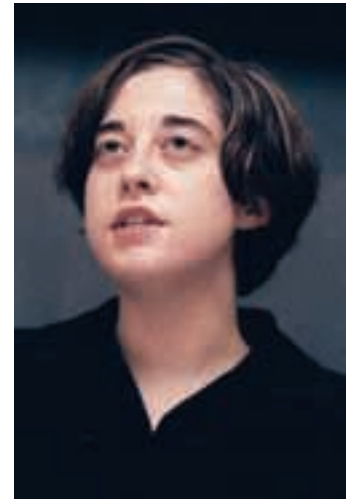
which are issued by judges and magistrates when there is reason to suspect that the Fourth Amendment's "knock and announce" requirement, already perfunctorily applied, would be dangerous or futile, or would give residents time to destroy incriminating evidence.

California is one of few states that does not allow no-knock warrants. But the fate of Alberto Sepulveda—who was shot dead an estimated sixty seconds after the SWAT team "knocked and announced"—suggests the problem is not the type of warrant issued but the use of military tactics.

The state's interest in protecting evidence of drug crimes from destruction, or even in preventing the escape of suspected drug felons, does not justify the threat to individual safety, security and peace of mind that the use of these tactics represents. On this, the now-famous image of a terrified Elian facing an armed INS agent speaks volumes. Even when no shot is fired, these raids leave in their wake families traumatized by memories of an armed invasion by government agents.

Police officers, too, are shot in these raids, barging unannounced into homes where weapons are kept. These shootings may appear to confirm the dangerousness of the criminals being pursued, until one realizes that they are committed when people are caught by surprise by intruders in their own homes and not unreasonably, if unfortunately, grab a weapon to defend themselves. (Suspects also die in these shootouts. Troy Davis, twenty-five, was shot point blank in the chest by Texas police who broke down his door during a no-knock raid in December 1999 and found him with a gun in his hand. Police had been pursuing a tip that Davis and his mother were growing marijuana. His gun was legal.)

Using paramilitary units to enforce drug warrants is the inevitable result of the government's tendency to see itself as fighting a "war on drugs." This rhetoric makes it easy to forget that the targets in these raids are not the enemy but fellow citizens, and that the laws being enforced are supposed to ensure a safe, peaceful, well-ordered society. If lawmakers in Washington and Sacramento are genuinely committed to defending the right of the American people to be safe and secure in their own homes, they would demand an accounting for the thousands of drug raids executed by SWAT teams every year all over the country, raids that get little media attention but nonetheless leave their targets traumatized and violated. Assuming, that is, that they leave them alive.



Sharon Dolovich joined the faculty this past fall as Acting Professor of Law. Her areas of interest include legal ethics, criminal law, prisons and prison law, and moral and political theory. Professor Dolovich's current research focuses on the intersection between criminal justice policy and moral and political theory. She currently has two articles in progress: "The Ethics of Private Prisons" and "Ethical Punishment in Liberal Democracy." She will teach in her scholarly areas of interest.

Professor Dolovich earned her B.A. from Queen's University in Kingston, Ontario, and her Ph.D. in political theory from Cambridge University. At Cambridge she was a Commonwealth Scholar. (Her doctoral thesis, on gender and political theory, will be published in revised form by Routledge under the title, *The Gender of Justice: Feminism, Liberalism, Law and the Ethic of Care*.) She then went on to Harvard Law School where she earned her J.D. While at Harvard, she served as articles chair of the *Harvard Law Review*. Following law school and before coming to UCLA, Professor Dolovich clerked in Miami for The Honorable Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit, after which she returned to Harvard University as a Faculty Fellow in the Center for Ethics and the Professions. She has published widely.

UCLA LAW STUDENTS AND

Consent Decree Monitoring



I am optimistic that the focus on equity and excellence mandated by the decree will continue to be central to the culture of the San Francisco Unified School District down the road, and continue to provide learning opportunities for UCLA Law students.



STUART BIEGEL

The *SFNAACP v. SFUSD Consent Decree* represents an agreement concluded in 1983 in response to an equal educational opportunity lawsuit filed by the plaintiffs. The decree continues to be viewed as a breakthrough because it not only mandates the desegregation of all schools, programs, and classrooms, but also requires increased efforts to achieve academic excellence for all students. Several reform and accountability strategies now being adopted nationwide are seen as having begun in San Francisco under this decree.

When I was first asked by the parties (the San Francisco chapter of the National Association for the Advancement of Colored People, the San Francisco Unified School District, and the California Department of Education) to consider taking on the position of Consent Decree monitor, I explained that the only way I could do so would be to integrate the role into my day-to-day life at UCLA. This would mean not only including the issues in my course curriculum, but also involving students in the monitoring process. Everyone from then Superintendent Bill Rojas to the California State Board of Education welcomed this idea, and ultimately I was able to provide a range of opportunities for both education students and law students. At this point in time, students from UCLA and the major Bay Area universities continue to assist me in this context, conducting research, furthering the public interest, and working with

real-life issues at the intersection of education law and policy. A large percentage of these students have come from the UCLA School of Law. Some students contribute as summer interns (via the Public Interest Law Foundation process), some through semester-long, independent study projects, and others by enrolling in an extra unit in my Law 282 class, *Education & the Law*. Since 1997, more than seventy-five UCLA students representing the full range of political and philosophical opinion on these issues have participated in the monitoring effort, visiting schools, interviewing district officials, and attending key meetings. They include Kelly Rozmus '97 and Thuy Nguyen '00, who have both since gone on to practice law in this area.

Student work in this setting goes far beyond fact-finding. Indeed, these students continue to play a major role in helping to determine both the nature and the scope of the inquiry. The Consent Decree requires an independent review of its specific mandates—paragraph-by-paragraph—but it also contemplates an analysis by the monitoring team and the parties of interrelated issues across a wide spectrum. Thus, in 1999–2000, Betty Chan '01 relied on her experience as a bilingual Cantonese teacher in SFUSD by focusing on language acquisition issues; Enzo der Boghossian '00 connected back to his undergraduate work as a Coordinator of Pro Bono Consultation for low income families in Alameda County by preparing a detailed analysis of disparities in school attendance; Nanci Freeman '00 built upon her involvement with the Black Law Students Association by identifying parameters of the decree's broad equity context; and Mary Thu Huynh '01 applied her experience working with gang-affiliated youth through the Chinatown-North Beach Youth Services by assessing counseling and discipline-related issues in that regard.

In addition, Daniel Javitch '92 employed both the skills gained as an attorney at Kaye Scholer (N.Y.) as well as the perspective gained from student teaching at Mission High School (S.F.) in his focus on Consent Decree transition issues, and Gerald Sequeira '01 connected back to both his extensive community outreach work as an undergrad as well as his active involvement with the La Raza Law Students Association by focusing on resegregation issues. A consistent and overarching feature of all these efforts is the ongoing inquiry into the ways that the law might be employed to shape educational policy.

In the aftermath of the Brian Ho lawsuit (the "Lowell High" case), the Consent Decree has a targeted end date—December 31, 2002. But I am optimistic that the focus on equity and excellence mandated by the decree will continue to be central to the culture of the San Francisco Unified School District down the road, and continue to provide learning opportunities for UCLA Law students.

Stuart Biegel has been a member of the faculty at UCLA's Graduate School of Education since 1983, and on the adjunct faculty of the UCLA School of Law since 1989. He is a recognized expert in the fields of education law and Internet law, having completed major works of scholarship in both areas. He has served as Director of Teacher Education at UCLA, and as Special Counsel for the California Department of Education. In addition, he continues to maintain the UCLA Online Institute for Cyberspace Law & Policy Web site. His recently completed book on cyberspace regulation will be published later this year by MIT Press. As he continues to receive national recognition for his work on Internet-related issues, Professor Biegel also has served the State of California as the court monitor for the wide ranging *SFNAACP v. SFUSD Consent Decree* since 1997, filing annual reports on school district progress with Federal District Court Judge William H. Orrick (N.D. Cal.) His most recent report, which can be found online at <www.gseis.ucla.edu/courses/edlaw/sfrept17.htm>, was covered in all three major northern California newspapers, and also nationally in *Education Week*.



Student work in this setting goes far beyond fact-finding. Indeed, these students continue to play a major role in helping to determine both the nature and the scope of the inquiry.



David Sklansky

Scholar... Teacher... Leader

KAREN STIGLER



Teaching law at UCLA is a privilege and a pleasure. The students here are great, the faculty is very supportive, and the staff is absolutely terrific.



DAVID SKLANSKY

Widely respected as a scholar and wildly popular as a colleague and teacher, David Sklansky was selected Professor of the Year by the 1996 graduating class, a mere two years after joining the UCLA School of Law faculty. This past spring he won the campus-wide Luckman Distinguished Teaching Award. He teaches criminal law, criminal procedure, and evidence, and publishes extensively in the areas of policing and criminal justice. Most recently he collaborated on a report to the Los Angeles Police Commission on the problems brought to light by the Rampart scandal. Professor Sklansky is universally applauded for his scholarship, school and civic involvement, and his effective, engaged teaching.

After Professor Sklansky graduated from Harvard Law School in 1984, he spent two years as a law clerk, first for Judge Abner J. Mikva of the U.S. Court of Appeals for the District of Columbia Circuit, and then for Supreme Court Justice Harry A. Blackmun. He then spent a year as an associate with the Washington firm of Bredhoff & Kaiser, followed by seven years as an Assistant U.S. Attorney in Los Angeles—the last year of this time as chief of the Criminal Complaints section—before joining the School of Law in 1994.

With this kind of background many professors would be tempted to rely heavily on war stories from their years in the trenches—and Professor Sklansky's students do voice appreciation of his insights into the world of practice. But Professor Sklansky has a light and humble hand with his experience. Professor Stephen Yeazell, in a letter* to the Academic Senate Committee supporting Professor Sklansky's nomination for the Award, noted that, "When he brought a war story into the classroom, it was often prefaced with something like, 'When I was in practice, I used to think X; I wonder if that's true in light of what we've been reading.'" Professor Yeazell (himself chairman of the UCLA Academic Senate, as well as a past recipient of distinguished teaching awards at the Law School and across the campus) commented, "That stance is a lovely gentle way of letting students see into the world of practice, but to convey at the same time that that world is not beyond criticism. One couldn't ask for more."

Students are enthusiastic supporters of Professor Sklansky's skills in the classroom. One typical letter reads, "Criminal Procedure with David Sklansky was, without a doubt, the most important class that I took during law school....David's class was the most powerful lesson in all my years of education on the difference one teacher can

make on a student, a class, and an entire community. David's knowledge, understanding, energy, and enthusiasm regularly made his class exciting and inspiring. He taught through a combination of theory and practice, debate and collaboration. His teaching emphasized a respect for established principles of law with a healthy questioning of the foundations on which they were based.... In short, David was—and is—in my experience a teacher unparalleled in ability.”

Professor Sklansky is famous for incorporating innovative teaching tools and props, often gathered at considerable time and expense, to illustrate the subject matter. His lectures are peppered with slides of crime scenes, overheads of newspaper articles, games (like Fourth Amendment Jeopardy), tape recordings of interrogations, and clips from movies and television shows. In his letter to the Committee, Professor Gary Blasi commented on this: “Through [Professor Sklansky's] extraordinary efforts, he both elevates and grounds the discussion in the classroom. Legal arguments and principles are no longer merely strings of words, but things that matter in the lives of people. Lawsuits are no longer merely the hidden predicate of interesting appellate cases, but the very life of the law. I know of no teacher who is as able at conveying to future lawyers the principles and practice that, at bottom, are the reason for a law school.”

Other faculty members praise Professor Sklansky's intellectual rigor. Professor Arthur Rosett wrote, “David makes teaching look easy and fun, but we know that the spontaneity is possible only because he is the master of the subject and has thought through the problems with great care and skill.”

Professor Yeazell remembers Professor Sklansky's preparation for the first class that he taught here at the Law School: “As a seasoned federal prosecutor, he was naturally assigned to teach a class on criminal procedure, which includes the Fourth Amendment's restrictions on search and seizure. Most casebooks begin with a brief mention of *Carrick v. Entington*, a hoary old Eighteenth-century case, which they use as historical window-dressing before settling down to business. Not David. I've done some work in English legal history, and I found him one summer afternoon in my office picking my brain for knowledge about the background of the case. That was easy to do because I knew almost nothing, a point I tried not very successfully to disguise from David. That didn't stop him. A week or so later he reported back with the results of quite wonderful research, which he had turned into class materials, and which he used to build a platform for the entire course, anchoring it not in the developments of the past few decades as is usual, but in the history of policing over several centuries. He had, before he taught his first class, reoriented the approach to a standard and important course.”





Professor Rosett calls Professor Sklansky “the most universally admired teacher of his generation at the Law School.” A student from Professor Sklansky’s earliest days of teaching adds, “In a profession that has an insidious tendency to make its practitioners petty and self-important, Professor Sklansky is a beacon of thoughtfulness and proportion.”



Alumni, too, are affected by Professor Sklansky’s intellectual curiosity. They find it impressive that, more than just admitting that he does not know the answer to a student’s question, Professor Sklansky will return to the next class with a fully researched answer, an attribute typical of the way that he pours his heart into his classes. A recent graduate writes, “Professor Sklansky is committed to teaching and clearly derives joy and satisfaction from watching his students learn. Whenever he sensed that students were not grasping a particular concept, he would arrive in class the next day with a new chart or diagram that explained the topic in a different manner. Because Professor Sklansky seemed to dedicate so much time and energy to class preparation, I found myself doing the same. He not only taught me the law; he also taught me to enjoy learning it.”

Displaying his usual modesty, Professor Sklansky waves off the notion that he exerts himself in preparation. “Teaching law at UCLA is a privilege and a pleasure. The students here are great, the faculty is very supportive, and the staff is absolutely terrific. I dash off a quick E-mail to the reference librarians, and they provide me with wonderful material. Then the Audio Visual and Information Services staff get it up on the screen and out of the loudspeakers.” Professor Sklansky particularly stresses the importance of faculty collegiality. “When I first arrived, for example, I was lucky enough to get an office next door to Alison Anderson, who was very generous with her time and her educational expertise. She taught me an awful lot about teaching.”

Professor Sklansky’s classes are by all accounts demanding and challenging. Yet students say that they also feel empowered in his classes, both by the modified Socratic method he uses to encourage students to keep on top of the reading, and by maintaining a congenial atmosphere in and out of class. An alumnus writes, “The true test of a law school teacher is how he or she handles classroom discussion, and Professor Sklansky excels at this. First, he is respectful to his students. His is a class where students who rarely speak in other classes feel comfortable raising their hand. He is not afraid to explain where a student’s reasoning has gone wrong, but he does not resort to sarcasm or to the too-frequent ploy of making himself look wise by making a student look stupid. Second, he has a rare ability to lead fruitful class discussions about controversial topics. Through his even temper, unblinking willingness to explore ideas, and his general decency, discussions of issues like rape laws can invoke heartfelt and opposing views from class members without an air of rancor injuring the discussion. Third, and related to his genuine commitment to teaching, he is self-deprecating and quick to rethink ideas, based on student input. His openness to criticism, indeed his solicitousness of it, is evident whether it concerns his views on an area of the law or the way he runs his class.”

Professor Sklansky’s devotion to his students extends far beyond the classroom and far beyond the syllabus. A former student remembers that, “One day, during class, Professor Sklansky referred to our need to begin outlining our notes for the exam....He then stated that, if any of us were unsure of how to outline, he would be

happy to show us if we stopped by his office after class. Though many of us first-year law students wore poker faces to mask our mounting hysteria about exams, I assure you that his remark registered under our expressions of blasé disinterest because after our classes finished for the day, about thirty students mobbed Professor Sklansky's office. Though surprised at the turnout, he found a lecture hall and taught us how to outline. In an education system that separates 'content' from 'skills,' as law school does, Professor Sklansky's conduct was extraordinary...."

Professor Sklansky also spends countless hours working with students on individual research papers and counseling students contemplating careers in criminal law. One student recounts, "He seems particularly proud and hopeful that he is teaching people who will go out and do good work in the legal profession."

To recent graduates starting their careers, he continues to be a mentor. A UCLA-trained lawyer writes, "I was getting ready for my first appellate argument before three federal judges in a pro bono civil rights case. Though my case was in an area out of his expertise, and he was in the midst of final exams, at my request Professor Sklansky took the time to prepare for and to participate in a four-hour practice session for me with two lawyers from my firm. His insight into my case, his constructive criticism about my presentation, and most importantly his encouragement were instrumental in making this project one of the most rewarding of my young career." The barrister continues, "I must note, he did not help because I was one of his best students (my grade in his class was a disappointment) nor because we are close friends (I know him no better than many teachers at UCLA and am continually pleased that he always remembers who I am), but because I was part of the Law School community, and this is just what he does."

All in all, Professor Rosett calls Professor Sklansky "the most universally admired teacher of his generation at the Law School." A student from Professor Sklansky's earliest days of teaching adds, "In a profession that has an insidious tendency to make its practitioners petty and self-important, Professor Sklansky is a beacon of thoughtfulness and proportion. Without being ostentatious about it, he communicates by his manner that practicing law has the potential to be a kind of public service."

**This and all other students and faculty comments quoted herein are from letters written to the Faculty Senate in support of Professor Sklansky's nomination for the University Distinguished Teaching Award.*



Joe Sklansky and his dad, David

Professor Tom Holm Wins Distinguished Teaching Award



KAREN STIGLER

If Will Rogers never met a man he didn't like, it could be said that Tom Holm never met a student he couldn't teach. And that is only one of the reasons he won the Luckman University Distinguished Teaching Award for Lecturers for 1999–2000. He is much appreciated and highly regarded at the School of Law, where he is recognized as an outstanding teacher and mentor.

