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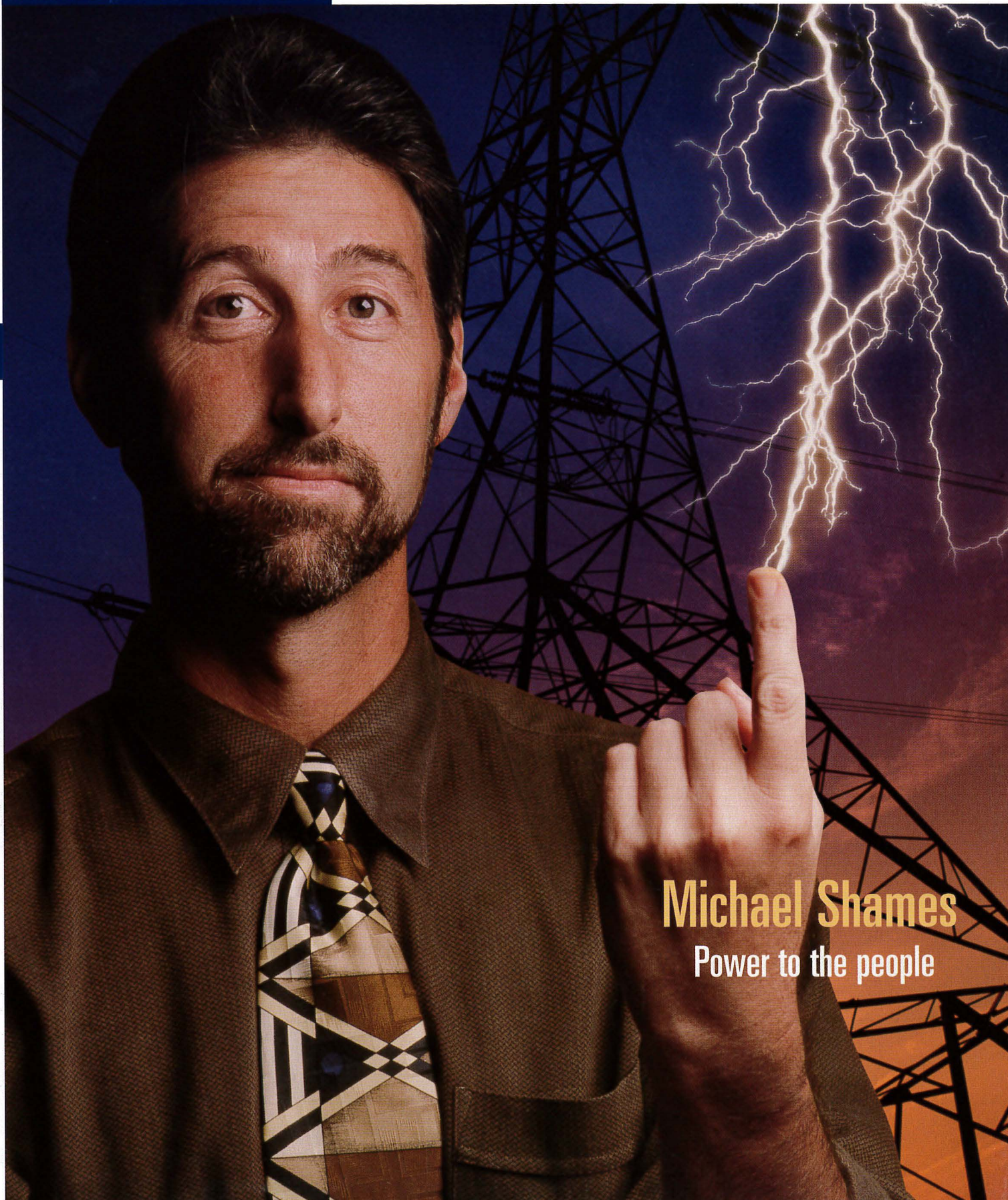
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advocate

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

18:2 FALL/WINTER 2001-2002



Michael Shames
Power to the people

advocate

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Michael Shames '83 leads the fight to protect California electricity consumers

