University of San Diego
Digital USD

Newspaper, Motions (1987-) Law Student Publications

4-1-2003

Motions 2003 volume 38 number 6

University of San Diego School of Law Student Bar Association

Follow this and additional works at: http://digital.sandiego.edu/motions

Part of the Law Commons

Digital USD Citation

University of San Diego School of Law Student Bar Association, "Motions 2003 volume 38 number 6" (2003). *Newspaper, Motions (1987-)*. 105.
http://digital.sandiego.edu/motions/105

This Book is brought to you for free and open access by the Law Student Publications at Digital USD. It has been accepted for inclusion in Newspaper, Motions (1987-) by an authorized administrator of Digital USD. For more information, please contact digital@sandiego.edu.

Archives c.1

Acta Semper Verus Commodum

MOTIONS

University of San Diego School of Law

Volume 38, Issue 6 April/May 2003

INSIDE THIS ISSUE:

Campus News 2-3

Editor's Corner....2

Editorials 6-8

USD Mock Trial Team: Looking For A Few Good Trial Lawyers

By Julie Corbo
Staff Writer

Employers are looking for people who can "do it": stand up in front of a judge in a courtroom and communicate the facts of the case. Not surprisingly, 83% of the 2nd years polled who were on the Mock Trial Team already secured summer jobs months ago. This was the one extracurricular activity that showed the most direct tie to future employment. But, the typical law school profile of a Mock Trial Team member is not in the top 10%. That doesn't matter, because when employers see Mock Trial on a resume, they don't want to talk about anything else. "They're excited," says Theresa Alldredge, a 4L Evening student who earned her spot on the team in the Fall of 2000.

Alldredge was really nervous when she first went out for the team. "A friend talked me into it," she says. Now, seven tournaments later, Alldredge knows that she is absolutely prepared to try a real case. She is confident. Presiding judges agree, saying that Mock Trial Team members are better than 90% of the licensed practitioners that appear before them.

The usefulness of a practicum like the Mock Trial team cannot be understated. You learn how to think quickly on your feet, how to have a courtroom presence, and how to communicate. Team members are "brilliant communicators," says Lisa Hillan, Assistant Coach. These students have talents that fit more the oral advocacy role. "Your time is split," says Hillan, between classes and preparation for competitions.

Much like a college sport, Mock Trial is completely extracurricular. So you learn how to be organized. Balancing classes and training, participants commit to 20 to 30 hours per week for six to eight weeks each semester, not to mention time spent preparing for competitions at home. You have to be organized.

When asked to compare Mock Trial with Moot Court, Hillan said, "They are two sides of a gold coin. There's no need to be mutually exclusive." Hillan says that the program is starting to have more crossover participants, although the styles remain totally different. Mock Trial differs both structurally and substantively from Moot Court. Mock Trial is a simulated trial court presentation of facts for the jury. Moot Court, on the other hand, is an appellate oral argument made to the bench after a previous ruling or jury verdict. Moot Court requires a written brief, whereas Mock Trial has absolutely no writing requirement. Typically, Mock trial is like a marathon, with three to four hours per round and three to six rounds per tournament. Moot Court on the other hand is usually around fifteen minutes per side, about forty-five minutes a round.

The USD National Mock Trial Team was founded fifteen years ago by Professor Richard "Corky" Wharton, Head Coach. One day, Wharton was asked by the Association of Trial Lawyers of America (ATLA) to enter a team in the Western Regionals, and he picked students from the hallways to compete at the last minute. They placed second in the national competition.

* *SEE THE TEAM'S RECORD ON LAST PAGE*

SEE ***MOCK TRIAL***, page 2

Back Row (from left to right): Erik Liggins, John Elsworth, Alfonso Morales, Ben Benumof, Paul Reizen, Jorge Alex Vargas, Shaka Johnson, and Sam Sherman.

Center Row (from left to right): Eve Brackmann, Amy Bamberg, Amy Rose, Troy Atkinson, Kyle Rowen, Martin Aarons, Joseph Charles, and Theresa Alldredge.

Front Row: Asst. Coach Lisa Hillan, Celeste Toy, Sahuna Durrant, Jessica Mitchell, Huggy Price, Noel Fischer, Emily Burns, Jessica Matulis, and Head Coach Richard Wharton.

Not pictured: Ankush Agarwal, Megan Godochik, and Krishna Haney.

The Terrorist Next Door

By Nicole Saunders
Staff Writer

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety- Benjamin Franklin

Don't tell that to Republican Senator John Minnis, Chairman of the Oregon State Senate Judiciary Committee, who is proposing an anti-terrorism bill with a mandated punishment of life in prison (with a minimum of 25 years) without the possibility of parole.

Dubbed Senate Bill 742 (SB 742), it follows in the footsteps of other state and national bills, like the USA Patriot Act, in its purported efforts to safeguard the nation against terrorism. However, many are saying that the bill goes far beyond earlier definitions of terrorism.

SB 742 identifies a terrorist as any person who "plans or participates in an act that is intended, by at least one of its participants, to disrupt" assembly, commerce, transportation, educational or governmental institutions.

Further, the bill allows state and local police to disregard Oregon's "181" laws (which stop the collection or maintaining of information about the political, religious, or social views, associations, or activities of any persons or groups unless part of a criminal investigation and which forbid using resources to apprehend people whose only offense is a federal immigration violation) if investigating terrorism.

On March 24, 2003, the Senate Judiciary Committee held a hearing on SB 742. More than 200 opponents of the bill showed up for the hearing and about 80 of those signed up to testify. No one signed up to testify in support of the bill. Due to a lack of time, only nine people were permitted to testify.

Susan Russell of the Oregon Criminal Defense Lawyers Association testified that the bill was unconstitutionally overbroad. Oregon ACLU Executive Director David Fidanque testified that both the original bill and the subsequent amendments "[invite] the type of political spying abuses that were widespread during

SEE ***TERRORIST***, page 5

Published Since 1971

EDITOR-IN-CHIEF

Tom Ladegaard

ASSISTANT EDITOR
Damien Schiff

STAFF WRITERS

Julie Corbo
Juliana Lee
Mike Lees
Tom FitzGerald
Jonathan Meislin
Nicole Saunders

ADMINISTRATIVE REVIEW

Carrie Wilson
Dean of Student Affairs

For Information, please call 619-260-4600 ext. 4343 or email motions@sandiego.edu

Disclaimer: The contents of this newspaper do not reflect the views or opinions of the University of San Diego School of Law, the University of San Diego, the University of San Diego School of Law News Organization, or the Editors, Directors or Staff of this newspaper and are solely the products of the authors in their individual capacities. Unsigned editorials reflect only the view of the Editorial Board of this newspaper, a Student Organization consistent with University of San Diego School of Law policies.

MOTIONS welcomes all letters, guest columns, complaints and commentaries. All submissions must be signed and include daytime and evening phone numbers. We do not monetarily compensate contributing writers. We reserve the right to edit for content, length and style.

The Editor's Corner

From the Editor's Corner:

What a strange three years. Can any of you say that you are the same person who entered law school? I am not sure exactly when it happens, but your mind begins to function differently.

Although I expect to put in long hours on the job and be challenged everyday, I look forward to the day when I can leave work at work. I want to come home, unwind, and do anything but read cases. As a law student the specter of law school always haunts you. Whether you are watching a movie, going to the bars, reading for pleasure, or sleeping, there is always this sense that you should be studying; that you could and should be doing more. There has to be a point where enough is enough. I do a better job for my client when my own needs are being taken care of. Do not neglect yourself in your fight to the top of the rankings! Go surfing, play a round of golf, see a movie, go to the gym, go to the bar and get stupid- whatever it is that keeps you balanced and connected with yourself and those you care about. Law school can be an alienating experience for sure, and you will not last long at any firm if you are devoid of personality and people skills.

Do not interpret this as someone who does not want to be a lawyer. I genuinely enjoy every task on the job because it is meaningful and challenging. Okay, there is nothing to love about form interrogatories! On the job you are working for a client, so there is a human (or corporate) face behind the memorandum you are researching or complaint you are drafting. In law school you are working for yourself; in practice you are working for your client. Law school teaches you how to think like a lawyer, but we have few opportunities to learn how to be a lawyer.

Given that I am on my way out I wanted to share some of my thoughts about the law school experience. Ask if you catch yourself doing any of the following:

-- Why do some students preface an in-class comment with a "Basically,..."? It does nothing to help the point you are trying to make, and in essence is a more intelligent way of saying, "Duhhh";

-- Why do some students preface an in-class comment with, "I was just going to say..."? You are speaking now! You are already saying it! I cringe when I hear students say this, and I cringe harder when I catch myself doing it;

-- Some students already exhibit the arrogance of a seasoned practitioner.

SEE *THE CORNER*, page 12

> MOCK TRIAL

CONTINUED FROM PAGE 1

In the 2002-03 school year alone, the Mock Trial team took home some serious hardware: First Place Texas Young Lawyers National Trial Competition Western Regional Tournament; Participants at National Finals, First Place San Diego Defense Lawyers All-California Competition, Second Place ATLA Western Regional, Third Place ATLA Western Regional, and Fifth Place (Field of 32) Lone Start Classic Invitational Tournament, San Antonio, Texas.

Over 200 law school alums have counted themselves lucky to have been on the Trial Team. Current members are chosen from either the Thorsnes Closing Argument in the fall or the ATLA Spring Tournament. The Closing Argument Competition is open to 2L day or 2L/3L evening students only. The ATLA Spring Tournament, on the other hand, is open to everyone. The ATLA tournament is a good opportunity to have a try at the kinds of oral advocacy skills practiced by Mock Trial Team members.

Most competitions, including the Spring ATLA Intramural Mock Trial Tournament, break down into components, including: opening statement, direct and cross-examinations of live witnesses, closing arguments, exhibit handling, and objections. Practicing lawyers and local judges evaluate participants' universal presentation skills. Anyone chosen to be a member of the Mock Trial team from the ATLA Spring Tournament is automatically an advocate during the next school year.

Mock Trial members chosen from the Fall Thorsnes Closing Argument competition become part of the scrimmage team for a year. Like "red shirts," the scrimmage team practices with the Mock Trial team advocates and helps them prepare for competition. This year, Mock Trial has expanded its second-year scrimmage program to twelve. These second-year students have the opportunity to receive some direct coaching. As a third year, participation in Mock Trial is as an advocate. There are up to sixteen advocate spots available each fall, with returning second years having priority. During the semester, coaches Wharton and Hillan work with the teams and frequently one-on-one with the competitors, giving them great feedback.