Professor Al Moore says of his distinguished and beloved colleague, "Tom is a master at creating a classroom environment where the students feel comfortable taking risks. As a result, Tom is able to use the students' comments and insights to develop their analytical skills. This makes his classes interactive, effective, and fun." Professor Holm's students agree. One of the many students and alumni who sent the Academic Senate glowing letters supporting Professor Holm's nomination for the award,* wrote, "Professor Holm's *Lawyering Skills* class is by far the best class that I have taken at law school. Not only did I learn more in this class than in others, but I enjoyed doing so.

Professor Holm took the time to structure his lectures in a way that would present the material in an animated and engaging fashion. At times, Professor Holm was so funny that the entire class would erupt into a fit of laughter. Yet despite his animated teaching style, Professor Holm takes teaching very seriously. It is clear that he takes great care in preparing for class so that he is able to present the material in a clear and articulate way. Furthermore, he goes out of his way to ensure his students understand the material he presents before moving ahead."

Students' letters echo one another in their enumeration of Professor Holm's many exceptional qualities. They testify to his outstanding lectures, exquisite preparation, high expectations that in turn extract from students a high level of performance, endless hours devoted to working individually with students, cheerful demeanor, patience, humor, real interest in students as people and dedication to their success, and mentoring skills. And he successfully balances these disparate attributes. A recent graduate recalls, "On the first day of class, Professor Holm stated that he hoped his interaction with the students would be informal but that this should in no way be confused with the effort he sought and the importance of the material. I believe that he has struck this balance better than any professor I have known."

Tom Holm is director of the Law School's Lawyering Skills Program. In this capacity, he teaches sixty first-year students in two year-long sections of the required

lawyering skills course, teaches a seminar to fifty upper-class law students who assist with the lawyering skills course, and also teaches a new instructor orientation program that he developed. The first-year course, *Lawyering Skills: Theory and Practice*, historically has been an extremely difficult teaching challenge, yet since he joined the faculty to teach this course in 1996, he has uniformly received rave reviews.

The Lawyering Skills Program requires professors to take smart people who may have not been trained to think in an analytical fashion, and give them the practical skills set to think, write, and speak like lawyers. “This kind of job,” Professor Holm says, “meshes well with what I like to do. I don’t teach writing per se, I teach legal writing. What I’m really focussing on is how to present legal analysis in a coherent way. It’s very foundational.” He uses as an example the story of a parent telling a child not to eat a cookie. While the “civilian” parent might say, “Don’t eat the cookie; it’s not good for you,” the parent who’s thinking like a lawyer would say, “Don’t eat the cookie. It’ll spoil your appetite and you won’t want to eat your dinner. Then you won’t get the elements of nutrition you need, so you won’t grow big and strong.” Professor Holm continues, “It’s hard to get people to articulate the assumptions underlying their conclusions, but you need to give the reader the information [he or she] needs.”

In a class I visited that was the first in a two-part series on synthesizing cases, Professor Holm showed students how to analyze and synthesize several cases to develop arguments for their client. He taught them how to analyze each case in connection with this purpose: determining the elements of the overall rule, creating a fact-specific “test” that states how a party can establish each element, determining the relevant factual reasoning of each case, and understanding how policy concerns impacted the court’s analysis. He then taught the students how to create arguments for their client by comparing and contrasting their client’s factual situation to the relevant cases and provided an analytical framework through which the students could accomplish this task. By working through specific examples, Professor Holm taught students how to evaluate each case’s utility by evaluating the factual similarities and differences between the precedent case and their client’s case, as well as evaluating whether the policy concerns underlying the precedent case were equally applicable to their client’s situation. As part of this process, Professor Holm gave his students several means by which to organize and synthesize their analysis, including creating a chart that identified the relevant facts, reasoning and holding of each case. “When you begin dealing with several cases,” Professor Holm told the students, “you begin to love and cherish the chart...The chart is your friend.”

In another recent lecture, he demonstrated why students so value his class. He described the differences between timeline and theory-driven interviews and the distinctions between client and witness interviews, then moved into the main topic for the day: the components and sequencing of the timeline interview. He began at the beginning, going over how to introduce oneself to the client and possible approaches to different clients. Then, he said, the interviewer should give the client a preview of how the interview will go, letting him or her know its structure. He reviewed how



Professor Holm took the time to structure his lectures in a way that would present the material in an animated and engaging fashion. At times, Professor Holm was so funny that the entire class would erupt into a fit of laughter. Yet despite his animated teaching style, Professor Holm takes teaching very seriously. It is clear that he takes great care in preparing for class so that he is able to present the material in a clear and articulate way.





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to get a chronology of events by using open-ended questions, mentioning the value of repetition both to make sure the interviewer has understood the facts correctly and to assure that client that the interviewer is listening to him. Then he sailed on to the final segments of the interview: After the fact-finding, the interviewer should make sure to discuss the client's goals and concerns, then conclude with presentation of an action plan intended both to give the client confidence that the lawyer was responsive to the client's problem, and to let the client know what he or she needed to do.

The lecture was filled with humorous asides, often with reference to Professor Holm's experience as a litigator. The class listened intently and sympathetically, perhaps because they were anticipating their own upcoming interviews with "clients" from the Witness Program. Professor Holm's final discussion of passive versus active listening had his listeners doubled over in laughter as he detailed different possible ways of active listening, including "leaning forward with an intent look that says, 'Tell me more, tell me more, was it love at first sight?'" (a lyric from the movie *Grease*); yet it was clear that the audience had been greatly enriched by more than just the humor in the session. "I try to focus on things at a very practical level," Professor Holm comments. "There's an art to doing this well. There's a skill to making things clear, and all students can learn this skill if you work with them long enough."

His own law school, he says, did not provide this training. "A lot of schools don't. It's interesting—the more 'prestigious' schools tend to provide less practical training because it is perceived as less cerebral. But UCLA is very good in the level of focus on the practical part of lawyering. We have a very good clinical program."

UCLA law students recognize the improvement in their logical thinking, writing, and oral argument. A current student wrote, "The summer after my first year, I worked as an extern for a district court judge. It was during those months that I realized what a superior teacher Professor Holm is. Due to [the] stress that [Professor Holm] placed on the importance of good research skills, I was much more confident in legal research than were the other externs with whom I worked. Furthermore, I felt that the style of legal writing that Professor Holm taught was superior to that of the other externs from other top law schools. I completely attribute my success in the judge's chambers that summer to my luck in having Professor Holm as my law skills professor. And another student concurs: "The class that Tom teaches is one of utmost importance to the law curriculum, as it focuses precisely on the skills a young lawyer needs to be successful. More than any other class I took at the UCLA School of Law, *Lawyering Skills* is relevant to the work I do today. I am a capable, thorough, and confident new attorney, thanks in large part to Tom's class and his effective teaching."

Mr. Holm knows his stuff. After law school graduation and a one-year clerkship with Judge Arthur Alarcon of the Ninth Circuit Court of Appeals, he was an associate with Morrison & Foerster in the business and litigation departments for four years. Yet, doing litigation and appellate work, he says, "I was not working at a level or in a way I wanted to work with people." In law school he had thought of going into law teaching but was turned off by the idea of writing scholarly articles. When he learned, in 1996, that UCLA Law had positions doing what he liked doing—

teaching law students how to do legal analysis and how to present it persuasively—he joined the faculty to teach lawyering skills in the Clinical Program.

The *Lawyering Skills* class is especially delicate to teach because its structure requires constant critiquing of sensitive first-year students' writing. (It is also exhausting: Tom Holm devotes countless non-class hours per semester meeting with students and TAs and critiquing their work.) In this, Mr. Holm is universally acknowledged to be exceptionally skilled. A student commented, "Professor Holm creates a safe classroom atmosphere where first-year students feel that their opinions and ideas are important and where mistakes are allowed.... On a personal level, I often felt that the hours I spent in *Lawyering Skills* my first year had an element of healing to them. In the competitive environment of law school, Professor Holm is keyed in to the students' need to feel respected intellectually and to feel that they are capable. His positive approach to critiquing students' papers exemplifies this. Professor Holm is genuinely interested in the academic progress of his students."

It is striking that every one of the letters sent by students and alumni in support of Professor Holm cites his openness to student inquiries and concerns extracurricular as well as academic. Students find his outside support invaluable, "Professor Holm's approachability outside the classroom is unparalleled. He is a mentor, a sympathetic ear, and a fountain of optimistic advice to many stressed-out first-year law students." Another student added, "He was as willing to take the time to explain a complex legal concept as he was to offer advice on problems one might be experiencing outside of school. His passion for his teaching is matched only by his extensive knowledge of his subject matter."

Professor Holm is respected and beloved by his students, past as well as present. Faculty member Carolyn Kubota, who co-taught criminal trial advocacy with him in the spring semester 1999, put it well, "The students loved him. Mr. Holm has a big heart and boundless enthusiasm and those attributes were not lost upon our students. [He] is a gifted teacher. He has a commanding presence in the classroom that inspires immediate respect. He is confident and decisive in focusing class discussions on the appropriate issues; at the same time he is open and receptive to the students' ideas and perspectives. In the best pedagogical tradition, he helps the students to analyze the issues presented in their questions, rather than simply answering them."

** This and all of the other student and faculty comments in this article are taken from letters written to the Academic Senate in support of Professor Holm's nomination for the Distinguished Teaching Award.*



Professor Holm's approachability outside the classroom is unparalleled. He is a mentor, a sympathetic ear, and a fountain of optimistic advice to many stressed-out first-year law students.



CITIZEN REYNOSO



(Above)
Professor Cruz Reynoso
receives the Presidential
Medal of Freedom
from President William
J. Clinton.

(Left)
Professor Reynoso
receives numerous
awards, proclamations
and honors for his
life-long commitment
to civil rights and
teaching (at a reception
held in his honor at
UCLAW).



THE WHITE HOUSE
WASHINGTON

October 25, 2000

Warm greetings to everyone gathered in Los Angeles to pay tribute to Cruz Reynoso.

Throughout our history, America has been blessed with remarkable leaders and visionaries who have told us not only who we are, but also who we can become. Cruz Reynoso is such a leader. Throughout his distinguished career, from his work for the Equal Employment Opportunity Commission to his tenure on the California Supreme Court, he has shown an unwavering commitment to the law and to the public good, and his record of achievement has proven what a noble endeavor public service can be.

His life story is also a testament to the power and promise of the American Dream. The son of Mexican immigrants, Cruz Reynoso was discouraged in his youth from pursuing his education because of his background. Yet he went on to both college and law school, never forgetting his roots, and always serving as a voice for the American ideals of justice and equality. He has shown by example how much we have to gain by embracing the talents and creativity of all our people. I was proud to appoint him to the United States Commission on Civil Rights and to present him with the Presidential Medal of Freedom, and it gives me great pleasure to join you in saluting him for his many accomplishments on behalf of his fellow Americans.

Best wishes to all for a memorable event.

Bill Clinton



(Above) Professor Reynoso poses with current students (clockwise) Songhay Armstead-Miguda '01, Gregory Williams '01, Martin E. Erickson '01, James Do Kim '02, Crystal James '02, Vanessa Roxanna Alvarado '01, Lena Hines '02.

(Below) Dean Jonathan D. Varat and Professor and Mrs. Reynoso enjoy themselves at a reception held in Professor Reynoso's honor at the School of Law.



George Takei, Chairman of the Board of Trustees for the Japanese American National Museum, best known for his role as Mr. Sulu, helmsman of the Starship Enterprise on the original television show, Star Trek, greets Professor Reynoso and his wife during a School of Law reception held in the professor's honor.



Barry H. Lawrence '66, Senior Partner at the law firm of Kaye, Scholer, Fierman, Hays & Handler, gives remarks at a reception sponsored by the firm at the School of Law to honor Cruz Reynoso for his receipt of the Presidential Medal of Freedom.



Professor Reynoso with former student, Susan I. Santana '95, Executive Director of the Hispanic Heritage Awards.



(Above) Students listen attentively to Professor Reynoso's words of advice.



Professor Reynoso sits with Special Assistant Effie Turnbull '98.



Former students of Professor Reynoso were interviewed and filmed for the Hispanic Heritage Awards Ceremony honoring Professor Reynoso. (L-R) Lilia Alvarez '97, Cynthia Valenzuela '95, Bonnie Chavez '96, Susan Santana '95.

(Left) Professor Reynoso sits with second-year law student and research assistant Emmanuelle Liggins '02.



(Above) Barry H. Lawrence '66, Dean Jonathan D. Varat, Aurel Van Iderstine.



LAW SCHOOL OFFERS NEW CONCENTRATION IN

Critical Race Studies

JERRY KANG AND LAURA GOMEZ

Throughout American history, race has profoundly affected the lives of individuals, the growth of social institutions, the substance of culture, and the workings of our political economy. Not surprisingly, this impact has been substantially mediated through our laws and legal institutions. To understand the deep interconnections between race and law, and particularly the ways in which race and law are mutually constitutive, is an extraordinary intellectual challenge with substantial practical implications. In an increasingly racially diverse state and nation, these issues promise to remain central to the work of legal scholars and lawyers.

In recognition of this dynamic, the School of Law faculty recently approved the new Concentration in Critical Race Studies, which will offer second- and third-year law students a coherent and rigorous program of study focusing on the nexus of race and the law. Students who successfully complete the program will receive an appropriate notation on their transcripts.

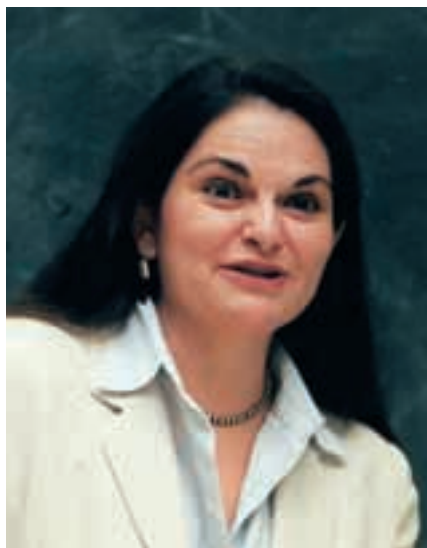
The Critical Race Studies concentration builds upon the strengths of a substantial and diverse group of faculty whose teaching and writing probe the links between racial inequality, racial classification, and the American legal system. They include Professor Kimberlé Crenshaw, who is recognized as one of the founders of Critical Race Theory, a body of legal scholarship with impact both within and outside the legal academy. Professor Cheryl I. Harris, who joined the UCLA faculty in 1998, is the author of the widely cited article "Whiteness as Property," published in the *Harvard Law Review*. Professor Carole Goldberg, a founder and director of the Law School's Joint Degree Program with UCLA's Interdepartmental Program in American Indian Studies, has taught, written, and practiced in the Indian law area for more than twenty years. Devon W. Carbado, elected Professor of the Year by the UCLA Law Class of 2000 and a recent recipient of Harvard Law School's Black Law Student Association's Distinguished Alumni Award, is the Editor of *Black Men on Race, Gender and Sexuality* (New York University Press 1999).

Professors Laura E. Gomez and Jerry Kang (see sidebars) direct the Critical Race Studies Concentration. Professor Gomez lectures and writes about crime, politics, the sociology of law, Chicano/a studies, and race relations. Professor Kang is an expert in Asian American Jurisprudence and is a noted authority on law and cyberspace.

This specialization will be appropriate for law students who seek advanced study and/or practice in race and the law, critical race theory, civil rights, public policy, and



Jerry Kang



Laura Gomez

other legal practice areas that are likely to involve working with racial minority clients and communities or working to combat racial inequality. The course of study will emphasize students' mastery of five areas: history (centering on the Constitution but focusing as well on a variety of other legal documents and experiences); theory (critical race theory, jurisprudence, and theoretical advances outside the legal academy); comparative subordination (an understanding of the multi-racial nature of American race relations, as well as how racial inequality is affected by discrimination based on gender, sexual orientation, and disability); doctrine (case and statutory law and its interpretation); and practice (including legal practice, community service, and lawyers' use of social science techniques).

Students in the program will be required to complete two core courses, *Civil Rights* and *Critical Race Theory*. They will then be required to complete two courses in comparative subordination. Students will also exercise their knowledge and skills in two applied courses, one each in the doctrinal and practice areas. Finally, program students will be required to complete a substantial writing requirement, either working independently with a program faculty member or via an approved seminar.

Beyond these course requirements, students will have the opportunity to engage in a wide range of related extracurricular activities. Program faculty will encourage participating students to serve as editors on student law reviews, drawing particular attention to the *UCLA Chicano/Latino Law Review* and the *UCLA Asian Pacific American Law Journal*. Program faculty and students will sponsor conversations about important policy issues in the race and law area with alumni, activists, and other scholars through informal lunch speakers and more formal symposia. Students in the Concentration will engage in the full range of Law School activities. It is expected that their participation in the Concentration will enhance their contributions to extracurricular and other intellectual activities beyond the program.

Jerry Kang, Co-Director of the new Critical Race Studies Concentration, is an expert on race and cyberspace. On race, he has focused on the Asian American community and has written about hate crimes and affirmative action. He has co-authored a casebook on the Japanese-American internment during World War II, which will be published in 2001. On cyberspace, Professor Kang has published in the *Stanford Law Review* on information privacy, and in the *Harvard Law Review* on cyber-race, the nexus of race and cyberspace. His casebook on communications law and policy also will be published next year.

Professor Kang was elected "Professor of the Year" by UCLA Law's graduating class in 1998. In his acceptance speech, Professor Kang told the graduates, "Deep down you do not want to use your training to manipulate the law shamelessly. Deep down you do not want to use your training to bully others intellectually. Deep down you do not want to use your training to spring up the staircase of materialism, where you know the price of everything but the value of nothing.... As you train in the skills of persuasion and analysis, do not delight in clever manipulation of the law. Do not delight in bullying others with your intellect. Instead, nourish and grow what is already honorable inside you. Integrity is the one thing over which you have control."

A 1993 graduate of Harvard Law School, Professor Kang came to the UCLA School of Law in the fall of 1995 following a clerkship with Judge William A. Norris of the Ninth Circuit U.S. Court of Appeals and a year of information policy analysis at the National Telecommunications and Information Administration. At Harvard, he was a supervising editor of the *Harvard Law Review* and Special Assistant to Harvard University's Advisory Committee on Free Speech.

Professor Laura Gomez, Co-Director of the new Critical Race Studies program, is a sociologist and a law professor, with both a Ph.D. and J.D. from Stanford. She is an expert in the sociology of the law, Chicano/a studies, and race relations, and lectures frequently on these topics. She teaches courses on criminal law, law and society, and women and crime. She recently authored a Los Angeles Times op-ed piece bemoaning the effects of reductions in diversity at UC on learning opportunities for students.

Professor Gomez is author of the recent book *Misconceiving Mothers: Legislators, Prosecutors and the Politics of Prenatal Drug Exposure*, the first book in Temple University Press' "Gender, Family and the Law" series. *Misconceiving Mothers* is an empirical study of how two California institutions constructed and responded to the "crack baby" problem in the late 1980s. It examines issues both of how topics get on the cultural and political map, and how, in this instance, state legislators and local prosecutors responded to pregnant drug users.

Professor Gomez was born in Roswell, New Mexico, and grew up in Albuquerque. Before coming to UCLA in 1994, she clerked for Judge Dorothy W. Nelson of the U.S. Court of Appeals for the 9th Circuit. She also spent a year working in Congress as an aide to Senator Jeff Bingaman.

ERG

Empirical Research Group

RICK SANDER AND JOE DOHERTY

Once upon a time, most legal scholarship revolved around the careful analysis and comparison of judicial opinions—sifting court decisions to discern new trends in the law or critique old rigidities. This classic form is still, of course, very important, but over the past generation the legal academy has become far more eclectic. The economic analysis of law, feminist and critical race perspectives, historical and sociological analyses, and much more have become common parts of the scholarly

dialogue. Underlying all of this change has been a far greater integration of legal scholarship with the social sciences and with quantitative methods. In few law schools has this change been more marked or successful than at UCLA, and thus in few places was there a greater need for the Empirical Research Group—one of the Law School's latest innovations.

The Empirical Research Group (ERG) was organized in the spring of 1999 with five related missions. First, ERG would assist law faculty in accessing and interpreting technical and quantitative research conducted by social scientists. Second, it would help faculty organize and launch their own empirical investigations. Third, when large-scale research projects require special funding, it would work with faculty to secure research grants from government and foundation sources. Fourth, it would foster collaborative work between law faculty and other UCLA faculty working in related policy, social science, or management fields. And finally, ERG would help to connect faculty work to policymakers and policy debates, increasing the practical



(L-R) Associate Director Kim McCarthy, Professor and ERG Director Rick Sander, and Associate Director Joe Doherty review a National Science Foundation grant proposal to study housing segregation.

applicability of faculty research. In essence, the purpose of ERG is to provide an institutional infrastructure for the law faculty's increasing engagement with empirical, social-scientific research.

"Traditionally, when legal scholars wanted to make a point about how the real world operates, they relied either on anecdotes or on the unfiltered lifting of findings from someone else's work," says Professor Rick Sander, who serves as Director of ERG. "The maturing of the social sciences and the spread of personal computers has both raised the standards for empirical work and made it more accessible. So more and more law faculty realize they can do more ambitious things and give their work

more credibility to a broader audience. What they need is a little institutional back-up.”

Over its first eighteen months, ERG has provided that sort of back up to over twenty members of the law faculty. Professor David Binder’s experience was fairly typical. Professor Binder is studying the experience and training of lawyers in taking depositions. One goal of his research is to determine whether law schools should devote more resources to deposition training. He has received survey responses from just over 300 lawyers from all areas of practice, including those primarily representing plaintiffs, those primarily representing defendants, and those associated with large, medium, and small firms. “Without the assistance of ERG, I would never have undertaken this research,” Professor Binder said. “ERG played a major role in helping me design my survey questionnaire so that it collected valid data. ERG is now playing a major role in helping me unpack the responses I have received.” Those responses indicate that attorneys receive little deposition training in law school or in practice. “Given the importance of depositions in the litigation process,” Binder concluded, “these findings suggest that law schools should give serious consideration to including deposition training in their clinical curriculums.”

ERG has two “core” staff members. Joe Doherty is a senior graduate student in political science completing his dissertation at UCLA, who worked for some years as a survey analyst and methodologist at a political consulting firm. Doherty works half-time at ERG as its Associate Director for Research and at any given time he has several open faculty research projects. “It’s a challenging job,” according to Doherty. “Not all legal research questions are amenable to empirical analysis, of course, but there is usually some component of a project that can benefit from data collection and statistical methods. I try to help the faculty figure out what that is. I enjoy the variety of the work, its relevance to current issues and controversies, and the opportunity to work with some of the best minds on the planet.”

Kim McCarthy joined ERG in August 2000 as Associate Director for Grants and Administration. McCarthy has an M.B.A. and previously oversaw a criminal justice research center at Northeastern University. McCarthy works with faculty to identify funding sources and develop grant proposals. When projects are funded, she hires staff (most frequently law students and graduate students from other departments) and acts as the projects’ general manager. She also coordinates ERG’s finances, which are far from simple. Over its short life, ERG has secured twenty-five grants and contracts of more than one-half million dollars.



Research Associate Darren Schreiber (seated left) co-authored the code for the computational modeling of housing segregation.

Professor Sander (right) is Director of the Law School’s Empirical Research Group, which fosters empirical, policy, and interdisciplinary work among the faculty. He also helped develop, and teaches in, the Program in Public Interest Law and Policy. Sander teaches *Property, Quantitative Methods, and Urban Housing*.

The common thread in Professor Sander’s work is his use of empirical research to understand and improve public policies. Right after college he worked as a community organizer, but he soon became preoccupied with how an innovative community bank affected the inner-city economy, and he got a federal grant to study and write about the bank. This pattern repeated itself when Sander went to graduate school, where work with local housing groups led him to study fair housing and housing segregation; at Northwestern Law, where teaching in the school’s academic support program led him to launch several large-scale studies of legal education; and in Los Angeles, where the Mayor’s request for his opinion on the minimum wage led to studies of a proposed Living Wage Law and its implementation in LA.

Distance Learning

Professors Daniel H. Lowenstein and Clyde Spillenger have launched the latest distance learning courses at the UCLA School of Law. The classes are taught in the GTE

Conference room, and are electronically linked to classrooms at UC Berkeley and the USC Law School. The point of the joint courses is not simply to get people from different locations, but from different disciplinary perspectives—both faculty and student.

Professor Lowenstein has teamed with political science professor Bruce Cain of UC Berkeley to teleconference a class on election law. The course considers ways in which the law governing the political process affects and reflects political power relationships. Topics include the right to vote, reapportionment, minority vote dilution, political parties, campaign finance, incumbency, and ballot propositions. Readings consist primarily of judicial decisions, supplement-

ed by theoretical and empirical electoral studies.

Professor Lowenstein comments, “So far, my impression is that it is working very well. Lawyers and social scientists really do approach problems in a different way, even when they are in broad policy agreement. It is not surprising to see that at the faculty level, but it is interesting to see how much it is true among the students. Indeed, the students probably diverge more in their approaches than Cain and I do, suggesting that the acculturation into the discipline occurs more quickly than one might expect.”

Professor Spillenger and USC Law Professor Ariela J. Gross explore the interaction of law, culture, and politics in American society from the Revolution through the New Deal in their course on legal history. The class provides an introduction to the study of law from a historical perspective. Topical sections covered include nineteenth-century law and economy; slavery and the Civil War; progressivism and social welfare policy; and the history of citizenship, including issues involving Indian law, immigration, race, gender, and marriage. The course offers critical readings of cases and other primary materials.

According to Professor Spillenger, “Our course is a little different in that Professor Gross and I will, typically, be physically in the same classroom when teaching, whether at USC or UCLA. This enables us to get the benefit of bouncing ideas off each other a bit more spontaneously, which I hope is more stimulating for the students. It also enables each of us to get to know the students at the other school a bit better. We’ve been very pleased at how smoothly the technical aspects of the course have gone.”



UCLA Law Professor Dan Lowenstein (L) meets with Bruce Cain, UC Berkeley political science professor, before launching their distance learning course.



UCLA Law Professor Clyde Spillenger outlines the course with USC Law Professor Ariela J. Gross.

Returning Faculty

Professor Phillip R. Trimble (far right) returns to teaching at the Law School from his year as the Vice-Provost for International Studies and Overseas Programs at UCLA.

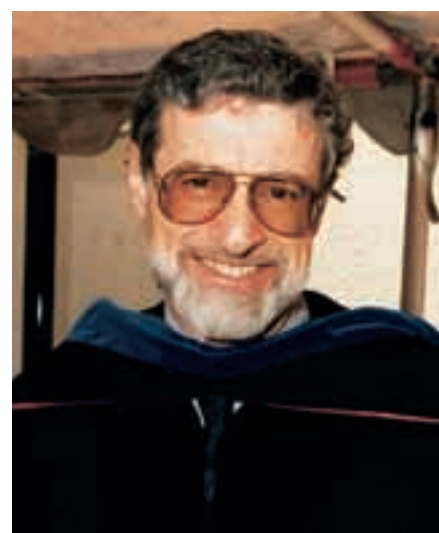
Professor Trimble introduced UCLA to several dignitaries while at ISOP, among them, President and Mrs. Jimmy Carter, who visited campus this fall. Professor Trimble was the American Ambassador to Nepal during the Carter Administration. An expert on international relations, he was the Assistant Legal Advisor for Economic and Business Affairs in the Department of State during the Nixon, Ford, and Carter administrations. In his avocation as a mountaineer, Professor Trimble has climbed on five continents, including several expeditions to the Himalayas and to both polar regions, and in 1976 he led the successful U.S. expedition to Mt. Everest. More recently, he looked for music in eastern and central Africa for Afro Pop Worldwide and was assistant director of two contemporary music theatre works in the Netherlands.

At the Law School, Professor Trimble is expected to resume his teaching and scholarship in the fields of international law, national security, and international human rights.



~~The UCLA School of Law welcomes back Professor Norman Abrams (right) from his~~ ten-year stint as UCLA's Vice Chancellor, Academic Personnel, where he was overseer of faculty appointments and promotions as well as the faculty grievance and disciplinary process.

Professor Abrams teaches courses in and writes on subjects relating to criminal law, evidence, and federal criminal law. His ground-breaking casebook on federal criminal law is now in its third edition (with Professor Sara Beale), and he is also a co-author of *Evidence—Cases and Materials* (with Judge Jack Weinstein and Professors John Mansfield and Margaret Berger). In a letter to the UCLA Community, Chancellor Albert Carnesale wrote, "Vice Chancellor Abrams' commitment to faculty excellence echoes his dedication to seeing UCLA thrive and excel. I am grateful for...his wide-ranging contributions to the University.... I know that the campus community joins me in thanking and congratulating Norm...."



A Salute to Veteran's Day

GRANT NELSON



Grant Nelson is a professor at the School of Law and recipient of the 2000 Rutter Award for Excellence in Teaching.



Last November, the University of California honored Veteran's Day as a holiday for the first time. For me, Veteran's Day evokes largely pleasant memories of my military experience during the mid-1960s.



Even though I served as a young Army officer during the Vietnam era, I was fortunate not to have been sent to Vietnam or to have experienced the horrors of those who fought in World War II or Korea. Of course, like many of my young colleagues, I sometimes was forced to confront the self-righteous intolerance of anything military from some of those in the student protest movement and their sympathizers in the academic world. Nevertheless, I remain grateful to this day for having had the opportunity to serve my two years. Notwithstanding the minor hardships and the short interruption in my career plans, the military experience blessed me in innumerable ways and, I like to think, made me a better person.

Why do I say this? For a young man from Minnesota, the Army was my first meaningful experience with cultural and racial diversity. In 1965, the Army was one of the few American institutions that had been racially desegregated. My first commanding officer was an African-American major. The young men who were my responsibility included blacks, whites, Asians, American Indians, and Latinos. There were immigrants, the educated as well as those who had little formal education, the affluent, and the economically deprived.

While the Army was hardly a racial utopia, it had achieved a degree of racial integration then uncommon in civilian life. Moreover, outside the job, not only was housing integrated, but there was significant social interaction across racial lines. There actually were periods, however fleeting, when one sensed what it would be like to live in a colorblind society.

The Army also taught me that the sense of "family" should be broader than our spouse, children, and other blood relatives. It sounds trite, but the Army taught that we are responsible for the general welfare of those in our unit, not simply their job performance. While the military is undoubtedly based on a hierarchy of rank, it operated in some ways less rigidly and more benignly than I expected. We were taught to be there for our "subordinates" when they experienced family tragedy or difficult personal problems. This concern for colleagues was simply part of the culture, irrespective of rank. In large measure, we lived in a communitarian world before it was fashionable to use that term.

Finally, the Army entrusted me with a degree of responsibility that would have been unattainable at my age in civilian life. And being responsible for the actions of others twenty-four hours a day was more challenging and at times more rewarding than writing legal memoranda as a rookie attorney in a large law firm.

Of course, at the time I did not feel quite as sanguine, let alone blessed, to be part of the military. As my wife Judy will attest, I complained a lot about being trapped in the military when my friends were advancing in their civilian careers. Nevertheless, with the perspective of time, I've become deeply grateful for this period of public service. I like to think that I'm also a better teacher, lawyer and citizen because of it.

The Outreach Resource Center

TONY TOLBERT

The Outreach Resource Center is continuing to expand its Law Fellows Early Academic Outreach Program, which was instituted during the 1997–1998 academic year to help promote diversity at the Law School and in the legal profession. The Program provides pre-law school students with intensive academic enrichment in conjunction with extensive mentoring and counseling, career development activities, academic service seminars, and LSAT preparatory course scholarships. We plan to expand the Program further by accommodating a greater number of students from additional undergraduate institutions and by reaching out to a broader range of prospective law students.

In addition to developing and nurturing relationships with prospective law students, a critical mission of the Outreach Resource Center is to provide counseling, mentoring, and general support services to current Law School students who have not had access to traditional mentoring and social support systems. I intend to utilize personal contacts in the legal and business community to help create a network of support activities for students served by our office. These activities may take several different and complementary forms, including establishing mentoring relationships, arranging guest speaker presentations, and facilitating in-home dinner events. Some of these activities will also provide opportunities to coordinate efforts with various student organizations and other Law School offices, including Career Services and Alumni Relations. Enlisting student groups and individual students into our outreach efforts and collaborating with them on a variety of outreach initiatives, such as presentations at undergraduate institutions, are other key goals that will be instrumental to our success.

It is vital, both from a programmatic standpoint and an institutional perspective, to communicate internally and externally the Law School's commitment to diversity and related outreach efforts. With that objective in mind, we have plans to publish an Outreach Resource Center newsletter that will serve the Law School community and beyond, spreading the word about the various outreach programs, activities, and initiatives that are underway.

I am committed to working creatively and resourcefully with students, faculty, and other staff members to restore the legacy of diversity that historically has distinguished the Law School from other top tier-legal institutions, and also to create a model outreach program that may be held up for emulation by other law schools and graduate programs across the country.



Tony Tolbert recently joined the Law School's Outreach Resource Center as Assistant Director, and works closely with Leo Trujillo-Cox. Mr. Tolbert received his B.A. in political science from U.C. Santa Barbara and his J.D. from Harvard Law School. Following law school, he joined the firm of Manatt, Phelps, Rothenberg & Phillips in Los Angeles as an associate in the music and litigation departments. He has held several legal positions in the entertainment and sports industries, including stints at MCA Records, Upper Deck, the 1994 World Cup Organizing Committee, and Ticketmaster. Most recently, Tony served as General Counsel of Dunk.net, Shaquille O'Neal's start-up Internet company.

Tony is a Trustee of The UCSB Foundation and sits on advisory boards for the Constitutional Rights Foundation and Cedars-Sinai Medical Center Sports Spectacular. An avid sports fan, Tony enjoys coaching youth basketball.

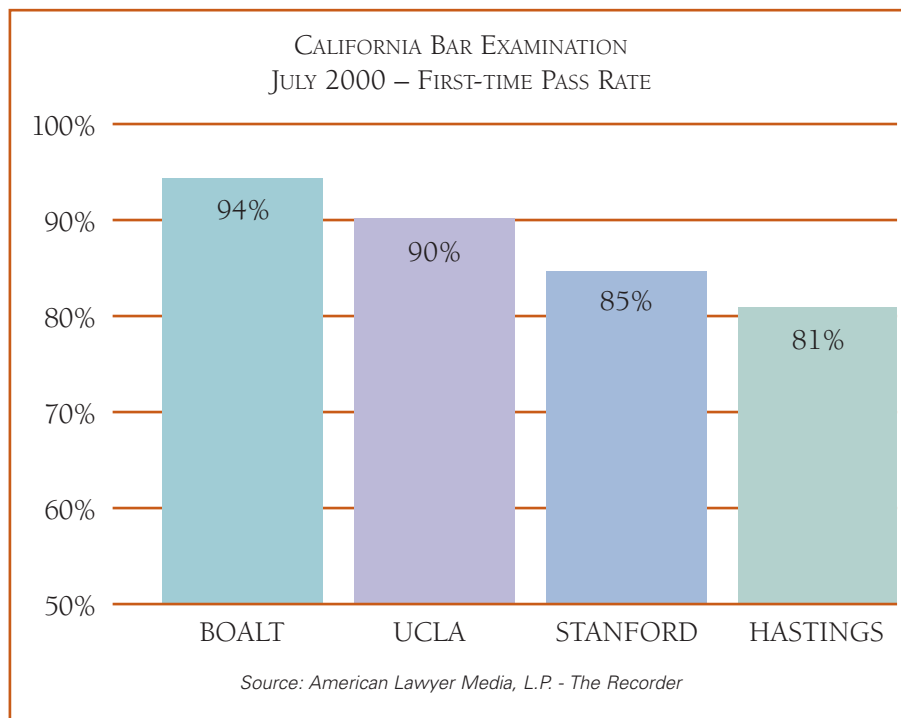
Institutional Research and Policy Studies



Tom Skewes-Cox joined the School of Law in September in the new position of Director of Institutional Research and Policy Studies. He has worked at UCLA for the last eight years, first in the Student Affairs Information and Research Office and most recently as an Assistant Director in the Office of Undergraduate Admissions and Relations with Schools. He is also a Visiting Professor at the Pepperdine Graduate School of Education and Psychology, where he teaches research and evaluation to prospective teachers. Before coming to UCLA in 1989 to pursue a Ph.D. in education, completed in 1998, Tom worked as a high school math teacher, both in Southern California and in Munich, Germany. He holds a master's degree in education from USC and completed his bachelor's degree in applied mathematics at UC Berkeley. He can be reached at (310) 794-5296 or <thomas@law.ucla.edu>.