What makes the USD team so special is the coaches' approach. Instead of hiring outside attorneys to write the courtroom presentation for the Mock Trial Team, the Mock Trial Team members themselves write everything, from the opening and closing statements to the direct and cross-examination. Wharton and Hillan guide, facilitate, suggest, edit, and direct; they do not steal the important creative learning process from the students. A lot of schools that USD competes with do not allow the team to go it alone: the lawyers or professors they hire to write just hand them a script and send them off to compete. So when USD wins, the students are really beating attorneys or professors.

This is a completely extracurricular program, not a three-credit class like at almost all other law schools. That is why the coaches require such a big commitment from their students. "It's a commitment that definitely pays off," says Alldredge. She has secured her job as a civil litigator in San Diego, and will remember her time as a Mock Trial Team member as being "really fun." Alldredge is the most experienced team member to date, with seven tournaments under her belt. She equates the Mock Trial experience to "trial by fire," you learn while you're going along. And while going along, you have to travel to compete.

Traveling for tournaments is part of the job when you're on the Mock Trial Team. You get to network with other Mock Trial programs, learn from them, and even maybe get a job while arguing. That's exactly what happened to Shaka Johnson, who had not even finished a tournament when his future employer handed him a business card and told him to give a call.

It's a lot of work to get to the level of competition that the team is at today. But, overwhelmingly, Mock Trial Team members past and present agree that it is the best thing they did with their time at USD School of Law.

Need Help Paying Off Your Loans?

In a time of economic downturns and international conflict, USD students will still graduate in debt when they graduate... some with little possibility of paying them off. The Loan Repayment Assistance Program (LRAP) assists graduates who may be driven out of public interest practice due to their high education debt. LRAP helps alumni provide legal services for individuals and groups who have been traditionally unable to obtain effective legal representation by helping them repay their loans while working in public interest law.

Any USD alumni with a legal education debt over $48,000 who accepts a position in a non-profit organization - 501(c)(3) or 501(c)(4) and whose salary is less than $40,000 should apply for LRAP following graduation.

This year's spring LRAP pledge drive, sponsored by the Public Interest Law Foundation (PILF), focused primarily on procuring student donations. Faculty, Staff, and Student Organizations also gave substantial contributions. Dean Rodriguez graciously agreed to match the donations received during the LRAP pledge drive. Including the match from Dean Rodriguez, PILF helped to raise over $30,000 for LRAP.

SBA RESOLUTION PROPOSES INCREASING LIBRARY HOURS

The SBA's first resolution of the year, adopted unanimously, addresses the need for extended library hours. Student feedback suggested that the library needed to be open earlier. Comparison with the other local law schools showed USD was a distant third in total library hours.

The resolution proposes opening the library at 7 (instead of 8), Monday-Friday from the return of spring break until the end of the semester. The SBA is not looking for any services, just someone to open the library and turn on the lights. Our hope is to see this permanently implemented with consideration for additional hours. Even with the proposed change, USD would still have the fewest library hours of the San Diego law schools.

The impetus for extending the hours came from student feedback from all three years. Students want to study on their own schedules and some are morning people. The library suggested finding open classrooms and then relocating when classes started. This is inconvenient. Students like to get started when they want and stay put. When asked about library hours, many students were dismayed with the limited hours, expressing how many more hours their undergraduate libraries were open, some up to 24/7.

March 3, 2003

SBA Resolution "A"
Library Hours Resolution

WHEREAS the Student Bar Association, as a result of many student complaints, has become concerned with the current hours of the Legal Research Center (LRC).

WHEREAS many students arrive at school before the LRC opens at 8:00 a.m. and desire a place to study without interruption or having to move from classroom to classroom.

WHEREAS competitive San Diego law schools offer much longer hours to their students (Cal. Western is open 126 hours/week, Thomas Jefferson 115.5 hrs/week, versus USD 108 hrs/week).

WHEREAS opening the library at 7:00 a.m. will only require one work-study employee at a minimal cost to open the front door and turn on the lights.

BE IT RESOLVED that for a trial period beginning March 17, 2003 until the end of the Spring 2003 semester, the LRC be open to law students beginning at 7:00 a.m., Monday through Friday, bringing the total number of hours to 113/week.

RESPONSE TO SBA RESOLUTION"A" PROPOSING INCREASE IN LIBRARY HOURS OF OPERATION

In the March 2003 issue of Motions, the SBA published a resolution requesting that the library open one hour earlier (7:00 A.M. instead of 8:00 A.M.) on weekdays for a trial period beginning on Monday, March 17, through the end of the Spring semester. Some students who like to arrive on campus and begin their studies at 7:00 are not satisfied with the option of finding an empty classroom to use until the library opens at 8:00.

Over the years, it has been the practice of students who arrive on campus before the LRC opens to use law school classrooms as study halls. The most convenient are the two classrooms located in the front of the LRC building. Some students now complain about the inconvenience of packing up their study materials and moving to the library when classes start.

In the resolution, the SBA suggested that the change in operating hours could be made without any increase in library staffing by simply engaging a single student worker to open the door and turn on the lights at 7:00.

Library management met on March 5 to discuss and brainstorm options for opening the library earlier while maintaining current staffing levels. The managers acknowledged that they should be gratified that they have succeeded in making the operation of the library appear so effortless that it seems as if it could be handled by a lone student worker for at least one hour. However, they have some serious concerns about the necessary staffing for carrying out the library's service responsibilities.

The truth is that much more goes on than meets the eye to make the library ready to accommodate patrons. Stacks maintenance workers must gather and re-shelve scores of books, wheeling carts throughout the stacks and study areas. They must also rearrange shelving and scan books on the shelves for inventory purposes. These tasks must be completed before patrons enter, because the activity is disruptive and not conducive to studying. These tasks must be performed daily to uphold the high standards of collection maintenance that help make the LRC the best law library in the area.

In addition, computers must be turned on and evaluated for "bugs" before the patrons enter the library. Beginning the day with all computers in running order is essential to the smooth operation of the computer lab. If these procedures were not followed each morning, students coming to the library to use the computers would suffer interruptions, frustration and delays. Likewise, copiers must be refilled and tested to ensure that they are in operating order.

Clearly, no one worker can accomplish all of these tasks and simultaneously staff the front desk to ensure security and continuity of service. The lone student worker proposed by the SBA resolution would be in charge not only of opening the library; he or she would also have to handle any emergencies or maintenance requests that arose during that period. The student would be responsible for the security and safety of all patrons and valuable property on the premises (books, microfiche, computer equipment, purses, wallets), items that could walk out the door while the worker is called away from the front desk to respond to an emergency or repair request. When there is a full complement of staff present, back-up is on hand to handle these occurrences.

Library management believes that it would be irresponsible on its part to expect one worker to deal with these potential problems singlehandedly.
Furthermore, because of the many contingencies that may delay or prevent any worker from showing up to work or arriving on time, it is not possible to promise reliable service based on the availability of just one person.

Nor is the presence of student workers guaranteed; the student work force is an ever-changing body that comes and goes depending on students' work study funding, the availability of other work opportunities, their class schedules and study workloads. Therefore, the library cannot base any segment of its operating hours solely on student staffing; there must be permanent staff present to ensure continuity.

The SBA points out that other local law schools are open more hours than the LRC is. However, the issues are different for libraries that are not located on university campuses. For example, the availability of security guards at Cal Western to monitor patrons entering and leaving the building relieves the library staff of these responsibilities. The populations served are much more limited than ours; the LRC serves not only a much larger student body and faculty but also the entire campus community, and it is open to the public as well. In addition, the size of the LRC collection far outstrips theirs, and it has many more valuable and rare materials that require maintenance and monitoring.

For two weeks at exam times, the LRC hours are extended, and certain pre-opening routines are temporarily suspended. Statistics show that relatively few patrons enter the library between 7:00 and 8:00 A.M., despite the fact that the earlier opening time is announced with prominent signs on the library doors well in advance of the study period. Library management has to weigh the predictive aspect of these figures in deciding how to prioritize the services that the library is able to offer at current staffing levels.

On April 2, the Dean's Student Advisory Council met with Deans Rodriguez and Cole and with Acting Library Director Ruth Levor to discuss the students' request for an expanded library schedule. Levor explained that, while the library management would like to accommodate the students' request, they had been unable to identify a satisfactory means of doing so. The students made suggestions for addressing the issues raised by the library and questioned the dean about funding priorities. While no current solution was identified, the issue of funding for library staffing remained open for consideration in future budgets.

At present, no change in library hours has been initiated. Hours will be extended during finals study period, Friday, May 2, through Thursday, May 15, when the library will be open from 7:00 A.M. to midnight seven days a week.

McClennon Honors Moot Court Competition

Justices Weigh In On USD's Brightest

By Nicole Saunders
Staff Writer

Kara Keating-Stuart spent three rigorous months preparing for her role in arguments on the constitutional right of a life term inmate to procreate. It was that effort which enabled Keating-Stuart, a second-year evening student, to place first in the 2003 Paul A. McLennon, Sr. Honors Moot Court Competition last month before a mock court of justice here at the University of San Diego.

March 17th and 18th marked the semi-final and final rounds of the 2003 Paul A. McLennon, Sr. Honors Moot Court Competition. This competition is endowed through the generosity of USD law professor Michael Devitt and his family in honor of longtime family friend, attorney and naval officer Paul A. McLennon. Organized by the Appellate Moot Court Board, the competition provides an opportunity for students to develop both their brief writing and the practical skills in advocacy they will need as lawyers.

In preparation for this Moot Court competition, interested students registered and attended four classes taught by Professor Michael Devitt. These classes featured guest speakers including appellate court judges, attorneys in appellate practice and leading scholars in constitutional law. Drawing upon these resources, the students wrote and submitted appellate briefs for either the petitioner or the respondent in a fictitious case of first impression before the Supreme Court.

The case before the students involved a life term inmate who was denied a request to provide his wife with a sperm sample for purposes of artificial insemination. The inmate brought a claim for violation of his constitutional right to procreate under 28 U.S.C. Section 1983. Additionally, he claimed that the denial constituted cruel and unusual punishment and infringed on his right to equal protection under the law, under the 8th and 14th amendments.

Five rounds of initial competition took place between February 24th and March 5th at the San Diego Superior Court in downtown. From the original group of students, only four competitors (Janet Gertz, Carrie Dolton, Kara Keating-Stuart and Jeff Singletary) were chosen to advance to the semi-final round held in the Grace Courtroom on the University of San Diego Campus. The Honorable H. Lee Sarokin (Retired, Third Circuit Court of Appeals), Justice Richard D. Huffman (California Court of Appeals, Fourth District), Dean Daniel Rodriguez, and USD Law Alumnus Mr. Theodore J. Boutrous presided.

A reception followed the arguments, in which the Best Briefs and Best Oralist Awards were announced. Best Brief for the Petitioner went to Van Nguy, with runner-up Paul Hirst and honorable mentions to Carrie Dolton, Eve Brackman, and Jill Kovaly. Best Brief for the Respondent went to Shauna Durrant, with runner-up Chris Schmitthenner and honorable mentions to Michelle Cole, Melissa Wagner, and Sarah Brennen de Jesus. Best Oralist was awarded to Autumn McCullough, with runner up Troy Atkinson and honorable mentions to Paul Hirst and Carrie Dolton.

It was also at this time that the results of the semi-final round arguments were announced. Kara Keating-Stuart and Jeff Singletary would move on to compete in the final round arguments, presenting oral arguments in front of United States Supreme Court Justice Clarence A. Thomas, Chief Justice (ret.) Steven J. Feldman of Arizona Supreme Court, and Judge Margaret McKeown of U.S. Court of Appeals for the Ninth Circuit. Some fortunate students were offered, by lottery, the chance to sit in and hear oral arguments for the final round. The rest of the student body was able to take advantage of a live webcast of the proceedings on the Moot Court Website, as well as many "overflow viewing rooms" that were set up in Warren Hall.

After months of preparation and two stiff weeks of competition, Kara Keating-Stuart was declared to be the winner of the competition. When asked how it felt to present oral arguments in front of such a prestigious group of justices, a very modest Kara replied that she was "just happy she held her own." Once she got past the nerves and excitement of it all, she described the experience as being more like a conversation- "a very weighty conversation with outstanding legal minds." Her opponent, Jeff Singletery noted that most lawyers never get the change to present in front of a Supreme Court Justice, but he got to do it before graduating from law school. He added their questions were "tough but fair."

All 2L, 3L, and 4L students interested in appellate advocacy are strongly encouraged to contact the Moot Court Board regarding upcoming competitions. The Moot Court Board Office (WH-125) is located in Warren Hall on the first floor next to the lawyering skills offices. Their office is open with members to answer questions Monday through Thursday during most normal business hours. You can also reach them at 619-260-4530 or mootcourt@sandiego.edu.

Please also note that the USD Appellate Moot Court Board is currently accepting applications for the 2003-2004 Associate Board. Applications are due by April 17th at 5p.m. at the Moot Court Office.

Judges Respond to Students' Questions

By Damien Schiff
Assistant Editor

As part of the events leading up to the Paul A. McClennon, Sr. Honors Moot Court Competition, USD Law students were given the opportunity to attend a question and answer session with the three distinguished jurists who would be judging the competition: Clarence Thomas, Associate Justice of the U.S. Supreme Court; Margaret McKeown, Judge for the 9th Circuit Court of Appeals; and Stanley Feldman, Chief Justice (ret.) of the Arizona Supreme Court.

Students were asked to submit written queries to Dean Rodriguez's staff. The Dean then selected about a dozen of these, which he posed to the panelists, assembled on the stage of the Kroc Peace and Justice Center Theater. What follows is a reduction of the panelists' responses.

The Dean began the session by introducing the judges. He noted that Judge McKeown was the person seated to the Dean's far right; a ripple of laughter was heard from the audience. Justice Thomas then wryly commented that Judge McKeown was also to his right, a remark bringing expressions of amusement to those in attendance.

The panelists were first asked whether, looking back, they would do anything different in their legal education. Chief Justice Feldman emphasized that those aspiring to the practice of law should strive for a broad education in the liberal arts before proceeding to law school. Justice Thomas admonished schools not to teach law students as if they all will become law professors. Judge McKeown suggested that first-year students should make the most of their summer vacation before their second year, as that would likely be their last real opportunity for an extended vacation prior to retirement.

When asked which judge they most admired, Chief Justice Feldman cited Thurgood Marshall. Justice Thomas concurred with Chief Justice Feldman; he also noted his respect for the first Justice Harlan and his defiant lone dissent in Plessy v. Ferguson. Judge McKeown praised District Court Judge Donald Voorhuis as someone about whose decisions attorneys, after having appeared before him, could say that justice was done and a fair result obtained.

Does a judge's political persuasion affect his decision? Chief Justice Feldman assured the audience that, in his many years on the bench, he never saw such influence. Justice Thomas came to the same conclusion, based upon his experience on the Supreme Court. Judge McKeown voiced her dissatisfaction with the media, which tend to predict a case's outcome based upon the political persuasion of the president or governor who appointed the judge deciding the case.

A more delicate issue was raised by the question, put to Judge McKeown, of why the Supreme Court reverses the 9th Circuit so often? She replied that the reversal rate in recent years is statistically not much different from that of other circuits, in part because the 9th circuit has heeded the advice of Justice O'Connor in taking more cases en banc (advice not followed in that circuit's recent Pledge of Allegiance case). Justice Thomas, coming to McKeown's (and the 9th Circuit's) defense, reminded the audience that the Court generally grants certiorari only when it intends to overturn the lower court. Judge McKeown added that the 9th Circuit hears 13,000 cases a year, far more than other circuits.

Perhaps encouraged by the panelists' bonhomie and good-natured responses theretofore, the Dean asked Chief Justice Feldman his opinion on Bush v. Gore. After a moment of reflection, the Chief Justice responded that the Court ought to have refrained from hearing the case and let the House of Representatives decide the issue by selecting one of the slates of Florida electors, thereby keeping the decision within the political branches. Justice Thomas defended the Court's decision to take the case, and its result, but added that, in light of what other Justices had written, he now wishes that he had written a concurrence to the majority opinion.

When asked how fast should a person be appointed to the Supreme Court, Justice Thomas stated that he would have preferred to stay at the Court of Appeals, where he had been a mere fifteen months prior to his nomination to the High Court, but changed his mind after persistent importuning by President George H.W. Bush.

Judge McKeown was asked about her role on the 9th Circuit's gender bias task force. She noted that most gender bias occurs in the discovery or behind-the-scenes stages of litigation; but she believes that great advances have been made to eliminate gender bias.

As to whether civil liberties have been too restricted since September 11, Chief Justice Feldman answered in the negative; he mentioned that he would soon be traveling to the Final Four Tournament, and that he

SEE ***Q & A***, next page

Cross Burnings and the First Amendment

By Jonathan Meislin
Staff Writer

Three men in Virginia may have luckily escaped conviction under a Virginia state statute making it illegal to burn crosses with the intent to intimidate a person or a group of people. Two of the men were arrested for burning a cross on a neighbor's lawn. The burning was in retaliation to complaints that one of the men used his own backyard as a gun firing range. The third man was arrested under the same statute for leading a Ku Klux Klan rally where a cross was ceremoniously burned.

The Supreme Court ruled on April 7, 2003, that the statute under which each of the men was arrested was unconstitutional. The court held that statutes banning cross burnings are constitutional, but because the Virginia statute further stated that burning a cross was prima facie evidence of the intent to intimidate, the statute trenched upon the First Amendment freedom of speech. The man arrested as the leader of the rally had his conviction overturned. The other two men had their judgments vacated and cases remanded back to the state courts.

> *"To this day, regardless of whether the message is a political one or whether the message is also meant to intimidate, the burning of a cross is a symbol of hate."*

Justice O'Connor, writing for the majority, stated that, "[t]o this day, regardless of whether the message is a political one or whether the message is also meant to intimidate, the burning of a cross is a symbol of hate."

O'Connor further clarified that the burning of a cross can be used for both intimidating and non-intimidating means. The message behind the burning of a cross with the intent to intimidate is one of grave danger, and is calculated to provoke fear; therefore, the act can be classified as a "True Threat".

A true threat is any act or utterance which, by its very nature, inflicts injury or incites an immediate breech of the peace. The First Amendment allows prevention and punishment of such threats because the small social value in allowing the speech is outweighed by the greater social value in maintaining peace and order. Burning a cross with the intent to retaliate can be categorized as a true threat that the Supreme Court has held unprotected by the First Amendment.

Although the Virginia statute is a ban on burning crosses, it further states that the burning of the cross is prima facie evidence of the intent to intimidate. The statute therefore allows the arrest and punishment of a person who burns a cross without the requisite need to prove the intent to intimidate. This is discrimination of speech because of content and viewpoint. O'Connor clarified that burning a cross could be done either with the intent to intimidate, or without the intent to intimidate.

A state cannot ban the political message connoted by the burning of a cross simply because the message is an unpopular one. Such a message is the reason why we have the First Amendment in the first place. Although a cross burning can provoke fear and hatred by those who see a burning cross, this is not enough to ban all cross burnings, says O'Connor. "The prima facie evidence provision in this case ignores all of the contextual factors that are necessary to decide whether a particular cross burning is intended to intimidate." The justice concluded, "[t]he First Amendment does not permit such a shortcut."

In the meantime, Virginia has enacted a separate statute making it illegal to burn anything with the intent to intimidate. This is constitutional according to the ruling of the Supreme Court.

> TERRORIST

CONTINUED FROM PAGE 1

the civil rights movement and Vietnam War."

The few public supporters of the bill have said that police need stronger laws to break up protests like those that have created havoc in cities like Portland, where thousands of people have marched and demonstrated against war in Iraq since last fall.

Lars Larson, a radio talk show host who has aggressively supported the bill says, "We need some additional tools to control protests that shut down the city." Larson says that protesters should be constitutionally protected by free speech laws, but that does not mean giving them free reign to hold up ambulances or frighten people out of their daily routines and he believes that police and the court system could be trusted to see the difference.

The problem is that, in this current political climate, there is a real danger of widespread public support of generalized laws purporting to promote safety and protection. If these laws can be ultimately expanded to include activities that authorities wish to suppress, which could then be subject to extreme punishment, we are laying the groundwork for serious suppression. If this law passes in Oregon, it is not unlikely that other states will pass similar legislation.

Perhaps most disturbing about this bill are the types of activities that are specifically identified as terrorist in nature and thus subject to more stringent penalties: theft, unauthorized use of a vehicle, forgery, negotiating a bad check, using another's license, cheating, interference with livestock production, and even unlawful recording of a live performance.

It is important to keep in mind that the average felony murder sentence in Oregon is 16.6 years (13.3 after "good time") while those convicted of any of the abovementioned activities, under this proposed bill, would face a minimum of 25 years. Is blocking traffic or writing a bad check really on par with the ruthless murder of thousands of innocents by the September 11th hijackers? And it doesn't make much sense to go to all this trouble to create a new crime of terrorism, given that virtually all acts considered terrorism under the bill already violate Oregon law. Will re-labeling crimes necessarily make us any safer?