TOM SKEWES-COX

In any institution as complex as the Law School, policy decisions must be made in the context of ongoing evaluation of the past, clear-sighted assessment of the present, and planning for the future. Institutional Research can provide some of the context for these deliberations by examining empirical and qualitative data that apply to current challenges facing the school. As Director of Institutional Research I look forward to establishing effective systems to assist the Law School in learning what the data can tell us about policy issues—issues such as how to enrich the educational experience for students, how to evaluate various law school programs and services, and how to enhance alumni relations and development opportunities. I also look forward to working with students, faculty, alumni, administrators, and staff to develop this research agenda so vital to the ongoing strength of the school.



Tom Skewes-Cox studies data about UCLA School of Law within the context of other top academic institutions. The information helps strengthen our own programs.

Career Services

LISA BOSSETTI BARASH '96

As a 1996 graduate of the UCLA School of Law, I fondly remember my three years on campus, and I am very excited to return here as an Assistant Director in the Office of Career Services.

In this newly created position, I have two main responsibilities. First, I serve as a general career counselor to law students, advising them of their employment options, assisting in the preparation of effective resumes and cover letters, and facilitating various career-related programs and services. Secondly, I administer the judicial clerkship and summer judicial externship program. I am actively involved in the process of applying for these positions, including counseling students, assisting them with the mechanics of the application process, and coordinating the mailing of letters of recommendation written by UCLA Law professors.

As a former judicial law clerk and academic year extern, I strongly believe in the value of judicial clerkships and summer judicial externships both as a positive learning experience for students and junior lawyers and as a credential for a student's or lawyer's future career aspirations.

My goals for the future of these programs include encouraging more students to apply for judicial clerkships and summer judicial externships and expanding the range of opportunities available to UCLA Law students. And in addition to strengthening relationships the UCLA School of Law already has with members of the judiciary, I would like to develop new relationships with federal and state judges from across the nation, relationships that will benefit both the judiciary and our students.

Participation in clerkships by UCLA School of Law graduates reflects favorably on the School. Many Law alumni are former judicial law clerks or members of the state or federal judiciary, and I invite them to contact me if they are interested in discussing their clerkship experiences with current law students or participating in any judicial clerkship or summer judicial externship events. I also encourage any alumni to get in touch with me if they have an interest in pursuing a judicial clerkship at some point in their legal careers, or if they wish to utilize resources in the Office of Career Services or participate in any of Office's activities and programs. Please feel free to contact me at (310) 206-1117 or <barash@law.ucla.edu>.



Lisa Bossetti Barash '96 joined the UCLA School of Law in October as an Assistant Director in the Office of Career Services. Before that she worked as an associate in the bankruptcy department of O'Melveny & Myers, LLP in Los Angeles and then as a judicial law clerk to the Honorable Charles F. Eick, United States Magistrate Judge in the Central District of California. She earned her bachelor's degree in sociology from UC Berkeley, and with a UCLA School of Law classmate, Mette Kurth '96, Ms. Barash (nee Lisa Bossetti) co-authored the article "Professor Elizabeth Warren's Article 9 Carve-Out Proposal: A Strategic Analysis," which was published in the *Uniform Commercial Code Law Journal*, Vol. 30, No. 1, Summer 1997.

community

Professors and Professionals

The School of Law is fortunate again this year to have an outstanding, talented group of adjunct and visiting lecturers and professors to complement our teaching program.

Melinda R. Bird, B.S., J.D.
Terree Bowers, B.A., J.D.
Brian Cartwright, B.S., Ph.D., J.D.
Patrick Del Duca, B.A., D.E.A., J.D.,
Ph.D., Dott Di Giur.
Elliott Dorff, B.A., M.A., Ph.D.
Scott Epstein, B.A., J.D.
Bernard Gold, B.S., J.D.
Maureen Graves, B.A., M.A., Ph.D.
Kristen Holmquist, A.B., J.D.

Thomas W. Johnson Jr. B.S., J.D.
Andrew M. Katzenstein, B.A., J.D., LL.M.
Kathleen Koch-Weser, B.A., M.A., J.D.
Edward J. McAniff, A.B., LL.B.
Schuyler Moore, B.A., J.D.
John J. Power, B.S., M.B.A.
Joel Rabinovitz, A.B., LL.B.
Mark D. Rosenbaum, B.A., J.D.
Catherine Sabatini, B.A., M.A., J.D.
Kenneth Ziffren, B.A., J.D.

Bojan Bugaric, an Associate Professor at the University of Ljubljana School of Law in Slovenia, returned to UCLA this fall to teach two courses: *European Union Law* and *Globalization and the Law*. He previously taught the latter course as a Visiting Professor. Professor Bugaric also taught *Economic Reforms in Central and Eastern Europe* in the fall of 1998, and *Introduction to Comparative Law* last spring. He received his LL.B. from University of Ljubljana School of Law, a Certificate in European Law from the European University Institute in Florence, his LL.M. from UCLA, and his S.J.D. from the University of Wisconsin. While attending the UCLA School of Law, he was awarded his first Fulbright

scholarship in 1993. From 1988–90, he was the Assistant to the Secretary of the Council for Protection of Human Rights in Ljubljana. Professor Bugaric has been a Fellow of the Institute for Legal Studies, University of Wisconsin, Madison (1994–1997), and has served as a member of the Advisory Board of the International Institute for Peace, Vienna since 1996. He was a Visiting Scholar at Harvard University (1995–1996). He has written more than twenty articles on subjects ranging from comparative constitutional law to a comparative look at critical legal studies.

Patrick Del Duca returned to UCLA this spring to teach a course on Latin

American infrastructure development transactions. Following graduation from Harvard Law School, Professor Del Duca clerked for Judge Alfred T. Goodwin of the U.S. Court of Appeals for the Ninth Circuit, and then for Justice Antonio La Pergola at the Corte Costituzionale in Rome. He has written on topics of commercial, comparative, environmental, European Community, and international law. Professor Del Duca practices law with the firm of Kelley Drye & Warren, and has served as a member of the Pacific Council on Foreign Relations Mexico Study Group.

Elliot Dorff, Provost and Professor of Philosophy of the University of Judaism, returned to UCLA this spring to co-teach *Religious Legal Systems* with Professor Arthur Rosett. Professor Dorff has co-taught this course at UCLA since 1974. He received his bachelor's degree from Columbia College and earned his master's degree and Rabbinic training at the Jewish Theological Seminary of New York, at the same time completing his Ph.D. in philosophy at Columbia University under a Danforth Foundation Fellowship. He has been a leading member of the Committee on Jewish Law and Standards of the Conservative Movement since 1984 and in that capacity has been the author of a number of very important decisions on Jewish law.

Damien Geradin, a Professor of Law at the University of Liege and the College of Europe, Bruges in Belgium, taught a mini-course on comparative and international telecommunications law and policy this past fall. He has held visiting appointments at King's College

London, the University of Paris II, the Autonomous University of Barcelona, and Yale Law School, where he was a Fulbright visiting lecturer in law. During this academic year, he will also be a European Visiting Professor at the University of Peking. Professor Geradin received his *Licence en droit* from the University of Liege in 1989, his LL.M. from the University of London in 1990, and his Ph.D. from Cambridge University in 1995. Prior to starting an academic career, he was an associate in the Brussels office of the international law firm of Coudert Brothers. He has authored several books and many articles in the areas of trade, antitrust, telecommunications, and environmental regulation.

Russell Korobkin, a professor at the University of Illinois School of Law, is visiting the UCLA School of Law this year. He taught *Negotiation Theory & Practice* in the fall and in the spring will teach *Health Law* and a seminar on law and behavioral science. Professor Korobkin received both his B.A. and J.D. from Stanford. While in law school, he served as an associate editor of the *Stanford Law Review*. Upon graduation from law school, he clerked for the Honorable James L. Buckley of the U.S. Court of Appeals for the District of Columbia Circuit in Washington, D.C. He then joined the law firm of Covington & Burling in 1995. He entered law teaching in 1996 when he joined the Illinois law faculty. He is a member of the American Law and Economics Association, the Society for the Advancement of Socio-Economics, and the Law and Society Association.



BOJAN BUGARIC



RUSSELL KOROBKIN



KIMBERLY KRAWIEC



EDWARD MCCAFFERY

Professor Korobkin's research interests lie in behavioral approaches to legal policy, as well as in negotiation and in health care policy. He has published numerous articles.

Kimberly Krawiec, a professor at the University of Oregon School of Law, taught *Business Associations and Securities Regulations* this fall. She received her B.A. from North Carolina State University and her J.D. from Georgetown. While in law school, Professor Krawiec served as an associate editor of the *Georgetown Law Journal*. She then practiced at the Wall Street law firm of Sullivan & Cromwell, specializing in securities and derivatives work. Professor Krawiec was appointed Assistant Professor at the University of Tulsa College of Law, then in 1997 joined the Oregon law faculty, where she teaches business law. Professor Krawiec writes primarily in the areas of insider trading, financial risk management, and derivatives.

Edward McCaffery, the Maurice Jones Jr. Professor of Law at the University of Southern California Law School, taught the course *Introduction to Federal Income Taxation* this past fall. Professor McCaffery received his B.A. from Yale University, his J.D. from Harvard, and his M.A. in economics from USC. Upon graduating from law school, he clerked for the Honorable Robert N. Wilentz of the Supreme Court of New Jersey. Prior to joining the USC faculty in 1989, Professor McCaffery practiced law with the San Francisco law firm of Titchell, Maltzman, Mark, Bass, Ohleyer & Mishel. He is Executive Director and

Chair of the Planning Committee at the USC Institute on Federal Taxation, and has published extensively.

Entertainment lawyer **Schuyler Moore** '81 returns to the School of Law this spring to teach *Entertainment Law*. He received his B.A. and his J.D. from UCLA. He is a partner in the Corporate Entertainment Department at the Los Angeles office of the law firm of Stroock & Stroock & Lavan. He is the author of *The Entertainment Industry*, published by Warren Gorham Lamont. He has taught an entertainment business course for UCLA Extension Program, and is a frequent speaker and writer on a wide variety of entertainment subjects. He is a leading member of the UCLA Entertainment Law Symposium—the largest, oldest, and most academic symposium of its kind.

Manuel Gonzalez Oropeza is a professor at the Universidad Nacional Autónoma de México, tenured law researcher at the Instituto de Investigaciones Jurídicas (Institute of Legal Research), and advisor to newly elected Mexican President Vicente Fox. He taught two courses at UCLA this past fall: *Mexican Public Law* and *Legal Problems of the U.S.-Mexico Border*. Professor Gonzalez Oropeza received his law degree from the Universidad Nacional Autónoma de México, and his master's degree in political science-public law from UCLA. He also holds diplomas from the Economics Institute of the University of Colorado and from the Institute of Latin American Studies of the University of North Carolina. He has published a number of articles in

Spanish. Professor Gonzalez Oropeza last visited UCLA School of Law in 1988 when he taught *Mexican Public Law*.

John J. Power, the Chief Financial and Administrative Officer of the UCLA School of Law, taught two courses this past fall: *Accounting for Lawyers* and *Financial Analysis*. Professor Power received his B.S. from UC-Berkeley and his M.B.A. from UCLA. He practiced with Price Waterhouse from 1972 to 1993, a career involving several years in the Kuwaiti and Korean offices of the firm. He has been active in the UCLA Alumni Association, as Treasurer and a member of the Board of Directors (1988–92), and as a member of the Financial Review Committee (1992–96). He was a member of the Board of Governors of the UCLA Faculty Center from 1997 to 1999.

Mark Rosenbaum, Director of the ACLU Foundation of Southern California, taught two courses at the Law School this past fall: *Constitutional Law: 14th Amendment* and *Civil Rights: Public Interest Litigation*. Professor Rosenbaum received his B.A. from the University of Michigan and his J.D. from Harvard Law School. At Harvard, he was the Vice President of the Harvard Legal Aid Bureau. He has worked for the ACLU Foundation of Southern California since 1974, serving first as a Staff Counsel, then as General Counsel, and now as Legal Director. Professor Rosenbaum's teaching career began in 1985 when he was a volunteer professor at a city law school teaching constitutional law and legal research and writing. He holds Adjunct Professor

appointments at Loyola Law School, the University of Southern California Law Center, and the University of Michigan. He has received numerous awards, and has published several articles.

Austin Sarat, the William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College, where he has taught since 1974, teaches a three-week mini course, *Social Lives of Law*, this spring. Professor Sarat received his B.A. from Providence College, his M.A. and Ph.D. from the University of Wisconsin, and his J.D. from Yale Law School. He served in the U.S. Department of Justice as Staff Social Scientist, working in the Office for Improvements in the Administration of Justice. Professor Sarat has held several visiting appointments. His awards include the Award for Excellence and Innovation in Alternative Dispute Resolution from the Center for Public Resources, and the Harry Kalven Prize from the Law and Society Association in recognition of his work contributing to the advancement of research in law and society. Professor Sarat is a highly active and visible presence in interdisciplinary work on law—he holds editorial positions on several major journals, including the *Yale Journal of Law and the Humanities*, *Social and Legal Studies: An International Journal*, and *Studies in Law, Politics and Society*. He was past President of the Law and Society Association, and recently chaired an ad hoc committee on Interdisciplinary Law-Related Scholarly Associations. Professor Sarat has written and edited numerous books, articles, and review essays.



MANUEL GONZALEZ
OROPEZA



JOHN J. POWER



KENNETH ZIFFREN '65

Guy Scoffoni, Professor of Law at the University of Aix-en-Provence, taught a three week mini-course, *Fundamental Rights in European Legal Systems*, this past fall. Professor Scoffoni received his education in France, where he studied law at the University of Marseille and completed his doctorate with high honors from the Universite de Paris. He is a review analyst and on the editorial board of the *Revue Francaise de Droit Constitutionnel* (French Constitutional Law Review), a member of the Organization of European Programs, and serves on the national and local selection committees for the Civil Service. Professor Scoffoni has visited and taught at institutions of higher learning worldwide, including Brighton University, the University of Oslo, the University of Hong Kong, the University of Bologna, and the University of Chuo, Tokyo. He has published a number of articles, mostly in French.

Peter Wendel, a professor of law at Pepperdine University, returns to UCLA Law this spring to teach *Wills and Trusts*. He received his B.A. from the University of Chicago and his M.A. from St. Louis University. He then returned to the University of Chicago, graduating with a J.D. from its law school. Professor Wendel worked as an Associate at Bryan, Cave, McPheeters & McRoberts in St. Louis, Missouri. He first entered teaching as a Bigelow Teaching Fellow

and Lecturer at the University of Chicago. He was then appointed Assistant Professor at St. Louis and then moved to Pepperdine Law School. In the fall of 1995, Professor Wendel was one of nine professors there who received the Luckman Distinguished Teaching Fellows Award for excellence in teaching. He has published widely.

Entertainment lawyer **Kenneth Ziffren** '65 returns to the School of Law to teach two courses: *Network Television* and *Motion Picture Distribution*. Professor Ziffren received his B.A. from Northwestern University and his J.D. from UCLA. At UCLA he was editor-in-chief of the *UCLA Law Review*. After law school, Professor Ziffren clerked for U.S. Supreme Court Justice Earl Warren. He was a partner of Ziffren & Ziffren from 1967-78, and in 1979 became the founding partner of the predecessor law firm to Ziffren, Brittenham, Branca & Fischer. Professor Ziffren is a member of the UCLA Executive Board for the Medical Sciences and the UCLA Campaign Cabinet. He served as a neutral mediator in resolving the Writer's Guild strike in 1988 and was the special outside counsel to the NFL in negotiating contracts with the networks. In addition to his lectures and legal articles on entertainment law, he has lectured at the UCLA and USC entertainment law programs.



UCLA School of Law Alumni and Friends
are encouraged to join us as we co-host with the
United States Holocaust Memorial Museum



“AN EVENING WITH BEN FERENCZ”

U.S. Prosecutor, the Einsatzgruppen case, the Nuremberg Proceedings

May 22, 2001



Ben Ferencz was born in a small village in the Carpathian Mountains of Transylvania. He was an infant when his family moved to the United States, where he attended school, eventually studying at Harvard University. There, he pursued his interest in criminal law, graduating from the Law School in 1943. He joined an antiaircraft artillery battalion that was training in preparation for an Allied invasion of Western Europe. At the end of the war in Europe, Mr. Ferencz was transferred to the war crimes investigation branch of the U.S. Army, and was charged with gathering evidence against and apprehending alleged Nazi war criminals. He ultimately became chief U.S. prosecutor in the Einsatzgruppen case of the subsequent Nuremberg Proceedings.



Please contact <events@law.ucla.edu> or (310) 825-0971
for reservations, time, and venue information



MORE THAN A NEW BUILDING:

The Hugh & Hazel Darling Law Library

The opening of the new Hugh & Hazel Darling Law Library provided a number of benefits to the Law School: a beautiful new space for students and faculty, a new campus landmark, and a symbol that the Law School had come of age. Unexpectedly, the spectacular solution to the long-standing problems with the library's physical plant allowed the Law School community to appreciate more fully the fact that the best law library in the country had been here for quite some time, obscured by drab, out-dated facilities.