In the end, most legislators say the bill stands little chance of passage. Democratic Senator Vicki Walker, one of four members on the six-person panel who have said they oppose the legislation, doesn't think "this bill is ever going to get out of committee." But, although SB 742 has met strong opposition, lawmakers are still expecting a debate on the definition of terrorism and the value of free speech before it comes time for a vote by the Oregon Senate Judiciary Committee

Senator Minnis has stated that he is willing to go further with additional amendments to ensure that terrorism is defined narrowly enough to preserve the right to protest and commit civil disobedience. "We're going to work hard and see if we can get a bill that actually works," says Minnis. A follow-up hearing has not yet been scheduled.

This is the second time in recent months that Oregon law has come under public scrutiny; media pressure recently ended the police practice of citing drivers supporting street-side protestors by honking acknowledgement. Under Oregon law, honking for anything other than an emergency is illegal.

For the full text of Senate Bill 742, go to: www.leg.state.or.us/03reg/measures/sb0700.dir/sb0742.intro.html

> Q & A

CONTINUED FROM LAST PAGE

was very happy to know that stringent security measures were in place at airports. He also voiced approval for the federal government's decision not to treat the Guantanamo foreign detainees as meriting the full panoply of constitutional safeguards for criminal defendants. Justice Thomas simply noted that it was too early to make an assessment of terrorism's effects on civil liberties. Judge McKeown voiced concern with some governmental actions, warned that we must not throw the baby out with the bath water, and reminded her listeners that we live under the rule of law.

The final question posed to the panelists was, What are the attributes of a good oral advocate? On this they were all in agreement: brevity and honesty. With that pithy reply, the jurists parted from the stage, leaving the audience to ponder the substance of the panelists' responses. In retrospect, the question and answer session proved to be an illuminating forum for those seeking a more personalized impression of these august adjudicators, they who, in our textbooks and reporters, by modes of analysis trenchant and hoary, say what the law is.

EDITORIAL

Why The S.B.A. Should Be Abolished

By Noel Fischer, 2L

That time of the year is upon us again. The temperature warms up, spring break comes, finals approach, and our school enters into an annual worthless civil war known as "The S.B.A. Elections." During that civil war, nondescript colored posters clutter the Law School, tenuous allegiances are formed, and lifelong enemies are made.

Even in the face of these hardships, candidates routinely put themselves through this angst. Some do it in order to obtain that prized line upon their resume. Other, more Machiavellian, candidates seek the tuition credit which executive positions receive as a reward for their service. Yet no one questions the S.B.A.'s legitimacy or the process which determines its membership. That is, until now. My two contentions are: 1. The process of selecting the S.B.A. is divisive; and 2. The S.B.A. serves no important function.

Currently, the S.B.A. functions as a representative democracy. Students register their candidacy, run for a specific position, and win or lose depending on the will of the students (who care enough to vote). Sound simple? Well, as always, the proverbial devil is in the details. These campaigns often turn student against student in a war for popularity.

In a normal, real-world, campaign, there are legitimate differences of opinion that the candidates possess. Whether the issue is taxes, the military, or free bus vouchers for war widows, the issues serve to note the different candidates' positions.

Unfortunately, there are no issues in S.B.A. Elections. There is nothing that any of the candidates legitimately disagree over. Instead of issues, we get meaningless slogans, maxims, and truisms such as "Proven leadership," "Information should be freely available," and my personal favorite, the generic campaign poster possessing simply the candidate's name and the omnipresent "Vote for (Name) for (Position)."

In response to the lack of any real disagreement over anything, candidates create it through different means. The preferred method is personal attacks. Allegations fly between opponents, and feelings get hurt. Sometimes the allegations have merit, sometimes they do not.

The truth or falsity of these allegations does not matter because the entire campaigns do not matter. No matter who is elected, the S.B.A. simply does not have enough power to change anything noteworthy at the school. Every time I ask my S.B.A. representative about changing something at the school, I've been told "The S.B.A. can't do anything about that." I always leave dejected.

So what does the S.B.A. do for those tuition credits? That is the $13,000 question. No one really knows. We know they pay for all that pizza we eat at all those meetings we go to during 1L for clubs that we do not join. We know they organize those two parties per year that we must buy tickets for. We know they meet every Monday at noon. That's it. If the S.B.A. does more, the organization must do a better job of disseminating that information. If it does not, then the student population should not subsidize its existence through the $50 that we pay each year and their tuition credits that undoubtedly come from our money.

I propose to end the current S.B.A. government. No more tuition credits. No more.

The Rumors are True!?
The SBA Response

By Joe Goodnight
SBA President

This year the SBA spent $50,000 on beer and pizza, conspired to hide an election from the student body, and, in general, served no important function. We're also selling the Coronado Bridge to the highest bidder. Make your checks payable to "USD SBA."

Please. It has never been our intention to keep the works of the SBA a secret from the rest of the student body. It was actually one of our goals at the beginning of the year to improve the dissemination of information to the students. Obviously, we haven't been reaching everybody.

Noel wants to talk about elections, so let's talk about elections. In all of my experiences in student government, from high school to college, elections have been consistently a nightmare for the candidates. Before these elections started, I told all of the executive members that "election time is when we find out what we did wrong from the people we didn't hear from all year long."

Enter Noel. Don't get me wrong: whether we agree with the criticism the student government gets or not, I most definitely seek to address it.

Getting the word out

For this election, the main gripe we heard was that the elections were not well advertised and no one knew when Statements of Candidacy were due. Now, elections were announced a month before this and repeated every week in an e-mail to the students. But with that said, we recognize there must be a problem with our methods.

Honestly, getting the information to the students is one of the most difficult tasks we encounter during the year. E-mails are oftentimes deleted immediately, flyers are thrown away, and not everyone listens to or remembers announcements in class.

An SBA web site is in the works and will be accessible from the law school's web page. And I know that it will be maintained and available to interested students. You should be getting announcements for club meetings from the SBA in several ways: once in the SBA minutes that are e-mailed to you every Monday, again on the SBA calendars that are in the SBA window and available on the SBA door, and from announcements made by class reps. And this does not include any advertising that the clubs do on their own.

If you're not getting it, how can we get it to you? Should we hire someone to twirl a sign in the parking lot and rock out to a walkman? Singing telegrams? Neon lights? Smoke signals? The Goodyear Blimp? Forgive my tone, but it's frustrating. What will get your attention? Please, let us know. The clubs and the SBA work very hard to put on these events and they are pointless if the students don't know about them.

The Tuition Credit

Here's how I feel about the tuition credit. Contrary to Noel's beliefs, USD has one of the best Student Bar Associations in the nation. Many SBAs don't have a constitution, receive little or no funding, have no relationship with the administration or faculty, and are generally disorganized.

Our student government is exceptional. We do more than other schools, govern more clubs, provide more programming, and have a better relationship with our faculty and administration (I know I haven't gotten to these specifically yet, but bear with me and please read on). The tuition credit is part of what makes our SBA so good.

For me, it ensures that I will work my hardest for the students. I would feel terribly guilty taking money if I didn't think I deserved it. I work harder knowing I received it and repeatedly put my SBA responsibilities before anything else, including school. I went one-for-five in class attendance during the first week of elections. That hurts, but I owe it to the students to make sure the job gets done. If you take away the tuition credit you lose the guilt factor that motivates a President in an oftentimes thankless job.

So why is the SBA so great? What function does it serve? Where does my $50 go? What does $50,000 of beer look like?

The SBA's function can be summed up as follows: 1) represent the student body; 2) provide a conduit between the students and administration/faculty; 3) govern the clubs and organizations by aiding their organization and in funding and advertising their events; and 4) provide various social events throughout the academic year. This is a modest summation, but essentially, it is what we do.

The majority of the money is budgeted for the clubs and organizations. Noel is right, when he was a First Year we received over $30,000 in requests for funding, primarily for lunches, i.e. pizza.

However, we've made some changes over the last two years. Now clubs only have $125 per semester to spend on lunch. This cap has freed up thousands of dollars to be spent on expenses that, we think, better benefit the students: travel for speakers, competition entrance fees, community service events, and fundraisers. After the budget allocation revisions we made last year, we are no longer lining Mr. Domino's pockets with greenbacks. This year the SBA fully or partially funded the following events where your money did not go to cheese and pepperoni:

Competitions:

-- Negotiations:

o Intramural Competition

o ABA Regional Competition in Salt Lake City Utah

o National Environmental Law competition.

-- Business Law

o Ruby Vale Corporate Law Moot Court Competition in Delaware

SEE *SBA REPLY*, page 11

The Return of Anonymity
A Critique of Motions

By Norm Daplume

Is it just me, or does Motions lack something. I am quite sure that what Motions lacks is my interest and the interest of all other readers. San Diego is the 6th largest city in the country, (although if Los Angeles had approved their split we would have gone down to 7th - what a big frickin city!), the University of San Diego is the self proclaimed premier law school in the city, and yet we publish a drip of a magazine that engages no interesting topics.

The three main reasons that Motions is not interesting are:

1) The topics are dry.
2) The articles are long.
3) They need more lists to attract attention. (See it worked!)

HERE IS HOW WE CAN FIX MOTIONS!

Allow people to submit anonymous articles:

Currently the articles are so boring. I would rather read the crime stats from the undergrad paper any day of the week than pick up Motions. (Here is a summary of last weeks: LOTS OF DRUNK COLLEGE KIDS, ALL TAKEN TO DETOX). We need a stimulating debate, one that gets people angry enough to put quality graffiti on the bathroom stalls. (Our school has the most boring graffiti I have ever seen. I love and miss it when grout jokes are written into tile grout, E.g. "Grout Expectations" or "Oscar the Grout." If you don't know what I am talking about, you need to upgrade the urinals you stand at.)

The way to have good articles is to allow people to write anonymously. Often the truest opinions are held back out of fear of reprisals. For instance, I love Professor Devitt, but I would never put my name to that. (Prakkash is a close second.)

Keep it short and sweet:

I am sure the editor doesn't mind the length of the articles, considering he'll often stretch a terrible cartoon to half a page to fill some space. He seems to be following that old bureaucratic mantra "Use it or lose it." In this case, if he doesn't fill the space, he'll lose the funding from SBA for a 6 page fold out. In print, unlike in pants, small is better.

I suggest bullet pointing EVERYTHING.

---I suggest bullet pointing EVERYTHING.

---See how nice this is.

---OK, Jokes over.

Conclusion:

There are important issues all around us, and the most interesting article I read was on the library obtaining 50,000 volumes. I actually stole one, so the count is back down to 49,999. Sorry.

I suggest Motions seek anonymous editorials on controversial topics so we can engage the problems of the world and try to make it better. At the very least, the editor will not have to stretch his cartoons so big.

P.S. Editors often put [sic] after a misspelled word to prove that they are smarter than the writer. If you did that here than you are a veri ________ person.

The Rumors Are NOT True!
Editor's Reply

By Tom Ladegaard
Editor-in-Chief

Thank you for your letter. Although you use some strong language in your critique of *Motions*, I appreciate it nonetheless because you would not have taken the time to write if you did not care. As my colleague SBA President Joe Goodnight would attest, we have thankless jobs in that the only feedback we receive is criticism, but that comes with the territory. Having said that, I am afraid that your critique makes little sense.

Because you are a fan of bullets, I will address your concerns accordingly.

- it is disconcerting to hear that *Motions* fails to capture your interest and you probably are not alone, but I question your status as the representative of "all other readers";

- I think that referring to USD as the "self proclaimed premier law school in the city" is a bit on the pompous side. True, USD is ranked in the second tier, above CWSL and TJSL, but given that I am a transfer from CWSL and have some perspective, I hesitate to say one is a better school than the other. You demonstrate an elitist mentality;

- *Motions* is a newspaper, not a magazine! Take one of the *People* magazines you have at home and compare the two- *People* is bound by staples and uses glossy paper; *Motions* is not bound and uses newsprint. You know how you get black fingertips when you read *Motions*? That is because it is a newspaper, not a magazine!;

- The topics are dry? *Motions* reports on events occurring around campus and in the legal community at large. You are a law student, and you are in for a long and boring career if you find legal events "dry." The purpose of a newspaper (not a magazine) is to *report* the news, not to *create* the news. As editor, I stand behind my writers' work, and take exception to your characterization of our stories as "dry," although I must confess that I enjoy the crime stats in the *Vista* as well;

- The articles are long? When articles are submitted to me they are seldom longer than two pages in Word format. That is about the length of a high school essay. A more accurate criticism would be that *Motions* contains too much "white space," but that would be much worse if the articles were not as "long" as they were. As a law student one of these days you are bound to read a case from the Supreme Court- those are long. Given the subject matter of many of *Motions'* articles, it would to the legal issue and the reader a disservice to breeze over it in as few words as possible. That is the domain of news broadcasts;

- We "need more lists to attract attention"? I feel this one hardly deserves a response. Once again, *Motions* is a newspaper, not *People* magazine. Lists generally do not lend themselves to news stories. However, they are quite useful when listing, for example, Michael Jackson's plastic surgeries or movies starring Jennifer Anniston. You will find in this issue a list containing USD's Mock Trial Team record, but that probably will not get your attention;

- Anonymous articles- You assume that *Motions* has some kind of policy banning anonymous submissions. *Motions* welcomes articles from anyone, and if the writer feels more comfortable doing so anonymously, so be it. I agree that we need a stimulating debate, and you should find several in this issue. What you need to understand is that Motions is a newspaper, not the *National Enquirer*, so we cannot create the debate. We can only provide a forum for when one arises;

- I "often stretch a terrible cartoon to half a page to fill some space"? Here I am confused, discombobulated, nonplussed, bewildered and befuddled. In my reign of terror as editor-in-chief over the last year I have yet to publish a single "cartoon," much less one that takes up half a page so as to "fill some space." Even if I did, I find it ironic that you would complain that the articles are too dry and long, only then to complain about "cartoons." Before you complain about this "drip of a magazine" I suggest you try reading it;

- If I don't fill the space, I'll lose funding from the SBA? I suggest you do your homework my friend, because *Motions* is autonomous. Motions has its own budget, and is in no way an entity under the SBA. How does the old adage go… when you a-s-s-u-m-e you make the first three letters of that word out of yourself;

- To clarify, the article on the library's newest addition, which you enjoyed so much, publicized the LRC's 500,000th volume, not its 50,000th. Now you are offending our librarians!;

- As to your P.S., I am once again all the adjectives I described three "bullets" above. I am a "veri______ person"??? The purpose of a [sic] is not to show that one is smarter than the other, but to keep a quotation in its original form, while showing that any error belongs to the original author, not the person quoting it. I think you made an attempt to cut me off at the pass should I have decided to edit your writing, but I decided it was more prudent to publish your writing in its raw misspelled, mis-punctuated and confused glory.

Thank you for your submission, seriously. We are entering a profession where we will earn our living by disagreeing with one another, and law school is where we begin to learn how to do it. Before constructing an argument, however, it is wise to get a better understanding of the facts.

EDITORIAL

PUTTING THE WHEELS BACK ON IRAQ – ATTORNEYS WANTED

By Tom FitzGerald
Staff Writer

After a mighty military campaign to rid Iraq of Saddam's regime, remaining signs of his ruling power will be completely eliminated shortly. Although this result was inevitable from the outset, casualties were sustained on both sides and brave U.S and British soldiers honorably gave their lives serving their counties. None will disagree on this. Whether you believe the war was just or foolishly think it was not, the end result is that a war-torn Iraq remains. The coalition forces have liberated the people of Iraq, but now the much more complicated task of rebuilding Iraq remains.

The Bush administration had the foresight to plan for the expected toppling of the regime prior to the initiation of the war. Their plan was titled the "Future of Iraq Project". The principles of this project were to liberate Iraq and not occupy or control the country or its resources. The liberation is underway and we have seen some fits of looting and chaos requiring troops to serve in a semi-police role restoring order.

Many argue that this is a result of the collapse of an iron-fisted dictator and his high advisors who had been living off the blood of the Iraqi people for so long. However, the degree and length of occupation by troops will be soft and short-lived as the end goal is to return power to the people of Iraq. Understandably, the US will still need to assert some police-like powers and maintain order in events such as these overly exuberant expressions of freedom, in order to ensure that there will be a sturdy framework for the Iraqi nation to carry on as Coalition forces withdraw.

The administration has already got the ball rolling. Retired General Jay Garner has been put in charge of the "Office of Reconstruction and Humanitarian Assistance" (ORHA) for Iraq. Under the auspice of his command of OHRA, 26 American police and judicial officials will soon be sent to Iraq to conduct assessments of how to establish local policing and security. After that, it is estimated that 1,200 police consultants, advisors, and judicial officials will be sent to Iraq to establish security. Bush has asked Congress for additional funding to bolster these numbers and ensure that order is restored to Iraq.

In the backdrop to this stabilization of the country is a movement to transition Iraq to a somewhat democratic state. This requires the "new" Iraq to draft, debate and approve a new democratic constitution. Iraqi attorneys have already drafted six hundred pages of proposed reforms for the criminal and civil codes as well as codes of criminal and civil procedure. This legal transition will begin after stabilization occurs, as free and fair local elections are conducted electing the governments from one city to another. Starting in the smaller cities, this will follow in the larger cities of Basra and Baghdad; eventually the entire Iraqi nation will be governed under free elections.

The question is who facilitates this process? The Coalition's campaign to oust Saddam was led successfully by General Tommy Franks, but General Garner's team is there to restore order and stabilization. The final leg of restoring power to the people of Iraq will entail putting the new government in place.

As mentioned above, this entails a new constitution and elections. Iraqi nationals will form these new leaders of Iraq, but they will need help. The U.S. Agency for International Development (USAID) will lead this charge but it will be up to the nationals to determine their laws. (*Note – Maybe the United Nations will finally come to the table and get involved. However, I guess that depends on whether the U.S. will let them*). USAID will not go it alone, however; it will contract much of the work out to American consulting firms to help shape the laws of postwar Iraq.

Firms such as Checchi and Co., Bearing Point (formerly KPMG Consulting), DPK Consulting, Chemonics, and many others will bid on contracts to provide technical assistance and consultation to Iraqi nationals on how to rebuild legal, economic, and technological systems. These consulting outfits have been helping nations build courts and constitutions for over 50 years. They have recent experience in Kosovo, Afghanistan, Columbia, and other countries to improve their political institutions and systems of laws.

The restructuring of Iraq will undoubtedly be large scale and must start with the rebuilding of their legal systems prior to moving on to technical and economic assistance. It is certain that one contractor will not have all the resources and will need to collaborate with resources from the other private and public sectors. Along with this will be much jockeying by subcontractors to provide their niche areas of expertise. This is where the attorneys come in. With the large consulting outfits lacking the legal expertise that is critical to this pivotal legal reform, they will need to outsource to law firms

So as the last pockets of Saddam's regime are ferreted out and civil unrest draws to an end, the new laws of Iraq will emerge. This law and order will be under the guiding hands of the coalition forces, ORHA, USAID, possibly the United Nations, Iraqi nationals, and private consultants. If you plan on practicing law in the near future and the sun, sand, and palm trees of southern California have been evasive in your job search, you may still have a chance for these same amenities if you head to the Middle East.

(Il)legality of the War?

By Juliana Lee
Staff Writer

As the war against Iraq gains momentum, the debate about its legality continues to gain momentum as well. War is never a desired solution to any situation, and although I do not feel that labels of "legal" or "illegal" are appropriate to describe the status of war against Iraq, in this article, I will discuss why the United States is authorized under both international law and its Constitution to declare military action against Iraq.

According to one news report, "war against Iraq is unequivocally illegal under the UN Charter, international law, and law generally." Contrary to the assertions of such anti-war critics, it is important to remember that when the "coalition of the willing" moves to disarm Saddam Hussein, it will be taking action to enforce Security Council resolutions enacted under Chapter 7 of the U.N. Charter, which supposedly constitutes the very backbone of international law. Further, it is important to recall that Iraq has openly defied these resolutions again and again since 1990. In April 1991, only five weeks after the Gulf War, Saddam Hussein agreed to UN Security Council Resolution 687 in order to remain in power and avoid getting tried as a war criminal for his invasion of Kuwait. Resolution 687 required Iraq to "unconditionally accept the destruction, removal or rendering harmless under international supervision of all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities." The resolution also stated that "Baghdad must not use, develop, construct or acquire any weapons of mass destruction."

Just four months later the UN approved Resolution 707, condemning Iraq for serious violations of Resolution 687. Since 1990, Iraq has been in violation of 14 other resolutions passed by the Council. In November of last year, the Security Council approved Resolution 1441, requiring once again that Iraq disarm, making clear that this was Hussein's last chance to cooperate with inspectors before Iraq was forcibly disarmed. Iraq refused to comply and the Security Council refused to enforce its own resolution. Some scholars state that only the UN can decide if a material breach exists and only the UN can decide what to do about it. However, 1441 does not require any further approval or votes for military action to occur and under its terms, the U.S. may carry out military action. A further Security Council resolution is not needed to authorize the use of force.