The Hugh & Hazel Darling Law Library houses a terrific collection, especially for a law library founded as recently as 1949, and boasts a rich assortment of Anglo-American law materials as well as impressive holdings in East Asian, Mexican, and Islamic materials. But the best of facilities and materials come to nothing without the right people to keep it running. It's the staff that makes this library great. Highly trained (with most librarians holding law degrees in addition to master's degrees in library science), deeply experienced, and dedicated to service, the librarians continually look for new ways to be of use to the Law School community. They assure that faculty and students have ready access to materials and that the collection is shelved in a user-friendly fashion. They have created a supportive environment for law students, offering services ranging from legal research training and reference advice to furnishing spill-proof mugs, recreational reading materials, game boards, a twenty-four-hour reading room, accommodation software and equipment for students with disabilities, and comfy seats. And this year, the library staff is expanding its services by focusing on improving access to the wide variety of digital legal resources available.



Back Row Standing, L-R: Jennifer Lentz, Fred Smith, Kevin Gerson, Barbara Rudich, John Wilson

Seated, Middle Row, L-R: Kate Pecarovich, Myra Saunders, Rhonda Lawrence, Adrienne Adan, Donna Gulnac

Front Row, Seated, L-R: George Wrenn, Linda Karr O'Connor, Xia Chen

“

The librarians at this law school are a treasure.

”

PROFESSOR DAVID SKLANSKY



Myra K. Saunders
Law Librarian & Associate Dean

The faculty rave about library services. First-year faculty member Sharon Dolovich quickly became a library fan: "I've only been here a few months and already I can't even count the times the reference librarians have come to the rescue. They've helped me track down obscure rules, opinions, and articles, decode the meaning of murky regulations, get the fuller picture behind the facts of cases—and that is just for starters." Faculty routinely thank library staff members and library research assistants in their published work. They express disbelief at how quickly research inquiries are answered and newly requested library materials are ordered and made available to them. And

they praise the library's Research Assistant program, which has improved dramatically the quality of research services available to them. Small wonder that the last ABA re-inspection report described library services as "model."

The librarians have recently started writing a witty column for the Law School's monthly newspaper, *The Docket*. The column, "The Librarians' Desk," written by Adrienne Adan, Jennifer Lentz, and Linda Maisner coyly refers to the authors as "Your Darling Law Librarians," and they are, in the best sense of the word. Their first column covered topics such as popular videos and recreational reading titles available for borrowing, offered a customized "Secrets of the Law Library" tour, and, in a section entitled "Coming Attractions," promised to identify the top five legal Web sites, and also, how to choose the right search engine.

In the words of Professor Stephen Yeazell, our librarians comprise, "The best cadre of professional law librarians in the country...This group of librarians has come to think of itself not as the custodians of some books, but as part of the School's academic programs. They train research assistants. They consult with faculty about courses. They respond with blinding speed to research requests, no matter how esoteric. They anticipate needs. They give training sessions in skills we didn't even know we needed. And they do so with a fine light touch." Professor Ken Klee adds, "We are lucky to have them at UCLA." We heartily agree.

Librarian Kate Pecarovich has been a librarian since 1972, following graduation from the master's program at UCLA's Graduate School of Library and Information Science. Eight years later she joined UCLA Law and will soon celebrate twenty-one years with us. She has been named 2000 "Librarian of the Year."



Kate Pecarovich, Head of Technical Services at the UCLA School of Law Hugh & Hazel Darling Law Library, and winner of the 2000 UCLA Librarian of the Year Award



It is with great pleasure that LAUC-LA names Kate Pecarovich Librarian of the Year, in recognition of her ongoing contributions and leadership in ORION2 activities, and her...key role in designing the new UCLA Law Library. Kate has enriched her fellow librarians and the entire UCLA Library Community... and has demonstrated the qualities of intellectual creativity, innovation, and leadership repeatedly throughout her twenty-year career at UCLA. Because of Kate's distinguished contributions, all UCLA libraries have ready access to complete and accurate holdings of the Law Library, and the Law Library is also a beautiful study facility with an inviting and useful collection design.



FROM THE LIBRARIANS ASSOCIATION OF THE UNIVERSITY OF CALIFORNIA-LOS ANGELES
WEB SITE. <WWW.LIBRARY.UCLA.EDU/COMMITTEES/LAUC/LAUC/INDEX.HTM>

Our wonderful reference librarians are a tremendous luxury of scholarly life at UCLAW. They either know everything already, or else can find it—and in about eleven minutes. It is scary how smart they are.

PROFESSOR JOHN WILEY



John Wilson, Reference Librarian



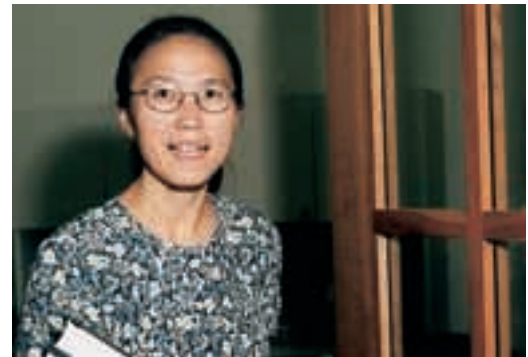
Jennifer Lentz, Reference Librarian



George Wrenn, Catalog Librarian



Linda Maisner '75, Reference Services Librarian, with student



Xia Chen, Reference Librarian

The reference librarians are a truly excellent resource, always willing and able to invest considerable effort and ingenuity to track down even the most obscure of unpublished sources. There are several articles that I know I could never have written without their assistance; as I said in the author's footnote to my most recent piece, 'Many thanks to the UCLA School of Law reference librarians for their tremendous research help'!

PROFESSOR EUGENE VOLOKH



L to R: Laura Cadra, Reference Librarian; Kevin Gerson, Reference Librarian; Linda Maisner '75, Reference Services Librarian

Library services are a team effort at the Hugh & Hazel Darling Law Library. Not pictured are: Adam Benítez, Serials Specialist; Nancy Berkowitz, Administrative Specialist; Taube Bregman, Cataloging Assistant; Charles Cannon, Administrative Officer; Maureen Dunnigan, Acquisitions Specialist; Todd Honma, Circulation Supervisor; Gabriel Juarez, Access Services Manager; Frank Lopez, Library Computer Services Manager; Sangeeta Pal, Document Delivery & Stacks Manager; Viktor Prokopenko, Computer Resources Analyst; Susan Reese, Supplementation Specialist; Brett Roller, Access Services Supervisor; Tracy Shamas, Stacks Supervisor; Emma Shepyer, Serials Assistant; and Aleksandr Stavchanskiy, Computer Services Analyst.



*Frederick Smith, Librarian Emeritus
Donna Gulnac, Head of Access Services*

I have used the research librarians to help me research and find materials for speeches, formal lectures, articles, and other projects. They have always been a great help; invariably they find the materials sought and they always undertake their tasks with professionalism and enthusiasm. They are a vital part of the Law School community.

PROFESSOR CRUZ REYNOSO



*Martin Fernandez, Evening Supervisor
Jennifer Hill, Evening Access Services Librarian*

For generations of UCLA law students one of the pleasant constants was the cheery "Hello! How ARE you?" as a student approached the loan desk at the entrance to the Law library. This was the greeting of B.T. Davis, longtime employee of the Law Library who retired in 1986 and passed away in 1997. One of the legendary episodes that demonstrated his sincere interest in students even after their graduation occurred when he happened upon a small gathering of alumni hosted by Dean Susan Prager. B.T. greeted one individual after another by name. For B.T.,



B.T. Davis

these alumni remained friends or acquaintances for whom his "How ARE you?" was genuine and personal. Our tradition of a remarkably supportive and cohesive community owes more than a little to B.T. Davis.

LIBRARIAN FRED SMITH



Rhonda Lawrence, Head of Cataloging



*Barbara Rudich
Catalog and Special Projects Librarian*

BayKeeper Ball



*Clockwise from top left:
Luanne Wells, Associate Dean Barbara Varat , and Dean Jonathan Varat
Paul Reiser and Bonnie Raitt
Professor Jody Freeman, Luanne Wells, and Mary Nichols
Ed Begley Jr.
John Raitt sings with his daughter
Steve Fleischli '94, Executive Director of BayKeeper*



events

"In short, it is because of the Wells that we have the Environmental Law Clinic;...that we have the wonderfully productive partnership with BayKeeper, ...that we have been able to build such a fine program in such a short time; ...that we have new support and new partnerships that will advance education in environmental law even further;...and that we and others are inspired to continue to support ever more beneficial programs and activities in support of environmental protection and environmental legal education."

"The commitment the Wells Family made to endow the Frank Wells Chair prompted an immediate response of one million dollars to establish the Evan Frankel Environmental Law and Policy Program, establishing yet another interactive partnership."

"The generosity the Wells inspired with their own magnanimity already includes an offer of yet another one million dollars if we can match it—and you can be sure we will work to do so."

DEAN JONATHAN VARAT



Luanne Wells accepts the Tiffany crystal memento from Dean Varat on behalf of the Wells Family. The etching reads, "With heartfelt thanks and deep appreciation for your extraordinary commitment to the advancement of environmental protection and the education of environmental lawyers at the UCLA School of Law."



Luanne Wells, Stacia and Kevin Wells



Dan Emmett (President of Santa Monica BayKeeper Board of Directors) at the podium, Briant Wells, Luanne Wells, Kevin Wells, and Terry Tamminen



Grads Swear-In

The Bar Swearing-In Ceremony, organized by the Law School Alumni Association, was a huge success with approximately 700 in attendance, including members of the Class of 2000, friends, and family. Presiding over the Ceremony were The Honorable Joan Dempsey Klein '55, The Honorable Lourdes G. Baird '76, and the Honorable Kim M. Wardlaw '79. The Honorable George Schiavelli (Ret.) '74, the president of the Alumni Board Association, welcomed the recent graduates to the Bar Swearing-In Ceremony, where they were sworn into the State of California, the Central District of California, and the Ninth Circuit. Professor David Sklansky motioned to admit the applicants. Ninety percent of the Class of 2000 who took the state bar exam passed on the first attempt.



(Top Row, L to R): 3L Class President Anne Jollay '01, Rick Davis '87, Dir. of Alumni Relations, Kristine Werlinich, Beth Cranston '86, Hon. George Schiavelli (Ret.) '74, Greg Ellis '88 (Bottom Row, L to R): Rich Havel '71, Dennis Perez '82, Hon. Bob Bowers '72.

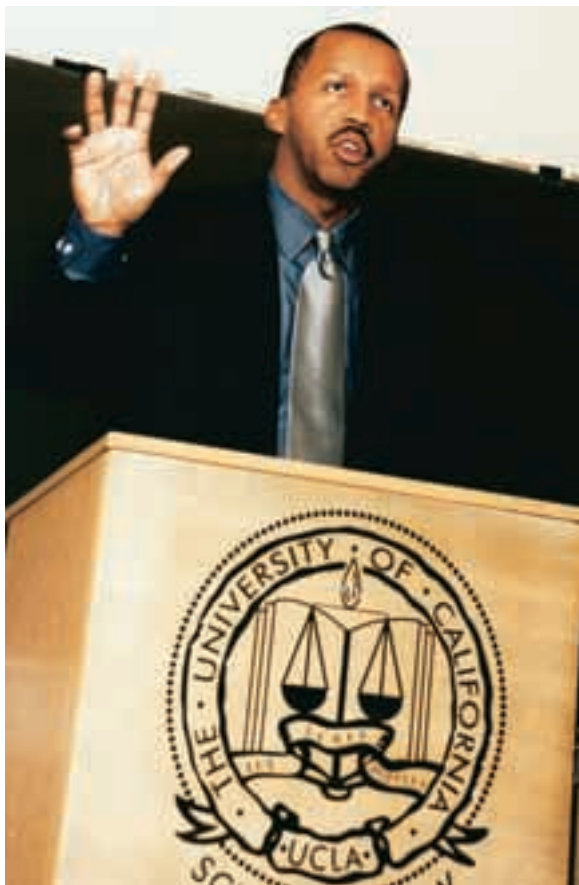


(Top Row, L to R): Hon. Lourdes G. Baird '76, Dean Jonathan Varat (Bottom Row, L to R): Hon. Kim M. Wardlaw '79, Hon. Joan Dempsey Klein '55, Professor David Sklansky.



Events Brief

EDITOR'S NOTE: EXPECT EXPANDED EVENT COVERAGE NEXT ISSUE.



Bryan Stevenson, the Executive Director of the Equal Justice Initiative of Alabama in Montgomery, Alabama and a professor at New York University Law School delivered the Irving H. Green Memorial Lecture on November 2, 2000. A standing- room-only crowd, including Irving Green's widow, Fay Bettye Green and their son, UCLA Mathematics Professor Mark Green, filled the largest lecture hall in the Law School to hear of Professor Stevenson's work with death row convicts and his representation of indigent people in the deep south. The Equal Justice Initiative has succeeded in overturning the sentences of more than forty death row inmates who had been wrongly or unconstitutionally convicted or sentenced. After his speech, Mr. Stevenson was surrounded by enthusiastic alumni, students, and faculty.

(Right) Honoring the School of Law by winning top scholarships from the Foundation of the State Bar of California are (L-R) Heather Zakson '02, Catherine Elkes '02, John Littrell '02, Beth Caldwell '02, and Natalie Bridgeman '02. All recipients were nominated by the School of Law and have participated in extensive volunteer service. Four of the five received the maximum dollar amount awarded by the Foundation.



Alumni served as judges for moot court early this fall:
Students: (L-R) Jennifer Tobkin, Kambiz Kohansedgh, Marta Dimitroff, Bijan Esfandiari;
Judges: (alumni), (L-R) Leonard Meyberg '65, The Honorable Marvin D. Rowen '56, Toby Rothschild '69



Alumni Tailgaters:

Root for your undergraduate team or your professional school? How 'bout both!



Bill Amsbary '55, Nat Read, Carolyn Carlburg '77



W. Clark Brown '89, Robert Schepps, with Sean Pine, Registrar and Acting UCLA Law Chief Information Officer



Bob Bartho, Matt Greenberg, David Greenberg '64, Todd Hindin, Leo Kwan '64



Steven Lawrence '85, Olga Lawrence



Kindra Sailors, Glen Reiser '78



(Center Rear, clockwise) UCLA School of Law Alumni Association President The Honorable George Schiavelli (Ret.) '74, his daughter Olivia, wife Holli, and son Peter (in the Stanford hat—gulp!) (Counterclockwise from Center Rear) Dr. Abraham Schlossberg B.A. '77, M.D. '81, Dr. Isidor R. Schlossberg B.A. '71, M.A. '72, Michael Schlossberg, and Evan Schlossberg

Criminal Justice in Bhutan

RONALD KAYE '89

There I was, having lunch at the home of Sonam Tobgye, the Chief Justice of the High Court of the Kingdom of Bhutan, discussing Bhutanese law and how Buddhist thought affects the court's perspective on the issue of criminal justice. After teaching a seminar about the criminal justice system of the United States to over half of the judges of Bhutan (called *Dashos* in the Bhutanese language of Dzongka), I now had an opportunity to question Bhutan's most esteemed jurist about what the Bhutanese consider to be the fundamental issues with respect to criminal behavior and punishment.

Interspersing his comments with quotes from President Abraham Lincoln, Justice Oliver Wendell Holmes, and the Buddha, the Chief Justice explained that the Bhutanese hold certain fundamental beliefs when addressing criminal defendants. These beliefs stem directly from the teachings of the Buddha and have been codified in a legal system since the country was unified in 1652. Some examples:

Sentencing in Bhutanese court is not considered punishment. Based on the principle of karma, when a defendant acts in an antisocial way, the defendant must pay for his misdeed in order to liberate himself. Thus, the Bhutanese believe it is good fortune that the defendant has been apprehended and has had an opportunity to work for a "clean slate" by paying for his wrongful conduct.

Expungement of past criminal convictions is crucial to a system of justice—a person should be sentenced based on the wrong he has committed, not on his past criminal history. A philosophy that, rather than condemning the person for his past misdeeds (the ghosts of the past should not haunt the



Ronald Kaye '89 and his wife Pamela J. Lew '94 proudly announce to their fellow alums that the adventure continues with the birth of Liana, born Feb. 6, 2000.

defendant), serves to motivate a defendant to work toward more productive, law abiding behavior.

Although it is not a formal doctrine, the Chief Justice shared his personal belief that people should not be given sentences longer than five years, because longer sentences hardened and institutionalized defendants, leaving them little hope of re-establishing their relationships and fully returning to their communities.

For me, a Deputy Federal Public Defender working in Los Angeles, such sincere commitment to the concept of rehabilitation, and belief in the power of the human spirit to change for the better, coming directly from the most powerful judicial official in the country, was more than refreshing—it was inspirational. Like Dorothy in *The Wizard of Oz*, I was sure I was not in Kansas, nor the Federal District Court in Los Angeles. No, I was in Bhutan, the only surviving Buddhist Kingdom in the Himalayas.

The High Court had invited me to visit Bhutan to teach about trial advocacy and American criminal procedure from a practitioner's perspective. I was able to secure this invitation after being introduced to the Chief Justice, albeit via E-mail 20,000 miles away, by a friend at Stanford who is a professor of Buddhism. My friend sensed that a seminar on American law would intrigue the Bhutanese at this stage in the development of their legal system. Luckily for me, his intuition was correct.

In view of my role as a Deputy Federal Public Defender, my presentation naturally focused on the rights of the accused. I was the first lawyer ever to lecture in Bhutan, although several professors from the United States and Europe had visited in

the past. My seminar focused on the tension inherent in the U.S. criminal justice system between the rights of the criminal defendant facing the loss of his liberty—perhaps the most revered principle in our society—and the need to maintain order and security in our communities.

In my practice I regularly try to persuade judges and juries to not lose sight of the fundamental rights of my clients, regardless of whether the facts of the case reveal that they committed the offense. Consequently, I had personal experience with the way judges, and sometimes juries, struggled with this tension in criminal cases and these competing goals. Now I was asked to share my experiences with the judges of a country that had little experience with crime, and where personal freedom was not as important as the welfare of the community and the spiritual development of the people. Yet in the year 2000, through access to the Internet and to visitors from abroad, the Bhutanese were becoming intrigued by cultures and ideas which were for so long completely alien to life in their country.