Since its inception, the UN Charter has sought to limit those instances in which individual states can use force. Article 51 of the Charter states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Some will argue that Article 51 should be read to prohibit a pre-emptive strike against Iraq, as it guarantees only a nation's right to self-defense *once it has suffered an armed attack*. However, it would be absurd to read Article 51 as a prohibition on pre-emptive strikes. If so, the UN Charter would be effectively protecting a first aggressor's right to "strike first."

Congress, pursuant to its Article I, Section 8 powers granted under the Constitution, passed legislation authorizing the use of force against Iraq. The President, who, under Article II of the Constitution, is legally authorized to commence military action against Iraq, signed this legislation into law. Thus, under international law and pursuant to our own Constitution, the United States is authorized to commence military action against Iraq.

Supreme Court to Decide Affirmative Action

By Juliana Lee
Staff Writer

Affirmative action is once again under attack. White applicants denied admission to the University of Michigan Law School and undergraduate programs are suing the University and challenging its use of race in its admissions process to its law school and undergraduate college. They charge that African American and Latino students with similar or lesser academic records were admitted to the university on the basis of affirmative action programs that gave preference to minority students. On April 1, 2003, the Supreme Court heard oral arguments for the two cases back-to-back (the law school case – *Grutter v. Bollinger*, case no. 02-0241 and the undergraduate case *Gratz v. Bollinger*, case no. 02-0516.)

The University has already won lower court victories upholding its policies. At issue is whether race can be used as a factor in admissions to publicly funded institutions as part of an affirmative action program. Justices were asked to decide whether a state has a "compelling interest" to promote a diverse student body, or whether the Equal Protection Clause of the 14th Amendment forbids giving one ethnic group or minority special advantages over another.

This will be the first time the Court has addressed the issue of affirmative action (policies that take into account racial and sexual discrimination in decisions such as admissions and job hiring) since *University of California v. Bakke* in 1978. Twenty-five years ago, the court forbade the use of explicit racial quotas but offered the idea that race could be used as a factor in admissions considerations. It is this "political fudge" –the idea of race as one factor, but not as an explicit quota in admissions criteria– that has led to conflicting opinions on the legality of affirmative action since then.

The Bush administration has filed amicus curiae briefs on behalf of the students who brought the lawsuit. Solicitor General Theodore Olson, arguing for the Government, told the justices that "this plan violates every standard that this court has set for the examination of racial preferences." University of Michigan officials report that "it has had its admission policy in place for over a decade"; they argue that "all students benefit, as does society at large." Over three hundred organizations, including major corporations, unions, student groups, and former chairmen of the Joint Chiefs of Staff, have asked the court not to bar all consideration of race in recruiting for such institutions.

While this case is about access to education, the court's ruling could have rippling effects on affirmative action programs in job hiring and government contracts.

The Supreme Court has no fixed deadline for its decisions, but one is expected by the end of June on whether these preferences are constitutional.

No radio or television coverage was permitted, but transcripts of the hearings are available at *www.umich.edu/~urel/admissions*.

Beyond Michigan: Is California's Pending Constitutional Amendment a Step Into a Color Blind Future, or a Step into Our Nation's Discriminatory Past?

By Jonathan Meislin
Staff Writer

California struck down affirmative action in 1996 with Proposition 209, which banned preferential treatment based on race and national origin in governmental hiring, education, and contracting. A pending amendment to California's Constitution on the March 2004 primary ballot may take things a step further. The question is whether that step is toward a color blind future, or back into our intolerant discriminatory past?

The Racial Privacy Initiative (RPI), proposed by Ward Connerly, an African-American business man who also proposed Proposition 209, will ban all separating, sorting, and organizing of people according to race by making it illegal for the state to inquire, profile, or collect racial data. The exceptions include law enforcement descriptions, prison and undercover assignments, and any other classification serving a compelling state interest that is passed by both legislative houses.

RPI was proposed to protect the privacy of individuals by keeping the government's nose out of issues of race, according to John Derbyshire in his article *Mind Your Own Business*. This follows the current trend away from, as some call it, reverse discrimination. Now that the state cannot give preferential treatment to certain races and national origins, why should it be allowed to continue to inquire about it?

Derbyshire argues that racial equality has come a long way since its initial inception in the sixties. Color blindness will only progress when the state stops separating the races for us. Who needs to separate the masses when it is so conveniently done already? Pete DuPont, in his article *Outside the Box*, parallels RPI to the practice of some of America's finest orchestra auditions, where candidates audition behind a screen, so that the judges are not aware of the race, sex, or age of the candidate. In the end the "blind" audition makes a beautiful sound. The state can no longer base its standards on color and avoid personal merits. Supporters of RPI see the proposition as a step into a colorblind future, where people are judged by their abilities and work, rather than the color of their skin.

Of course, every coin has its opposing side. The Coalition for an Informed California leads the opposition to RPI, and cautions Californians about how dangerous this proposition really is. According to the Coalition's web site, *http://informedcalifornia .org/hatecrime_01.shtml*, hate crimes are currently on the rise; they involve more violence than sexual orientation and gender hate crimes, and they emerge in patterns. Although RPI supporters contend that the initiative does not halt all race data collection, but only collection by the state, the government remains one of the largest sources of data.

As we have learned from our past, ignorance is not bliss. Beyond discrimination, we can diagnose racial problems dealing with graduation rates, crime awareness, races that are more susceptible to certain diseases, and much more. Knowledge is power, and with this power, we can bring ourselves closer to fixing problems facing today's California. Race is not a secret; it is something most of us proudly display every day. Those against the information ban worry that unless racial data are collected, we will not be able to fix the problem; and that the proposition is simply a slippery slope back into our nation's discriminatory past.

The issue will be put into the hands of California's voters next March. Beyond Michigan, California is at the forefront to change the way we treat people because of their color and origin. Whether this initiative is the death knell to racial equality, the road to a colorblind future, or an arbitrary issue, will be determined by time.

Study Abroad Programs At USD

COME JOIN US FOR THE SUMMER IN -

BARCELONA - 5/26 - 6/20/03
5/23 - 6/20/03 - Internship

DUBLIN - 6/30 - 8/2/03

FLORENCE - 5/26 - 6/21/03

LONDON - 6/30 - 8/2/03 classes only - - Internships closed

MEXICO CITY - 5/26 - 6/28/03

OXFORD - 7/7 - 8/8/03 - classes & Tutorials

PARIS - 6/30 - 8/2/03 - classes & Internship

RUSSIA - 5/25 - 6/27/03 - for classes
6/30 - 8/1/03 - for Internship

THERE ARE STILL SPOTS LEFT IN ALL CLASSES @ ALL SITES

SOME RESTRICTIONS APPLY TO THE INTERNSHIPS THAT ARE STILL OPEN

COME UP TO RM 310 IN THE LAW SCHOOL & TALK WITH US!

WHAT YOUR SBA DOES FOR YOU

This is a detailed report of just some of what the Student Bar Association has been doing all year long. It is purely for your information. I basically go through what the President and the rest of the Executive Board has been doing aside from governing the clubs and putting on parties.

The President's duties, from what I've experienced and seen over the last three years, are as follows. First and foremost, act as spokesman on behalf of the students. How, when, and with whom do I get to do that? First, with the Faculty of our law school. The President attends faculty meetings whenever they occur and is the only student in the room. This year the biggest topic of discussion with regards to the students was curricular reform. The faculty have decided to change the majority of first year classes into 4-credit one semester classes, except for civil procedure which will remain a 6-credit two semester class. This change, in my opinion, will greatly benefit the entering 1L students. The way it is set up now results in five finals at the end of your first semester. The new plan would result in just three finals in the Fall and four in the Spring. Clearly, this is a much more reasonable finals schedule for someone who is brand new to studying the law.

The next issue was whether to de-require all of the required courses (except PR which the ABA requires we take). Many faculty members were concerned that if their courses were de-required, the students would not take them, resulting in low bar passage as many of the currently required courses are on the bar. To aid the faculty and provide an informed and accurate portrayal of the students' opinion, we conducted a survey to find out just what people would take if everything were de-required. This survey has proven highly informative and is in use by the faculty. As of the last meeting where curricular reform was discussed, most of the previously required courses are on their way to being de-required. However, the issue of whether Tax I should be de-required is still on the table and is being researched in subcommittee presently. The survey we conducted speaks directly to the Tax issue and, I believe, shows how the students feel about tax. 34% said they would not take Tax if it were de-required. However, a high percentage of students who have taken Tax said that upon being forced to take Tax they discovered a genuine interest for the subject. The tax professors love this. Ok, I've already spent too much time on Tax and I'm sure I'm losing readers. But this is one example of the function of the SBA. Without that student in the room, the students would go practically unrepresented during decision-making processes that directly effect the student body.

The SBA President also chairs the Dean's Student Advisory Council (DSAC), made up of Dean Rodriguez, the SBA President, three Third Years, two Second Years, and one First Year. DSAC meets every month and, generally, just brings student issues to the Dean. This year we've discussed a variety of student concerns including the grading policy, hiring new faculty, creating study areas of focus and specialization (especially in the Intellectual Property and Environmental fields), how 1L sections are divided (randomly), class rankings, health insurance for law students, academic advising, and creating an on-line book store (why do we pay soo much at the bookstore? Our extra dollars are putting the teddy bears and short shorts with "Toreros" on the rear on the shelves. We don't need that stuff. Give me something by Dukeminier and some "Law in a Flash," don't gouge me while you're doing it, and get me out of that bookstore).

At the last DSAC meeting we discussed the Resolution that the SBA passed several weeks ago requesting that the LRC be open at 7:00 a.m. instead of 8:00. This issue came up through a 1L section representative who said that his classmates needed a place to study early in the morning. Now, you won't catch me anywhere even close to the LRC at 7:00 a.m. these days, but as a 1L, it may have crossed my mind. So the first thing we did was invite Ruth Levor, Associate Director of the LRC, to an SBA meeting to see what she thought about it. She suggested we use the classrooms outside of the LRC and in Warren Hall to study. Not a bad idea, but the students in need really want a place to study where they won't be interrupted at 9:00 when class starts or by other students studying in the same classroom. It was time to go to the top and let the faculty and administration know what the students wanted in a formal manner. We drafted a piece of legislation requesting the LRC be open at 7:00 a.m. for a trial period to determine if it would really be used at that hour. It was discussed, edited, amended, and passed unanimously by the SBA. The resolution then went to the LRC, the Dean, the Faculty, was posted throughout the school, and was published in Motions. Dean Rodriguez, Associate Dean Kevin Cole, and Ruth Levor all looked into the pros, cons and possibility of opening the LRC earlier. All in all, there just isn't any money to increase the staffing of the LRC at the moment. But Ruth Levor assured us that a request for funding to hire more LRC employees would be made at the next available opportunity. So, did we get what we want? Not exactly, but this is really just an example of the process we go through every week. We hear student concerns, we see what we can do about them as students, then, if we can't do anything, we call on the people who can potentially do something to help us out. In this case, we put in a lot of work and the LRC still sleeps until 8:00. But we made some noise, made our point, and put the faculty and LRC on notice.

The SBA President sits on several other committees that I won't go into too much detail about. SACBOT is the Student Affairs Committee for the Board of Trustees and includes an array of administrators for the undergraduate university, a representative from each of the graduate programs, the executives from the Associated Students, and three members of the Board of Trustees. This is our access to the Board of Trustees, the decision-makers at this University.

The Law School Relations Committee is run by the San Diego County Bar Association and includes various members of the SDCBA, administrators and all three of the Deans and SBA Presidents from USD, Cal Western, and Thomas Jefferson. This committee works on issues that concern all law students in the San Diego area in general. We've discussed issues ranging from Loan Repayment Assistance Programs (ours is the best) to subjects being added to the CA Bar Exam.

The Law Alumni Board consists solely of USD Law Alums, a student representative from the SBA, several USD administrators and the Dean. Their primary focus is to improve alumni development, raise money, and help us get jobs. At one meeting in the early Spring we were asked how our students were doing finding jobs. The immediate response was what you'd expect. "We can't find jobs to save our lives. We'll work for free if it will get us some experience." But was this accurate? Who is getting jobs, really? I didn't know. It has been tough for everyone to get a job these days, but how did the people who landed a job do it? As a result of this participation with the Law Alumni Board, we conducted a survey to ask all the questions that Career Services doesn't to find out how people found a job. Was it connections? Work experience? Grades? Law Review? Top Ten Percent? Studying Abroad? Moot Court or Mock Trial? Well, I'm sure it was a number of things, but the results are available on the SBA door and are worth checking out. Next year we'll take these results and do an information session with the new students who are looking for work in the Fall.

That's about it for committees that we sit on. We have access to practically everybody, the Dean, the Trustees, the Alumni, the San Diego County Bar Association.

So what do we do when we're not eating a free lunch with these committees? Every Monday we have our SBA meeting which all of the clubs attend to hear what is going on with the other clubs, report on their activities, and weigh in on any student issues that may arise.

The main role the SBA plays in the lives of the clubs, aside from disseminating information for them, is in providing funding for their events. The way it works is that at the beginning of every semester the clubs submit budget requests to the Budget Allocation Committee, chaired by the Treasurer and consisting of the President, Secretary, Vice Presidents, and one representative from each year. Clubs are allocated money on a line-item basis according to a list of criteria. The committee takes several factors into consideration when funding events, including whether the event will benefit the Law School? Does it have significant legal value? Is it open to all students? Is the request for something of educational or cultural value? Etc.

We have $10,000 to allocate to the clubs each semester. In the Fall of 2001, when I started as Treasurer, we received over $30,000 in requests at that first meeting. Guess what they were mostly for...pizza. During my first year and that Fall of 2001, the budget allocation was pretty much a toss up. We looked at what all of the clubs were asking for and then divided it as proportionately as we could. Clubs that had a lot of events planned got more money than ones that only had one event. This was fine, but all of the student money was being spent on food. We needed reform and with the help of several concerned and motivated students, we did it. Now Clubs only get $125 each semester to spend on food.

The new budget process has shifted the emphasis from food to funding expenses that will better serve the students. Travel for speakers, entrance fees for competitions, community service events, and fundraisers all receive much more money than they did in the past and the students money no longer goes solely to Dominoes. Every year we do a Budget Allocation information meeting to explain to the clubs how the budget process works. We show them how to fill out the forms and give them an idea of what the committee will most likely approve. If a club has a new idea or needs funding after the initial meeting, we have a Discretionary Fund of $2,500 that clubs can ask for at the Discretionary Funds meetings that occur every other week.

The SBA has a strong commitment to community service. The board itself holds two community service events each year. We also require that all clubs complete one community service project each semester in order to receive their funding. This is a fairly new development in the SBA and to ensure that it continues we created new responsibilities for the Day Vice President. Previously, the VP's duties were to aid clubs in the recognition process and to keep our files concerning the clubs updated and current. Last Fall we increased the VP's duties substantially and now this person works directly with the USD Office for Community Service Learning and facilitates Community Service opportunities for law students. The Office for Community Service Learning handles all of the community service projects that are undertaken at USD. They have a wide array of projects and events and are always in need of volunteers and organizations to undertake them. The VP now works to assist clubs in finding that community service project that would be meaningful to them. If a club has a community service project in mind, the VP will help to facilitate that project. This new position has been a huge success this year and the clubs have shared our commitment to community service.

In the Spring we hold a 3L Bar Information meeting for all of the graduating Third Years. Basically, this is a meeting to inform 3Ls of everything they need to know for graduation and signing up for the CA bar exam. We bring in representatives from Admissions and Records, Financial Aid, Career Services, Academic Support, Barbri, and PMBR and provide students with an opportunity to ask questions about the bar and graduation. Then we have a company come in at the end of the meeting to provide a convenient opportunity for students to get their fingerprints taken (needed for the moral character application). This event was started last year and proved, again, to be very helpful.

In conclusion, this is what the SBA does behind the scenes. These are all items that are important to the students and that the students should know about. This is what we do when we're not helping with Orientation, putting together the Mentor/Mentee program, planning the Halloween Party, planning the Spring Luau, or organizing the Graduation Party. Hope this helps clear the air.

Supreme Court Imposes Cap on Punitive Damages Awards

By Damien Schiff
Assistant Editor

It has become a commonplace of constitutional law that the Lochner era of economic due process—when state social welfare legislation was routinely held violative of due process because it unreasonably encroached upon the freedom of contract—is gone and will never return. The Supreme Court's punitive damages jurisprudence, exemplified by the recently decided *State Farm Mut. Auto. Ins. Co. v. Campbell*, no. 01-1289, slip op. (U.S. April 7, 2003), *available at* http://www.supremecourtus.gov, suggests that the much impugned doctrine may be experiencing a limited renascence.

Beyond its theoretical implications, *Campbell* also confirms a peculiar alignment of the Court's justices, as, in the field of punitive damages and due process, the old tags of "liberal" and "conservative" have proved unavailing. In *Campbell*, Justice Kennedy's majority opinion was joined by Chief Justice Rehnquist and Justices Stevens, O'Connor, Souter, and Breyer. In dissent were Justices Scalia, Thomas, and Ginsburg. One would be hard-pressed to find a similar 6-3 split in any other area of the Court's jurisprudence.

The facts of the case are these. Respondent Campbell was involved in an auto accident. His insurer, the petitioner State Farm, wanted to contest Respondent's liability in negligence actions brought against him as a result of the auto accident. The matter went to trial; Respondent lost; entered against him was a jury damages award substantially greater than that which the accident victims had proposed for settlement. Respondent subsequently sued petitioner State Farm, alleging bad faith, fraud, and intentional infliction of emotional distress. In this suit Respondent was joined by his tort victims, who agreed to forego the enforcement of their judgment against Respondent in return for representation by their own counsel and a 90% share of any award against State Farm.

A jury found for Respondent and awarded him \$2.6 million in compensatory damages and \$145 million in punitive damages. The trial court remitted the award to \$1 million and \$25 million, respectively, but the Utah Supreme Court reversed the remittitur and reinstated the jury's damages awards. State Farm appealed to the U.S. Supreme Court, claiming that the punitive damage award was an arbitrary and unreasonable deprivation of its property without due process of law.

In holding that the Utah jury's \$145 million punitive damages award violated due process, the Court, through Justice Kennedy, applied the three "guideposts" for jury verdict analysis enunciated in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). The first guidepost is "reprehensibility," i.e. whether the defendant's conduct is sufficiently repugnant to merit the civil punishment imposed by the jury's punitive damages award. Reprehensibility of constitutional magnitude is assessed by reference to several factors: whether the harm was physical or economic; whether the defendant showed indifference or reckless disregard for others' safety; the financial vulnerability of the victim; whether the defendant's conduct was repeated or isolated; the presence of malice, trickery, or deceit; and whether the defendant's act was intended or accidental. A jury may not punish a defendant for lawful out-of-state conduct; it may take cognizance only of that conduct which is personally harmful to the victim. Although lawful out-of-state conduct may be used by the jury as evidence of the defendant's intent for in-state conduct, there must exist a nexus between this evidence and the victim's specific harm.

The second *Gore* guidepost is the ratio of punitive to compensatory damages. Ostensibly eschewing a simple mathematical formula, the Court in *Campbell* announced that few awards will pass constitutional muster when the ratio exceeds single digits. Furthermore, a punitive damages award must avoid duplication of compensatory damages. Regardless of the ratio, the jury may not calculate its award based upon the wealth of the defendant.

The third guidepost from *Gore* is the disparity between the award for punitive damages and existing civil penalties for conduct similar to the defendant's.

In applying the *Gore* guideposts to the facts of *Campbell*, the Court first determined that the jury had impermissibly penalized State Farm for lawful out-of-state conduct not sufficiently tied to the plaintiff's harm; any punitive damages aimed at punishing State Farm for that conduct had to be disallowed. Second, the punitive-compensatory ratio greatly exceeded the normal single-digit constitutional limit. Third, comparable civil fines for State Farm's conduct amounted only to \$10,000.

Based upon the foregoing, the Court held that the jury award for punitive damages against State Farm was neither reasonable nor proportionate, and was therefore an irrational and arbitrary deprivation of property in contravention of the Due Process Clause of the 14th Amendment. In the Court's studied judgment, the facts of the instant case would most likely have supported punitive damages equal to the amount awarded for compensatory damages.

The constitutional infirmity of the \$145 million punitive damages award lay not in the procedure provided the Petitioner by the Utah courts to contest the reasonableness of the award, but in the award itself. Because there exists a substantive due process right against "grossly excessive or arbitrary punishment," a person is entitled to receive fair notice not only as to whether his conduct will be punished, but also fair notice of the degree of punishment to which he will be subjected for his unlawful act. A grossly excessive award is necessarily illegitimate, and therefore arbitrary.

Three dissents were filed in *Campbell*.

Justice Scalia dissented generally on the grounds of his opinion in *Gore*. As to the Court's application of the *Gore* guideposts to Campbell, Justice Scalia refused to accord the earlier case the weight of *stare decisis*, finding *Gore*'s guideposts to be "insusceptible of principled application."