Before I embarked on this journey, I had researched Bhutan and its history and the reasons it was the only surviving Buddhist Kingdom in the Himalayas. I learned that the country had never been colonized, even though China and India, its huge neighbors to the north and the south, had been subject to colonial rule throughout their histories. Centuries of independence and isolation fostered a fierce pride in the Bhutanese culture and their unique identity in the world. Therefore, although not technologically advanced or economically well-developed, the Bhutanese do not envy the outside world; they realize the beauty of both their culture and country. In Bhutan, there are no beggars and there are no people starving. Unlike other people in the developing world, the Bhutanese may be interested in visiting other cultures, but they seem to have little desire to emigrate abroad.

By reading the national newspaper, the *Kuensel*, over the Internet, I was able to get an advance look at modern



From High Court: Silk Knot Symbolizing Justice

Bhutanese culture. I was particularly interested in the types of crimes occurring in the society. Although crime as we know it virtually did not exist in Bhutan for centuries, crimes such as money laundering and burglary have begun to occur, but on a very small scale. I knew I would be immersing myself in a dramatically different social environment when the front page of the newspaper had a lead story about the use of

airplane glue by a few teenagers in the country's capital, Thimphu. (Interestingly, the Bhutanese universally believe that antisocial criminal behavior had arrived in their country due to the influence of other cultures, primarily the action-packed "blood and guts" plots portrayed in Hindi movies imported from Bombay.)

Once the seminar started, I dove into the topics which make up the bread and butter of being a criminal defense attorney in the United States: suppression of evidence, the right to counsel, the right to an impartial jury of your peers. The seminar consisted primarily of discussing the constitutional bases of these rights, applying the Fourth, Fifth, and Sixth Amendments to the landmark Supreme Court cases of *Miranda v. Arizona*, *Gideon v. Wainwright*, *Batson v. Kentucky*, etc., and demonstrating how these principles work in the "real world" through war stories from my own practice. To bring the class closer to "real life," I brought a transcript from a trial I had done in the Central District of California, a case where my client was charged with assaulting a federal prison guard. With transcript in hand, I was able to share with the judges my jury selection decisions, cross examination techniques, and closing argument analogies. To create a feeling of excitement and anticipation for my "students," I left the verdict as a surprise until the end of the seminar.

My twenty-five students were Bhutan's brightest—judges who presided over districts administering to the country's 750,000 people. The country only recently started to formalize its legal system and recruit students into the legal profes-

sion. High school students who showed the most promise were recruited by the Chief Justice himself to join the legal profession. Since the country literally didn't open up to the outside world until the early 1960s, almost every judge's parents were peasant farmers, generally uneducated. The judges themselves were often the first in their families to receive formal education.

Surprisingly, every judge who attended the seminar was fluent in English, generally with a strong Indian accent. After Tibet was annexed by the Chinese in the 1950s, the previous King of Bhutan realized that isolation from the rest of the world was no longer a viable option, and made English the language of instruction to children throughout their elementary and secondary school educations. Consequently, children not only had mandatory English classes, but they also learned history, math, and science in the English language. And virtually all the judges studied law in India—in either Bombay, New Delhi, or Calcutta—where the legal education is based on the British case law system and the language of jurisprudence is English.

The judges' familiarity with the American system stemmed from both their readings of landmark Supreme Court cases and the sensational cases which affected the consciousness not only of the public in the United States, but of people throughout the world. During the seminar I was peppered with questions about the O.J. Simpson, Rodney King, and Amadou Diallo trials. On repeated occasions I was asked to put myself into the shoes of Johnnie Cochran and ponder why he made particular decisions at trial, and what impact these decisions had on the jury.

For me, the most eye-opening aspect of the seminar was the judges themselves: impressive and truly inspiring. Throughout the seminar they demonstrated an unwavering commitment to the rights of the accused, fully embracing the principles of fairness in the judicial process as being as much of a priority as protecting the members of the community from criminals. When discussing prosecutorial misconduct in



Ron and Pamila taking tea with Norbu Tsering, a judicial assistant to the Chief Justice of Bhutan, and Ngawang, the Chief Justice's driver, overlooking the Dzong (castle) at Trongsa, Bhutan.

a case which I had pending before the Ninth Circuit Court of Appeals, several judges were appalled by the tactics of that particular Assistant United States Attorney. I will never forget one of the judges saying, "Seems like the only thing that prosecutor wanted was to win, and to win he stepped on the rights of your client—that seems contrary to your whole system of justice." I laughed out loud and responded

that I hoped the Ninth Circuit shared his sentiments.

During my stay in Bhutan I was consistently amazed at the forward-thinking attitude of the judiciary—their intent to fully computerize the dockets of the entire country, their emphasis on enacting legislation which protects human rights and the environment, and their stress on the importance of continuing legal education for police, prosecutors, and members of the judiciary. The judges are also equally passionate about maintaining their particularly independent cultural identity. Buddhist iconography dominates courtrooms. Each judge wears traditional dress and a *kabne*—a scarf bestowed by the King and representing the judge's rank in society. And the symbol of justice proudly displayed in the courts of Bhutan is the silk knot, which, although tightly knotted, can always be untied—an embodiment of the Buddhist tenet that all human actions can be forgiven.

When I asked a young judge what he thought about the symbol of the U.S. judicial system—the scales of justice—he told me he thought it was compelling that justice was blindfolded, seeking out the truth regardless of the person's appearance or race. He then asked me what role compassion plays in our system. I responded that compassion is not systemic in U.S. jurisprudence, but stems from the discretion of the particular judge in a particular case. He was quiet for a second and then said that Buddhism requires a commitment to compassion beyond the individual judge's particular personality.

It seems that the United States judicial system may have something very valuable to learn from the Kingdom of Bhutan.



'50s

Judge Richard G. Berry '55 is retiring from the Los Angeles Municipal Court. He was appointed to the bench by Governor Brown in 1991 after more than twenty years in practice. Judge Berry was a Santa Monica deputy city attorney from 1957 to 1960, then had his own practice from 1960 to 1974.

Florentino Garza '56 was honored as the California Trial Lawyer of the Year by the American Board of Trial Advocates. The annual award recognizes a person with a distinguished legal career, a superb reputation for high ethics and fair play, and several outstanding verdicts.

Herbert J. Solomon '56, a founding partner in the downtown firm of Solomon Ward Seidenwurm & Smith LLP, has passed the title of managing partner, which he held for the past five years, on to fellow UCLA Law alum **Jeffrey H. Silberman '82**. Mr. Solomon remains a partner in the firm.

'60s

Philip Magaram '61 received the Arthritis Foundation's Charles B. Harding Award for distinguished service. Presented annually by the Arthritis Foundation, the award recognizes those volunteers who have provided leadership and directions to the Arthritis Foundation.

The **Honorable Henry P. Nelson '61** (B.A. '58) of the law firm of Nelson & Fulton, a general litigation law firm, will be joined at the firm by his son **David**

K. Nelson '96, who comes to the firm after four years of civil litigation at Haight, Brown & Bonesteel in Santa Monica.

We are happy to report that **Howard M. Van Elgort '61** is still very much alive. In the last issue of *UCLA Law Magazine* we unfortunately reported that Mr. Van Elgort had passed away. Mr. Van Elgort is currently in private law practice in Soquel, CA. He was a Justice Court Judge from 1977 to 1979, then was elevated to Municipal Court Judge from 1979 to 1982.

Edward Poll '65 has been appointed to the Technology & Practice Guide Board in the General Practice, Solo and Small Firm Section of the American Bar Association, a one-year position starting July 2000. The General Practice, Solo and Small Firm Section represents approximately 13,000 lawyers throughout the country, most of whom are in the private practice of law.

Ceradyne Inc. announced the election of **Wilford D. Godbold Jr. '66** to its Board of Directors. Mr. Godbold, currently a private investor, was President and CEO of Zero Corporation, a manufacturer of products for packaging systems, thermal management, and engineered case requirements for the telecommunications, instrumentation, and data processing markets.

Stan Parry '67 has recently retired and lives in Palo Alto with his wife Melinda. He is active in several organizations that create community-based housing for the developmentally disabled. His book *Great Gothic Cathedrals of France, A Visitor's Guide* will be published by Penguin USA in the spring of 2001.

Lita Blatner '68 was honored by the State Bar of California for her pro bono legal work at the Good News Free Legal clinic in Visalia. Blatner received the President's Pro Bono Service Award at a State Bar convention in San Diego on Sept. 14, 2000. Chief Justice of the California Supreme Court Ronald George and State Bar President **Andrew Guilford '75** presented the award.

Pacific Capital Bancorp has appointed **Frederick W. Clough '68** to the position of senior vice president and general counsel. Clough was formerly the managing partner of the Santa Barbara law firm of Reicker, Clough, Plau, Pyle, McRoy & Herman, which he and his partners established in July 1996.

'70s

Minneapolis-based Robins, Kaplan, Miller & Ciresi has added **Cynthia Lebow '73** to the firm's office in Washington. Ms. Lebow joins the firm from the RAND Institute for Civil Justice in Santa Monica, California, where she was an associate director. She will focus on transportation and regulatory matters.

The Honorable George Schiavelli (Ret.) '74 has recently retired as Presiding Judge of the Appellate Division of the Los Angeles Superior Court and has joined the firm of Crosby Heafey Roach & May in their Los Angeles office's Appellate Group. He is also handling ADR matters through Alternative Resolution Centers (ARC).

State Bar President **Andrew Guilford '75** and Chief Justice of the California Supreme Court Ronald George present-

ed the President's Pro Bono Service Award at a State Bar convention in San Diego on Sept. 14, 2000 to **Lita Blatner '68** for her pro bono legal work at the Good News Free Legal Clinic in Visalia. Mr. Guilford also ended his term as State Bar President on that date.

Dian Ogilvie '75 has been named Group VP and General Counsel for Toyota Motor Sales U.S.A., Inc. Before being promoted, Ogilvie was VP and Assistant General Counsel for Toyota Motor Sales.

iVillage Inc., operator of iVillage.com: The Women's Network, announced that **Nancy R. Alpert '78** has been named Senior Vice President, Corporate Development. Alpert will be responsible for expanding and developing international operations and will serve as a board member of iVillage UK. Alpert will also focus on domestic strategic partners and licensing opportunities for iVillage. Alpert joins iVillage from Lifetime Television where she served as Senior Vice President, Business and Legal Affairs.

Marietta Sebree Robinson '78 was appointed to the Michigan Supreme Court. Before her appointment, Judge Robinson had been an attorney in private practice in Detroit since 1989. She is also an adjunct professor at the University of Detroit School of Law and Wayne State University School of Law.

'80s

As of September 2000, **Craig Riemer '80** is President of the 800-plus member Riverside County Bar Association for a one-year term.



'61

Howard M. Van Elgort

William Warhurst '80, formerly with San Francisco's Link & Warhurst, has joined Hannig Law Firm in Redwood City as counsel in the firm's litigation department.

Thomas McMahon '82 has joined Howrey Simon Arnold & White in their insurance practice. McMahon, formerly with Jones, Day, Reavis & Pogue, will represent policyholders in a variety of matters, including coverage for environmental, intellectual property, toxic tort, employment, and first-party property claims. He also has experience in litigating disputes concerning intellectual property, financial transactions, environmental matters, attorney malpractice, and employment disputes.

Jeffrey H. Silberman '82 is now managing partner with Downtown's Solomon Ward Seidenwurm & Smith LLP. He succeeds fellow UCLA School of Law alum **Herbert I. Solomon '56**, a founding partner in the firm, who held the job for the past five years and remains as a partner. Silberman has been with the firm since 1986 and has been a partner since 1989; he concen-

trates his practice on general business, corporate, and employment law.

John Posthauer '83 has joined the staff of Santa Clara County Counsel Ann Ravel in the tort litigation group, after leaving his position as a partner at Redwood City's Owen & Melbye.

Cynthia A.R. Woollacott '83, appeared on the cover of the June 2000 issue of *LA Lawyer* magazine, authoring an article on the new Anticybersquatting Consumer Protection Act. Formerly an associate for Pillsbury, Madison & Sutro, she now has her own firm in Century City.

Leah E. DeLancey '86 was recently named Partner by the firm of Baker & Hostetler LLP. Ms. DeLancey concentrates her practice in the area of trusts and estates in the firm's Long Beach office.

Michael DiGeronimo '86, a partner at Miller, Starr & Regalia specializing in real estate law as well as litigation and appeals, has been selected as chairman of the San Ramon Planning Commission. As a member of the Commission, he has helped review and process applications for hundreds of retail, office, and residential development projects in San Ramon. Mr. DiGeronimo was originally appointed to the Commission in 1998 and will serve as its chairman through August 2001.

Helene Pretsky '87 has been hired by The Hecker Law Group to spearhead their new corporate law unit. Pretsky, formerly with Kinsella, Boesch, Fuji-kawa & Towle, will oversee and execute the legalities of private placements, public offerings, mergers and acquisitions and preferred stock financings as well as commercialization agreements, domestic and international distribution and sales arrangements and employee stock programs, particularly internet, entertainment, and technology.

Lauri Shanahan '87 was featured in a May 2000 *California Law Business* article on twenty top lawyers under forty years old. Ms. Shanahan serves as general counsel to the Gap and heads a team of twenty-nine lawyers.

Scott Lenga '88 is living in Israel with his wife Carrie and is the proud father of three daughters, ages five, two, and two months. He has recently joined the Emicom Group as a Founding Partner. The Emicom Group is a venture capital investment company that provides funding and hands-on support to Israeli technology companies that serve the internet infrastructure, software, and telecommunications markets. <scottl@emicomgroup.com>

Thomas Roth '88 has accepted a position as an associate in the San Francisco office of Sheppard, Mullin, Richter & Hampton. He specializes in land use and real estate matters involving federal and state environmental laws. Before joining Sheppard, Mullin, he was a partner with Cutler & Stanfield, a land use and environmental boutique in Washington, D.C.

Sarah Fels '89 has joined the New York office of Allen & Overy. Surprisingly, a fellow UCLA Law alum whom she met at the N.Y. law alumni reception in spring 2000, **Heather Kim '97**, started at Allen & Overy the same day she did.

'90s

Stephen M. Going '90 has rejoined the firm of Perkins Coie LLP in their Portland office as a partner. He represents emerging companies, emphasizing corporate and securities law, including public and private offerings of securities, mergers and acquisitions, and business counseling.

Francis J. James '90 recently relocated to New York City and currently serves as the Director for International Programs at the Vera Institute of Justice, a non-governmental organization that designs and implements innovative reforms in justice, law, and human rights. He manages active legal reform projects in diverse places ranging from Asia and Russia to South Africa, Haiti, and Chile.

Harriet Pearson '90 has been promoted to Chief Privacy Officer at IBM. Pearson will guide IBM's privacy policies and practices, lead initiatives across IBM that will strengthen consumer privacy protection and further the company's leadership efforts in these areas. Before joining IBM in 1993, Pearson practiced law in Washington D.C., and worked as an engineer with Shell Offshore in Louisiana and Texas.

Karen I. Tse '90 graduated from Harvard Divinity School in June and was ordained a Unitarian Universalist minister. She works on international justice issues from her new home base in Geneva, Switzerland.

Luz Nagle LL.M. '91 and her family have settled in St. Petersburg, Fla., where she is a tenure-track professor at Stetson University Law School. She recently published "U.S. Mutual Assistance to Colombia: Vague Promises and Diminishing Returns," 23 *Fordham Intl. Law J.* 1235.

Kara Andersen '92 has been named a partner at Kecker & Van Nest. Andersen is a civil and criminal litigator.

Stuart Block '92 joined the firm of Cox, Castle & Nicholson in San Francisco as a partner in the firm's growing environmental practice. Mr. Block was formerly a partner at Beveridge & Diamond. He will focus his practice on land use and environmental permitting.

Thomas Bloomfield '92 was honored as one of California Lawyer Magazine's 21 Lawyers of the Year. The magazine wrote: As the assistant regional counsel for Region 9 of the U.S. Environmental Protection Agency (EPA), Thomas brokered a \$1 billion settlement with the owner of Iron Mountain Mines near Redding, one of the nation's most contaminated sites. The settlement is one of the largest in the history of both federal and California environmental protection programs and was made possible by an innovative insurance-based financing program.

Manuel Diaz '92 and **Beth Macias '94** are pleased to announce the birth of their son. Mark Emanuel (markmacdiaz.com) was born on 12/13/99 and was named in loving memory of their best friend—**Mark G. Tompkins '92**. Tompkins, a L.A. Deputy D.A., passed away due to a ruptured aneurysm in 1998.

Michael T. Donovan '92 has been named a partner at Wildman, Harrold, Allen & Dixon. Mr. Donovan concentrates his practice in the area of federal and state tax planning and tax controversies as well as general corporate law.

Laurie Falik '92 was honored as one of California Lawyer Magazine's 21 Lawyers of the Year. The Magazine wrote: Aon Corporation Litigation counsel Laurie Falik and National Litigation Counsel Shand Stephens have brought the concept of recoverable attorneys fees to in-house lawyers. In May the California Supreme Court upheld an appellate court's ruling that in-house counsel are entitled to recover attorney fees at market rates. Falik and Stephens argued that the payment of a salary to in-house attorneys is analogous to hiring a private firm on retainer. The decision is good news for legal departments such as Aon's, where all California trial work is kept in-house. Falik, who argued the case at the appellate level was joined by Stephens at the state Supreme Court, says the ruling also has the potential to affect settlement negotiations: "It will certainly make parties negotiating with in-house counsel take attorneys fees clauses more seriously."