Justice Scalia's position, as propounded in *Gore*, is that the 14th Amendment assures defendants that they shall receive a fair *opportunity* to contest the reasonableness of a punitive damages award; but there is no constitutional guarantee that the award *shall* be reasonable. From the time of the Amendment's adoption to the present, punitive damages have represented the community's collective sense of disapproval of a defendant and his acts; to impose some ethereal standard of "reasonable punishment" presupposes a familiarity with local mores and standards of conduct that members of the Supreme Court simply do not have.

Justice Scalia noted reprovingly in his *Gore* dissent of the reliance that case's majority placed upon *Lochner*-era precedents in supporting its notion of a substantive due process right against excessive damage awards. Although the *Gore* guideposts prevent a jury from taking into account the defendant's lawful out-of-state conduct causally unrelated to the plaintiff's particular injury, Justice Scalia would permit this practice because it is indistinguishable from the well-settled tradition in criminal law, during sentencing, of hearing evidence of other acts of the offender that are probative either of his potential for reformation or of his inveterate wickedness.

From the perspective of judicial efficiency, Justice Scalia contended in his *Gore* dissent that the majority's analysis would make every defendant's assertion of unreasonable damages an issue of constitutional moment.

Justice Thomas, in a one paragraph dissent in *Campbell*, contended that the Due Process Clause "'does not constrain the size of punitive damages awards.'"

Justice Ginsberg, in a more lengthy dissenting opinion, argued that the Court is ill-equipped to police jury verdicts; the states have already adopted measures aimed at trimming the size of excessive punitive damages awards; and the conduct at issue in the instant case was substantially more reprehensible than the majority believed.

Chief Justice Rehnquist, who had joined Justice Ginsberg in her dissent in *Gore*, this time sided with the majority. Could his shift mean that he believes the Court is well-equipped to police jury awards? Given that his vote was not necessary to the disposition of the case, perhaps the Chief Justice sided with the majority to prevent the most senior associate justice, John Paul Stevens, from writing the Court's opinion. Possibly his shift represents an ideological divide between the Due Process "proceduralists"—Scalia and Thomas—and the Due Process "limited substantialists"—Rehnquist, O'Connor, and Kennedy. Or is it simply that we now see *Lochner redivivus*?

> SBA REPLY

CONTINUED FROM PAGE 6

o Conrad Duberstein Bankruptcy Law Moot Competition In New York
-- University of San Diego Appellate Moot Court National Team
o Costs associated with National Moot Court Competitions

Community Service and Fundraisers:
-- Criminal Law Society: Juvenile Hall Service Project
-- APALSA: Blood Drive
-- SELS: Charity Softball Tournament
-- SELS: Charity Bowling Tournament
-- Bus. Law: T-shirt Drive
-- WLC: Race For the Cure
-- APALSA: Food Fair Fundraiser
-- SBA Community Service Day
-- LRAP
-- Intramural Fundraising Campaign
-- Gear-up project (8th Graders Interested in Law School)
-- Winter Clothing Drive
-- Climb-A-Thon
-- Human Rights Education Program

Speakers on:
-- Death Penalty
-- Police Brutality
-- Laws for Peace in Palestine and Israel
-- International Solidarity Movement
-- Taxation of LLC's
-- Refugee Rights
-- Human Rights Campaign
-- Corporate Attorney Panel
-- DA of the year Speaker
-- Government Speakers
-- Study Abroad
-- Lunch Time Debate War in Iraq

Events:
-- International Law Week
-- Trips and Seminars
-- Public Interest Law Career Fair in DC
-- ABA Conferences in Washington D.C., Denver and Orange County
-- National Lawyers Guild Convention in LA
-- Student Softball Team to VA

SBA Events:
-- Orientation
-- Mentor/Mentee Program
-- Halloween Party
-- First year Party
-- 3L Bar/Graduation info meeting
-- Evening Students Social
-- Ski Trip
-- Spring Luau
-- Spring Elections
-- Grad Party
-- San Diego Law Schools Joint Mixer

Others:
-- Club banners
-- Speaker gifts
-- Donations
-- Lunch Allocation

The SBA sends a student representative (usually the President) to the following committees: Dean's Student Advisory Council; Student Affairs Committee for the Board of Trustees; Law School Relations Committee; the University Senate; Law Alumni Board; 9th Circuit of the American Bar Association, Law Student Division; and the Faculty meetings.

Our participation with these committees is essential to representing the needs and concerns of the students. We have access to everyone: the faculty, the alumni, the San Diego County Bar Association, the ABA, and the Board of Trustees. All of those surveys you've been doing for the SBA are to assure that we are informed about student sentiments when we're representing you at these committee meetings. I've placed a detailed letter entitled "What Your SBA Does for You" about what we've discussed in each of these committees in the mailboxes and in the SBA door. Check it out if you're interested.

You've got an excellent board for next year. Talk to them, let them know what your concerns are, or just drop a note in the brand new suggestion box outside the SBA office. In closing, all we really do is work hard to make the law school experience more enjoyable and worthwhile for everyone. I think that's all Noel is trying to do, too.

USD National Mock Trial Team Record

Year	Award
1986–87	First Place ATLA Western Regional
	Second Place ATLA National
1987–88	First Place ATLA Western Regional
	Fifth Place ATLA National
1989–90	First Place San Diego Defense Lawyers
	Second Place ATLA Western Regional
1990–91	First Place ATLA Western Regional
	Second Place ATLA Western Regional
	Second Place ABA National Criminal Law Competition
	Third Place ATLA National
	Selected Best Team in Ninth Federal Circuit
1991–92	First Place San Diego Defense Lawyers
	Second Place ATLA Western Regional
	Second Place ABA National Criminal Law Competition
	Selected Best Team in Ninth Federal Circuit
1992–93	***National Champion*, National Invitational Tournament of Champions**
	First Place ATLA Western Regional
	Second Place ABA Western Regional
	Third Place ABA Western Regional
	Fifth Place ATLA National
	Selected Best Team in Ninth Federal Circuit
1993–94	First Place ABA Western Regional
	Third Place ATLA Western Regional
	Fifth Place ABA National
	Selected Best Team in Ninth Federal Circuit
1994–95	First Place ATLA Western Regional
	Second Place ATLA Western Regional
	Second Place San Diego Defense Lawyers
	Fifth Place ATLA National
	Selected Best Team in Ninth Federal Circuit
1995–96	First Place ATLA Western Regional
	Second Place ATLA Western Regional
	Second Place ABA Regional
	Second Place San Diego Defense Lawyers
	Third Place ABA Regional
	Selected Best Team in Ninth Federal Circuit
1996–97	First Place ATLA Western Regional
	Second Place ATLA Western Regional
	Second Place ABA Regional
	Third Place ABA Regional
	Selected Best Team in Ninth Federal Circuit
1997–98	First Place Consumer Attorneys All California Trial Competition
	Second Place ABA Regional
	Second Place ATLA Western Regional
	Third Place ATLA Western Regional
	Third Place ABA Regional
1998-99	First Place ATLA Western Regional
	First Place (co-winners) San Diego Defense Lawyers
	First Place (co-winners) San Diego Defense Lawyers
	Second Place ATLA Western Regional
	Third Place Consumer Attorneys All California Trial Competition
	Third Place Texas Young Lawyers National Trial Competition, Western Regional Tournament
1999-00	First Place ATLA Western Regional
	Second Place ATLA Western Regional
	Second Place Consumer Attorneys All California Trial Competition
	Third Place San Diego Defense Lawyers
	Third Place Texas Young Lawyers National Trial Competition, Western Regional Tournament
2000-01	First Place San Diego Defense Lawyers All-California Competition
	First Place Texas Young Lawyers National Trial Competition, Western Regional Tournament; Advanced to National Finals.
	Second Place Texas Young Lawyers National Trial Competition, Western Regional Tournament
	Second Place ATLA Western Regional
	Third Place ATLA Western Regional
2001-02	First Place San Diego Defense Lawyers All-California Competition
	First Place Consumer Attorneys All California Trial Competition
	Third Place San Diego Defense Lawyers All-California Competition
	Third Place Consumer Attorneys All California Trial Competition
	Third Place Texas Young Lawyers National Trial Competition, Western Regional Tournament
2002-03	First Place Texas Young Lawyers National Trial Competition, Western Regional Tournament; Advanced to National Finals
	First Place San Diego Defense Lawyers All-California Competition
	Second Place ATLA Western Regional
	Third Place ATLA Western Regional
	Fifth Place (Field of 32) Lone Start Classic Invitational Tournament, San Antonio, TX

> THE CORNER

continued from page 2

Regardless of our grades, how nice our resumes look, or whether we have the coveted italicized words in Latin following the J.D., we need to recognize that we don't know squat. One day you will enter the courtroom of a judge whose eggs were too runny that morning and who got cut off on the way to work, and you will be in his crosshairs. Nothing is more humbling than being ridiculed by a judge in open court while the reporter's fingers are moving, and it will happen to us all more than once;

-- Snickers and rolling eyes when someone is talking in class. Unless it is one of those people who simply loves the sound of their own voice, we all could be more respectful of our classmates. We are entering a profession, and we should start acting more professional.

This is my last issue of *Motions* as Editor-in-Chief, and next year the tradition will be passed on to a Mr. Damien Schiff, and able-minded individual who will not disappoint. I also wanted to publicly thank my hard working staff writers, whose work is the essence of the paper. Working for *Motions* has been a tremendous experience and it is one that I know I will miss. To anyone who is looking for a resume boost, to improve their writing skills, and an opportunity to get plugged in to the legal community, do not hesitate to apply.

I promise that this issue of *Motions* will not disappoint. We have multiple perspectives on the war in Iraq, affirmative action, and the McLennon Moot Court Competition. The LRC provides a response to the SBA Resolution seeking an increase in operating hours, and the SBA and *Motions* come under attack from students expressing their discontent. Thank you to Mr. Fischer and Mr. Daplume. The SBA and *Motions* are fighting to justify our very existence here!

It's been real. C-ya!

Tom Ladegaard

Graduation Awards Ceremony

The Awards Ceremony, held this year on the eve of Law School Graduation, will be taking place on May 23rd at 4 p.m. in the Shiley Theatre in Camino Hall.

Law students who will graduate in May or who graduated in August, and December, 2002 will be honored. Commendations, trophies, and prizes will be presented to past or present officers of the S.B.A affiliated organizations, student publications editorial boards, and participants in academic special programs and oral advocacy programs. Individual distinguished academic achievement awards and distinguished service awards are highlights of the ceremony in which members of the USD Law School Administration and the County Bar Association participate.

Many of the awards are granted by national and local legal organizations, publishers, the Alumni Association and San Diego lawyers, memorializing eminent members of the bar.

Friends and family of the graduates are cordially invited to the event which is to be followed by a reception in Camino Hall courtyard to fete the honorees.