Eric Lammers '92 recently joined the Washington D.C. office of Hale & Dorr after leaving the Pittsburgh office of Kirkpatrick & Lockhart. Eric specializes in complex commercial litigation. <eric.lammers@haledorr.com>

Tom Monheim '92 left the Air Force JAG Department in 1998 to join King & Spalding's Litigation & Trade Team in Washington, D.C. Tom specializes in government investigations and internal corporate investigations. <tmonheim@kslaw.com>

Mark O'Connor '92 recently became a named member of Lampert & O'Connor in Washington, D.C., where he has worked since leaving Piper & Marbury in 1999. Mark specializes in telecommunications and Internet policy. <oconnordnl@aol.com>

Kris Vyas '92 married Mallary Reznik and they recently bought their first house in Los Angeles. Kris left Morrison & Foerster to become in-house counsel at Edison International, where he oversees major litigation matters. <vyaskg@sce.com>

Brian Waldman '92 is the proud father of Ethan Waldman, born September 13, 2000. Brian was elected to become a partner at Arent Fox in Washington, D.C., where he specializes in food and drug law. <waldmanb@arentfox.com>

Joe Wendlberger '92 was recently promoted to Lieutenant Colonel. Joe is currently assigned to the Air Force Legal Services Agency in Rosslyn, Virginia, where he specializes in medical malpractice defense. <joe.wendlberger@pentagon.af.mil>

Cranston J. Williams '92 has been named a partner at Baker & Hostetler in Los Angeles. His practice concentration is in the area of commercial litigation, real estate litigation, and product liability.

Sara Hansen Wilson '92 has been named a partner at Steinhart & Falconer.

Linda Callison '93 has been promoted to partner at Cooley Godward's Palo Alto office.

Robert Kornegay Jr. '93, a corporate and securities lawyer, has been elevated to partner at Wilson Sonsini Goodrich & Rosati.

Liane Randolph '93 has been appointed as City Attorney for the City of San Leandro. She was formerly with the firm of Meyers, Nave, Riback, Silver & Wilson.

Carl Sanchez '93 has been promoted to partner at Cooley Godward's San Diego office.

Kimberly R Wells '93 was recently named Partner by the firm of Baker & Hostetler LLP. Ms. Wells concentrates her practice in the area of employment litigation and counseling on employment issues in the firm's Los Angeles office.

Sony Ben-Moshe '94 was featured in a May 2000 *California Law Business* article on twenty top lawyers under forty years old. An associate with Latham & Watkins project finance group, he negotiates business deals in Latin America—deals often valued into the billions of dollars.

P. Scott Burton '94 has been promoted from associate to counsel at McCutchen, Doyle, Brown & Enersen's Los Angeles office. Burton specializes in environmental and natural resources.

Kent Lawson '94 married **Renee Machi '96** in Santa Barbara in September.

Beth Macias '94 and **Manuel Diaz '92** are pleased to announce the birth of their son. Mark Emanuel <markmacdiaz.com> was born on 12/13/99 and was named in loving memory of their best friend—**Mark G. Tompkins '92**. Tompkins, a L.A. Deputy D.A., passed away due to a ruptured aneurysm 1998.

Limor Zer-Gutman LL.M. '94 has recently published, "Revising the Ethical Rules of Attorney-Client Confidentiality: Towards a New Discretionary Rule," 45 *Loyola L.Rev.* 669 (1999). Limor is an assistant professor at the University of Haifa School of Law.

The Latino Business Association has hired its first full-time president and chief operating officer, **Richard Verches '94**. Mr. Verches hopes to help the LBA's 1,500 member businesses grow by increasing corporate contracts, promoting international trade, and facilitating training.

Kyung Sin Park '95 is currently a Professor of Law at Handong University in South Korea. He teaches courses on constitutional law, torts, and antitrust. He also practices law in California and Washington.

Susan Santana '95 has accepted the position of Executive Director for the Hispanic Heritage Awards Foundation. Susan formerly was with the firm of Baker & McKenzie in San Diego where she specialized in general corporate matters, including multi-jurisdictional and cross-border transactions.

Stephen Uriarte '95 has been appointed as General Counsel and Director of Intellectual Property at BiTMICRO NETWORKS, Inc., a supplier of high-performance solid-state flash disk storage solutions. Most recently, Mr. Uriarte served as corporate patent attorney for S3 Incorporated where he managed the company's patent program, supervised patent litigation, performed intellectual property evaluations and due diligence, and assisted in general corporate legal matters.

Arun Baheti '96 as was named Director of eGovernment by California Governor Gray Davis. Baheti is currently Deputy Director of the Governor's Office for Innovation in Government. In this post, he manages technology projects and is involved with statewide technology policy. He is also managing the development of the State's new portal and was co-chair of the State's Interagency eGovernment Task Force.

Michael Deen '96 and his wife, Lisa Wallace Deen, moved from Denver to Santa Barbara. Mr. Deen joined Mullen & Henzell as an associate in the tax and estate planning department.

Kristen Holmquist '96 and **Stefano Moscato '96** welcomed their new son William Holmquist Moscato to their home in Venice in May. Will joined big brother Patrick, who turned three in November. Ms. Holmquist teaches a seminar to judicial externs at UCLA Law, and Mr. Moscato is an associate in the labor department at Mitchell, Silberberg & Knupp.

Steven Kay '96 has joined the immigration law office of Raquel Hecht in Eugene, Oregon. He will focus solely on immigration law.

Greg Klein '96 has joined archive.com as General Counsel and Director of Business Development.

Renee Machi '96, an associate at Brobeck, Phleger & Harrison in San Francisco, married **Kent Lawson '94** in Santa Barbara in September.

Mica Martin '96 and **Dru Greenhalgh '96** were married in October 1998 in San Diego. Their new baby, Max Greenhalgh, was born on March 14, 2000. They write, "He is awesome! Such a fat, content baby." Mr. Greenhalgh is an associate at Latham & Watkins in San Diego and Ms. Martin is an associate at Cooley Godward.

Tsan Merritt-Poree '96 was featured in the September 25, 2000 issue of the *National Law Journal*. The article, "A New Mood on Dot-coms," discussed how Tsan and other lawyers leave law firms to work at dot-coms only to return to the law firms after a few months. Tsan is currently an associate at Cooley Godward.

After four years of defending attorneys, accountants, and real estate brokers in civil litigation at Haight, Brown & Bonesteel in Santa Monica, **David K. Nelson '96** is joining his father, **The Honorable Henry P. Nelson '61**, at the general litigation firm of Nelson & Fulton.

Aaron O'Donnell '96 moved back home to Boston in September, where he joined the labor department of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo.

Andrea Sloan Pink '96 and Jonathan S. Pink (MFA '87) announce the birth of their second daughter, Isabella Sabine Barczay Pink. Ms. Sloan Pink is Vice President of Legal Affairs and General Counsel of Winfire, Inc. Prior to joining Winfire, she was associated with Gibson Dunn & Crutcher where she headed the Technology Group in Orange County.

Andrea Russi '96 joined the U.S. Attorney's Office in Los Angeles in July, working in the criminal and appellate divisions. She is currently prosecuting the notorious "floppy hat bandit," among others.



'96 Kristen Holmquist

Heather Kim '97 has joined the New York office of Allen & Overy. A fellow UCLA Law alum whom she met at the N.Y. law alumni reception in spring 2000, **Sarah Fels '89**, started at Allen & Overy on the same day.

Anthony Caldwell '98 has joined the firm of Shartsis, Fries & Ginsburg in San Francisco as an associate. Caldwell primarily works on matters concerning venture capital, securities, and corporate governance as well as investment funds and advisors.

Omar Gonzalez '99 joined Gray Cary Ware & Freidenrich LLP as an associate. He works in corporate securities.

Varand Gourjian '99 joined the Los Angeles firm of Sulmeyer, Kupetz, Baumann & Rothman which specializes in insolvency/bankruptcy matters, debtor and creditor rights, reorganizations, out of court arrangements, commercial collections, and related litigation.

Daily Variety reports that **Peter Nguyen '99** has been named to an executive post in the affirmative action department of the Screen Actors Guild. He will be responsible for enforcing non-discrimination portions of SAG contracts as well as running education and development programs on affirmative action and diversity issues.

Claudia Ramirez '99 was named a National Association for Public Interest Law Fellow in the Field. Her work will focus on meeting the needs of undocumented battered women through direct legal services, community education and outreach, and volunteer participation.

'00s

Carey L. Allen '00 recently joined Thompson Hine & Flory as an Associate in the firm's Cincinnati office.

Ryan Bradley '00 won third prize and \$3,000 at the 45th Annual Samuel Goldwyn Writing Awards for his screenplay *Storm Front*, the story of a hit man trapped at the scene of the crime by a snow storm.

Sonia Schwartz '00 was named a National Association for Public Interest Law Fellow in the Field. Her work will focus on ensuring that struggling, low income families know about and have access to vital food stamp benefits.

Have you published a book? Recorded a song?
Please send **UCLA Law Magazine** the book or CD with promotional materials, reviews, and photos so we can print a review for the **UCLA Law** community.

Peter A. Sell '00 accepted the position as Assistant District Attorney in the Bronx, N.Y.

Mildred Segura '00 has joined Crosby, Heafey, Roach & May's Los Angeles Office in their insurance and commercial litigation groups.

Amy Levin '01 won this year's Benjamin Aaron Award for her article "Child Witnesses of Domestic Violence: How Should Judges Apply the Best Interests of the Child Standard in Custody and Visitation Cases Involving Domestic Violence?" 47 *UCLA Law Review* 813 (2000). The article concerns judicial discretion in child custody disputes where one spouse has abused the other. The winning article was selected by a faculty committee consisting of Asimow, Bainbridge, and Freeman. Each year, the Benjamin Aaron Award is presented to the graduating third-year student who wrote the best article in any of UCLA's law reviews. The Award carries a \$500 prize drawn from funds contributed to Ben Aaron at the time of his retirement.

■ CLASS CORRESPONDENTS:

Please E-mail your class correspondent now to be included in the Class Notes section of the next issue of the magazine. Note that we appreciate photos. Please contact us if you'd like to be a class correspondent.

Jerry Goldberg 1953
Goldberg1953@alumni.law.ucla.edu

Louise Lillard 1985
Alumni Editorial Advisor
Lillard1985@alumni.law.ucla.edu

Jeffrey Cowan 1991
Cowan@alumni.law.ucla.edu or
jcowan@kendigandross.com

Tom Monheim 1992
Monheim1992@alumni.law.ucla.edu

Joseph Gauthier 1994
jtgauthier@aol.com

Jenny Meier-Kowal 1996
Meier1996@alumni.law.ucla.edu

Terrence Mann 2000
Mannt2000@alumni.law.ucla.edu

In Memoriam: Ronald E. Greenberg '57

Ronald E. Greenberg '57 died December 1, 2000 surrounded by his family. Born in St. Louis, Mo., in 1936 his family moved to San Diego, where he attended local schools, including Hoover High School. In 1999 he was recognized as a member of the S.D. County Bar "Legends of the Bar" honoring members practicing law for over forty years. Mr. Greenberg began his legal career in the S.D. City Prosecutor's office, then moved into private practice with Gutfleisch & Greenberg. Later, as a sole practitioner, he specialized in personal injury. Always an entrepreneur, he founded O'Kelly's Original Ice Cream, with his own original recipes, and two upscale billiard parlors, as well as being a real estate owner/developer and property manager. Always loving, supportive and loyal to all he met, he was one of the few individuals whose word and a handshake would suffice as gospel. He bravely fought a long uphill battle with lung cancer for fourteen months, although he hadn't smoked in twenty-two years. He is survived by his beloved family: his wife of twenty-five years, Linda; four children, Rian, Lori L., and Craig (and Donna) Greenberg of the San Diego area, and Lori M. (and husband Bill) Bateman of Rancho Cucamonga; and five grandchildren.

alumni

CONNECTED YET?

If you are not yet registered (its free; its fun!) with Alumni for Life then you have missed out on:



Electronic notification of events from your School of Law, most of which were free, involved career opportunities, networking, meeting students, or attending lectures and luncheons, dinners, or receptions, and many offered MCLE credits.



Electronic communications of media stories about your colleagues and friends, and the UCLA School of Law



A permanent UCLA School of Law e-mail address



Access to special alumni Web services



Don't be the last one on your block to become connected to Alumni for Life! Contact:
Kristine Werlinich, Director of Alumni Relations, UCLA School of Law
(310) 206-1121
alumni@law.ucla.edu

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ucla campaign

CAMPAIGN UCLA: Major Gifts to the UCLA School of Law



This past year was an exciting and successful one. Gifts and pledges to the School of Law, both restricted and unrestricted, totaled \$4,228,553 for the 2000 fiscal year, making it the most successful fundraising year since the conclusion of the Law Library Campaign.

Extraordinary support from alumni and friends enabled us to move ahead with new initiatives. Generous gifts from The Evan Frankel Foundation and Luanne C. Wells, widow of Frank G. Wells, made possible the expansion of the environmental law program at the School of Law. Mrs. Wells' gift will endow a chair in Environmental Law. The Frankel Foundation not only supported the establishment of The Evan Frankel Environmental Law and Policy Program, but offered a further matching grant of \$1 million. One of our most pressing needs is to raise the matching \$1 million so that we can ensure formal establishment of the Center for Environmental Law and move toward becoming the premiere center for environmental legal education and research that we intend to be.

Significant contributions to the Program in Public Interest Law and Policy will allow us to enhance this unique and nationally acclaimed Program and provide much-needed funds for student summer fellowships. Elizabeth Horowitz, widow of Professor Harold Horowitz, together with her family, established a fellowship fund in his name that will enable law students to work during the summers in legal agencies that focus on public interest law, thereby continuing the work to which Hal was committed during his lifetime. Robert Kayyem '64 and his family have endowed a fund that, in its first five years, will support the Program in Public Interest Law and Policy. The Kayyem Family Endowed Fund initially was established by the Kayyems' long-time friends Ralph '58 and Shirley Shapiro. Two anonymous gifts endowed the David Mellinkoff Memorial Lecture in memory of our friend and colleague, Professor David Mellinkoff. The Lecture will be a fitting way to pay tribute to a loved and respected legal scholar and simultaneously will enhance the intellectual stature of the School of Law.

This year an impressive number of you also made unrestricted gifts to the Law Annual Fund. Your commitment to helping us fulfill our mission to educate the next generation of lawyers resulted in our raising more than \$780,000 during the 2000 fiscal year.

The impact of your gifts is felt on a daily basis throughout classrooms, the library, student organizations, and beyond. Your gifts allow us to invest in our students and faculty and to develop new academic initiatives that extend the impact of the School of Law far beyond Westwood. We are grateful to each and every one of you for making the past year a success. We deeply appreciate your continued support of your law school.

Jonathan D. Varat

**\$5,000,000 and above**

Hugh and Hazel Darling
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Richard L. Stack, Trustee
Estate of David Simon '55

\$1,000,000 to \$4,999,999

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Betty Gershuny Denitz
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Jean Fleming
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David Kelton '62 and
Lenny Kelton
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Michael T. Masin '69 and
Joanne Masin
*Mark A. Resnik '72 and
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Henry Steinman '61
Walter, Finestone & Richter
A. Charles Wilson and
Betty Wilson
Robert J. Wynne '67

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Stephen Claman '59 and
Renee Claman
Jon J. Gallo '67 and Eileen Gallo
Stephen D. Greenberg '77 and
Myrna Greenberg
Irell & Manella LLP
Robert E. Kayyem '64 and
Milly Kayyem
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Richard V. Sandler '73 and
Ellen Sandler
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Professor Ann Carlson*

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William W. Vaughn '55 and
Claire Vaughn

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Barbara Ackerman
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Esther L. Belland
Phyllis Bernard
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Teresa Blotky
Harland W. Braun '67 and
Dianne M. Braun
Pamela Brockie '75
Rinaldo S. Brutoco '71 and
Lalla Shanna Brutoco
Richard J. Burdge, Jr. '79 and
Lee Smalley Edmon
Ralph Cassidy '61
Curtis Cole '71 and Sharon Cole
Melanie K. Cook '78 and
William A. P. Woods
Lorraine Cooper
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Cecilia Dan
Lori Huff Dillman '83 and
Kirk D. Dillman '83
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Ruth E. Fisher '80 and
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Sukey Garcetti
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Christopher Gilman '75
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Audrey Greenberg
Bernard A. Greenberg '58 and
Lenore S. Greenberg
Richard W. Havel '71

Elizabeth M. Horowitz
*In Memory of
Harold Horowitz*
Robert L. Kahan '69 and
Diane Kahan
David S. Karton '71 and
Cheryl A. Karton
James H. Kindel, Jr.
Kenneth Kleinberg '67 and
Helen Kleinberg
Joseph K. Kornwasser '72 and
Hana Kornwasser
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DeDe Lebovits
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Frances E. Lossing '78
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Rhonda Heth '80
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Louis M. Meisinger '67 and
Susan Meisinger
Skip Miller '72 and Sherry Miller
Richard G. Parker '74
Stanley G. Parry '67 and
Melinda Parry
Wilma Williams Pinder '76
*In Honor of her Mother,
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and James M. Prager '71
Sheldon W. Presser '73 and
Debora Presser
Professor Cruz Reynoso and
Jeannene Reynoso
Alan E. Robbins '66
Marguerite S. Rosenfeld '76 and
Morton M. Rosenfeld
Roth Family Foundation
*Edward Rubin and
Nancy Rubin
Thomas C. Sadler '82 and
Eila C. Skinner
Mark A. Samuels '82 and
Nancy B. Samuels '82
Marc M. Seltzer '72 and
Christina A. Snyder
Lewis H. Silverberg '58
Stuart A. Simke '60
Arthur Soll '58 and Barbara Soll
Herbert J. Solomon '56 and
Elene Solomon

Bruce H. Spector '67 and
Robin Spector
Art Spence '69 and Anne Spence
William F. Sullivan '77 and
Joanne Sullivan
Dean Jonathan D. Varat and
Associate Dean Barbara A. Varat
Diana L. Walker '69 and
Robert F. Walker
Kim McLane Wardlaw '79 and
William M. Wardlaw '72
Chancellor Emeritus
Charles E. Young and
Sue K. Young

\$10,000 to \$24,999

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Benjamin Aaron
Professor Alison Grey Anderson
Keenan Behrle '69
Don E. N. Gibson '83
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Ruth Halper
Suzanne Harris '77
Kenneth B. Hertz '84
William G. Knight '72
J. Perry Langford '52 and
Diane Langford
Ronald E. Neuhoof '68
Timothy J. White '78 and
Maria Wong White
Dorothy Wolpert '76 and
Stanley Wolpert

\$5,000 to \$9,999

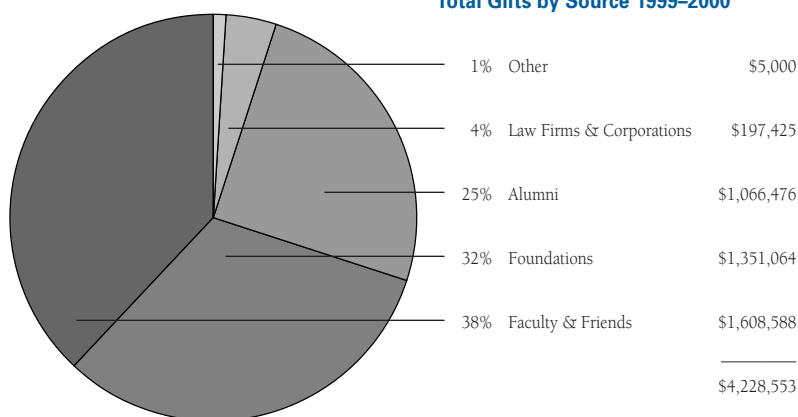
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Josiah L. Neeper '59 and
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total gifts

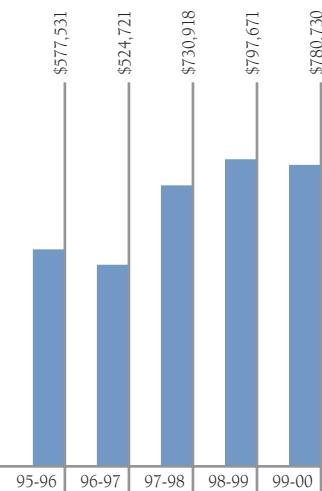
TOTAL GIFTS TO THE UCLA SCHOOL OF LAW:

\$4,228,553 from 2,189 donors

Total Gifts by Source 1999-2000

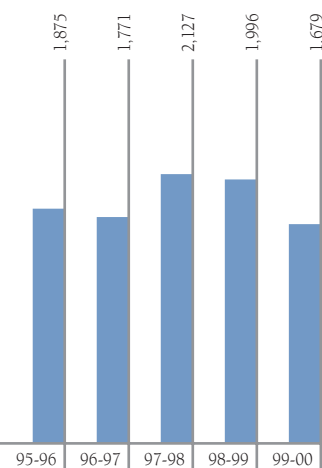


5-Year Growth of Law Annual Fund in dollars raised



The **UCLA Law Annual Fund** allows the Dean to seize opportunities as they arise and allocate resources where they can best benefit the law school. Providing both stability and flexibility, the Law Annual Fund plays an increasingly important role in helping us to provide the highest quality legal training.

5-Year Growth of Law Annual Fund in numbers of donors



As unrestricted support continues to be a priority for the UCLA School of Law, the Dean's Circle has been established to recognize and honor individuals who have shown leadership in this area. The Dean's Circle acknowledges donors who have made gifts of \$2,500 or more within the current fiscal year to the Law Annual Fund. Here we would like to welcome and thank the new and renewing members of the 1999-2000 Dean's Circle for their generous support of the UCLA School of Law.

Nancy L. Abell '79
 Julian W. Bailey '74
Michael Barclay '79
 Ann O. Baskins '80 and
 Thomas C. De Filippis
 Keenan Behrle '69
 Professor David Binder and
 Melinda Binder
 Barbara Boyle '60
John G. Branca '75
Professor Daniel J. Bussel
A. Barry Cappello '65
 Timothy J. Carlson '92
Stephen Claman '59 and
Renee Claman
 Dale V. Cunningham '60
 Michael A. K. Dan '69
 Hugo D. de Castro '60 and
 Isabel de Castro
James Eisenberg '83
 Buddy Epstein '74
David J. Epstein '64
Everhealth Foundation
E. Zeke Lopez '97, Trustee
B.D. Fischer '58 and Frances Fischer
Ruth E. Fisher '80 and
Professor Stephen C. Yeazell
 David Fleming '59
 Gil Garcetti '67 and Sukey Garcetti
 Sandra Kass Gilman '75 and
 Christopher M. Gilman '75
 Wilford Godbold Jr. '66
 William D. Gould '63
 William W. Graham '73
 Arthur N. Greenberg '52 and
 Audrey Greenberg
Stephen D. Greenberg '77 and
Myrna Greenberg
 Peter Hanlon '77
John Hansen, Jr. '56 and
Sandra Dahl-Hansen
 Stanley R. Jones '65
 Kenneth B. Hertz '84 and
 Teri Hertz
 Spencer Karpf '79

David Kelton '62 and Lenny Kelton
 Kenneth Kirley '90
 Kenneth A. Kleinberg '67
Ida Levine '80
Fred L. Leydorf and Mary Leydorf
 Frances Lossing '78
Michael T. Masin '69
 Evan Medow '67 and Cheryl Medow
 Philip Michels '73
 Milton L. Miller '56 and
 Marceile Miller
Timm Miller '79
Wendy Munger '77
 Ted Obrzut '74 and
 Rochelle Lindsey '79
 Budge and Brenda Offer
 Andrea Sheridan Ordin '65
 Edwin M. Osborne '60
Stanley G. Parry '67 and
Melinda Parry
 Louis Petrich '65
 Harriet Posner '84
 James N. Ries '64
 John H. Roney '59 and Joan Roney
 James L. Roper '61
 Thomas C. Sadler '82
 Rae Sanchini '87 and
 Bruce D. Tobey '84
 Marc M. Seltzer '72 and
 Christina Snyder
 Robert Serio '85
 Robert Shahin '69
 Ralph Shapiro '58 and Shirley Shapiro
 Lewis Silverberg '58
 Sherman Silverman '61
 Arthur Spence '69
 Scott J. Spolin '70
 Steven Strauss '81 and
 Lise Wilson '83
Jeffrey Y. Suto '88
Jonathan D. Varat and
Barbara A. Varat
 Judith Welch Wegner '76
 Earl Weitzman '71
 John Weston '69

*Italics indicate membership in the Dean's Cabinet
 (\$5,000 or more gift to the Law Annual Fund)*



A Message from the Chair

Last year was another record-breaking year for the Dean's Circle, sixty-eight members, representing a 36% increase over the previous year's membership, contributed a total of



Marc M. Seltzer '72, Chair

\$316,760, representing an increase of

69% over the previous year's total and an astonishing 40% of the total revenue raised in the Law Annual Fund. As chair of the Dean's Circle for the past three years, it has been amazing and gratifying to witness the record-breaking growth of this dedicated core of law school supporters during this time.

Your leadership inspires all your fellow alumni. The Dean's Circle Challenge helped to convey the message that the School of Law relies heavily on the generosity of alumni and friends; it resulted in numerous increased and first-ever gifts to the Law Annual Fund. It is because of you that the UCLA School of Law remains one of the premier law schools in the nation and, indeed, the world. We look forward to your continued involvement in the months and years to come.

Marc M. Seltzer '72

dean's circle

honor roll



1999-2000 HONOR ROLL OF DONORS

Fiscal Year July 1, 1999 to June 30, 2000

Each fall and spring as I read the UCLA Law alumni magazine, I am struck by the tremendous depth and breadth of the programs, activities, and intellectual offerings at the School of Law.

The members of the UCLA Law faculty clearly are among the most accomplished in their fields; students are bright, energetic, and dedicated; the atmosphere is vibrant and intellectually stimulating; and the array of opportunities for keeping graduates connected and involved with the School keeps growing.

As you read the pages of this magazine and the articles and features on the school's top-ranked Clinical Program and its various components, new faculty members and recent faculty publications and honors, the many activities at the Law School, both social and substantive, and news of our classmates and colleagues, remember that we, as alumni, are a vital part of all of this. Strong alumni support—our support—helps make so much possible at the School of Law. In fact, the School of Law simply could not provide much of what it does for students, faculty, the community, and for us as alumni without our generous help.

Endowment funds provide support in perpetuity for, among other things, faculty chairs, programs, and scholarships. Just as important to the financial health and vitality of the School of Law, however, is the Law Annual Fund. Its unrestricted nature gives Dean Varat needed flexibility to seize opportunities that require an immediate source of funds to bring worthwhile projects to fruition. Annual, unrestricted support allows Dean Varat to compete for the best professors, provide advanced technology in the classrooms and library, and invest in new and imaginative programs. In addition, Law Annual Fund dollars are crucial for maintaining the School's day-to-day operations. Some of the specific initiatives our Law Annual Fund dollars made possible this past year include: scholarly research for faculty members; faculty recruitment; faculty colloquia; library acquisitions; new student recruitment; alumni events including reunions and the annual Bar Swearing-In Ceremony; alumni communications and publications; Web site enhancement and development; and the day-to-day operations of the School of Law.

Dean Varat's goal is to sustain and enhance an academic community of unparalleled excellence at the UCLA School of Law. When you make the School of Law a priority each year, you play an important role in helping the Dean achieve this goal. Collectively, your gifts this year made an invaluable contribution to the vitality of the School of Law. As you consider your support in the future, please be assured that all gifts, of any size, are gratefully appreciated and will assist to ensure the continued well-being of the School today and into the twenty-first century. On behalf of Dean Varat and the entire Law School community, please accept my thanks for your role during the past half century in making the UCLA School of Law the youngest among the nation's top ranked law schools. I know that, together, we can look forward to the School of Law growing in strength and stature during its next half century.

Marc M. Seltzer

Marc M. Seltzer '72

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Along with building the School's endowment to ensure its long-term financial health, one of our highest priorities is growing annual, unrestricted support. As a direct result of the outstanding support and commitment of the entire UCLA School of Law community, the Law Annual Fund raised \$780,730 during the 2000 fiscal year. We proudly present this year's Honor Roll of Donors and warmly thank all the alumni, friends, faculty, law firms, foundations, and corporations whose names appear on the following pages for their support of the UCLA School of Law. These donors made a gift to the Law Annual Fund or to a scholarship or other designated fund between July 1, 1999 and June 30, 2000.

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 Marvin D. Rowen '56
 William A. Rutter
 Dr. David Sanders

Planned gifts from alumni and friends provide important support to the School of Law. Such gifts establish a meaningful memorial for the donor or someone the donor wishes to honor, while enabling the donor to assist in the continuing growth of the school. A carefully planned estate can help you avoid or reduce taxes, increasing the amount you can leave to your heirs and favorite charities. If you wish to provide for the School of Law in your estate plan, or if you have already done so but have not yet informed us, please contact the Development Office at (310) 206-1121.

If you are not a donor and wish to join UCLA Law's growing family of Supporters, please call (310) 206-1121.

We make every effort to ensure the accuracy of our Honor Roll. If there are any corrections or omissions, please contact the School of Law Office of Development and Alumni Relations at (310) 206-1121.

Please contact the Alumni Office if your name is listed incorrectly.

**Deceased*

***Gifts and pledges to the Law Library Campaign Fund of \$5,000 and above are listed in the Major Gifts section of the Honor Roll.*

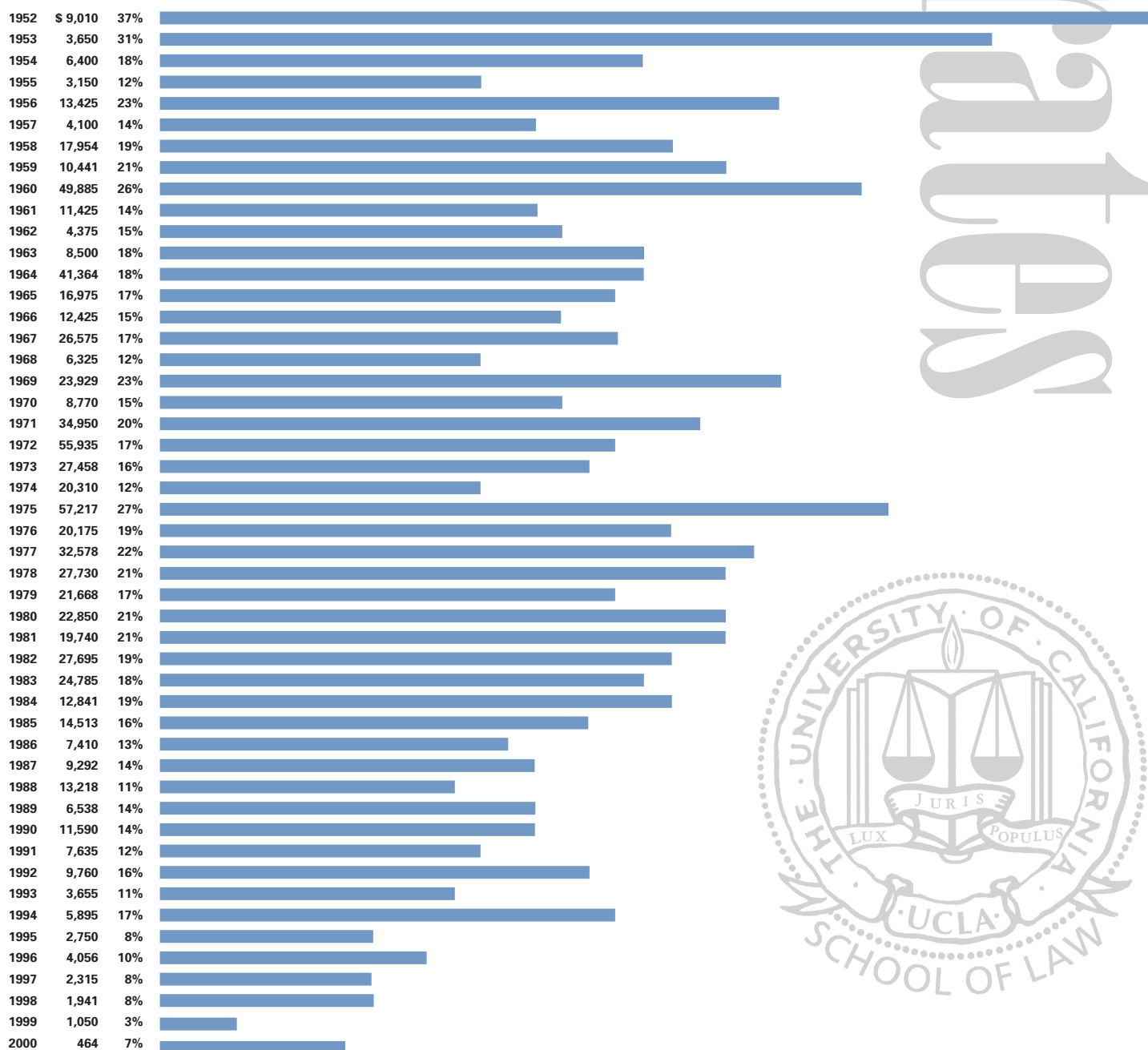
participation

by class

PARTICIPATION RATES BY CLASS

(All Law School Funds)

July 1, 1999 - June 30, 2000



Dean Jonathan Varat and the
Law Alumni Association
cordially invite you to join us at the
ALUMNI OF THE YEAR AWARDS
TUESDAY, APRIL 24, 2001



Honoring
Skip Brittenham '70
Alumnus of the Year for
Professional Achievement
and
The Honorable Elwood Lui [Ret.] '69
Alumnus of the Year for
Public/Community Service



We hope you will join us to celebrate
the success of these two alumni.

REUNIONS:

The Classes of 1955, 1960, 1965, 1970, 1975, 1980, 1985, 1990, and 1995 are planning their reunions for sometime this spring. It is not too late to be on your planning committee, so, if interested please contact the Alumni Office at (310) 206-1121 or <alumni@law.ucla.edu>. Keep an eye out for the Save the Date card.

We are starting to put together the reunion committees for the Classes of 1956, 1961, 1966, 1971, 1976, 1981, 1986, 1991, and 1996 for fall of 2001 reunions. If you would like to help plan your reunion, please contact the Alumni Office at (310) 206-1121 or <alumni@law.ucla.edu>.

UCLA LAW MAGAZINE

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APRIL 2001

Friday, April 20, 1 P.M.

**"The Changing Face of Practice:
Perspectives from the Profession and the Law School"**
A Symposium to mark the 30th Anniversary of the
UCLA School of Law Clinical Program
with a dinner and tribute to Professor David Binder
featuring Shirley M. Hufstедler

MCLE credit approved for 2.5 hours general credit and 1.75 ethics credit
Please call (310) 825-7376 or e-mail haro@law.ucla.edu



Saturday, April 21, 9 A.M. - 6 P.M.

AALS Colloquium: Equal Access to Justice
Please call (310) 206-9155 or e-mail pilp@law.ucla.edu



Tuesday, April 24, NOON

UCLA Law Alumni of the Year Awards
A Salute to The Honorable Elwood Lui [Ret.] '69
Public/Community Service and
Skip Brittenham '70
Professional Achievement
Century Plaza Hotel
Please call (310) 206-1121 or e-mail alumni@law.ucla.edu



Tuesday, April 24, 4:30 P.M.

The Twelfth Annual Public Interest Awards
UCLA School of Law, Room 1430
Please call (310) 206-9155 or e-mail mayorkas@law.ucla.edu

MAY 2001

Sunday, May 20, 2 P.M.

UCLA School of Law Commencement
Perloff Quad



Tuesday, May 22, 2001

An Evening with Ben Ferencz
U.S. Prosecutor, the Einsatzgruppen case, the Nuremberg Proceedings
Co-hosted by UCLA School of Law Alumni and Friends and the
United States Holocaust Memorial Museum
UCLA School of Law, Room 1347
Please call (310) 825-0971 or e-mail events@law.ucla.edu