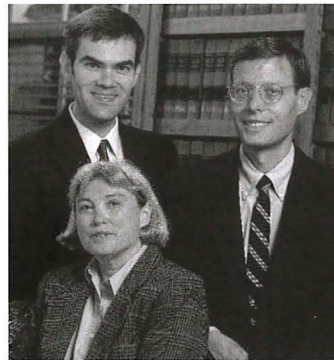
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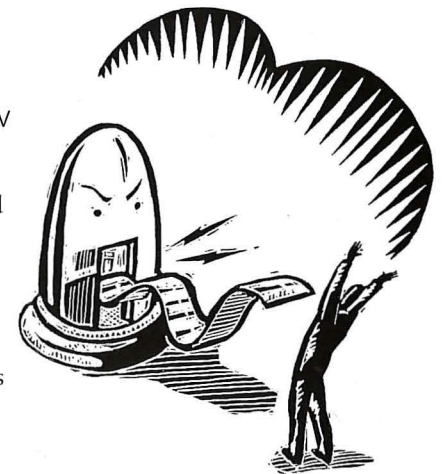
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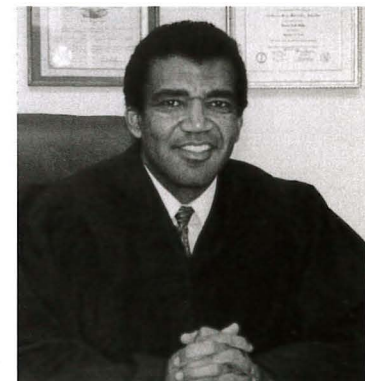
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message from the dean

The tragic events of September 11 and its aftermath have reminded us of the need to be vigilant in protecting our sacred values and our way of life. So far as this university is concerned, this way of life includes scrupulous commitment to integrity, civility, and justice. But what is the law school's signal contribution? Our faculty, administration, and student body are working diligently to come up with answers to this question.

One contribution has been the creation of fora for public debate about the difficult, yet pressing, issues swirling around the incidents of terrorism and the world's response. Law schools are a place for informed reflection upon what it means to live under a constitution and under the rule of law. Our law school, given its rich comparative and international law traditions, is also a place for reflection upon the ways in which American legal institutions shape and are shaped by systems and understandings in other

countries and in the world community. There are no silver linings which one can draw from this enduring tragedy.

However, we have at least forged, over the last few weeks, a continuing conversation within our law school about the nature of justice and the contributions of the rule of law and of democracy to dismantling systems of oppression and injustice. Even while our students are deeply immersed in their core legal subjects, we have provided occasions and opportunities to step out of ordinary law school life and reflect upon what it means to be a law student and lawyer in this time of war.

Let me share with you a memo I wrote for our law school community shortly after the September 11 tragedy:

After a tragic and deeply emotional two weeks of suffering and mourning, it is appropriate both to pause and reflect on a basic human level upon the horrible tragedy wrought by the terrorist attacks in New York and Washington, DC, and also to consider carefully how we as lawyers, law students, and participants in the educational process at USD, can respond in our law school community. Many of us are searching for answers, for emotional relief, and for ways to help.

Although there are great emotions swirling around, emotions fueled by personal loss, empathy, and passion, we cannot and will not tolerate in our law school any negative actions directed toward any members of our community, particularly those from the Middle East and of Middle Eastern descent. We have, in our midst, students of all religions and many ethnic backgrounds. We are all entitled to work and study in this law school peacefully and with fair treatment. On another occasion, I explained that the law school is absolutely a "hate-free zone." I want to reiterate that this goes for expressions and demonstrations of hate toward anyone for any reason based upon his or her background, religion, and national origin. And it probably goes without saying that discrimination on the basis of national origin is against law school regulation and is, even more basically, against the law.

We are simply one community in a nation of communities, which are all suffering and are all coping with the events of last week and the events still to come. We at USD have reached out institutionally to our friends in East Coast law schools to express our concern and to offer our help. Of course, there are many relief efforts underway in San Diego and throughout the world. I urge you to participate in these efforts, even while we continue our law school studies as normal as possible under the circumstances. At the same time, I want to make clear that this law school community will lend its voice to the growing movement toward national pride and away from hate, toward love and compassion for all peoples and against violence and prejudice, toward peace and against terrorism.

To turn from world events to our own backyard, let me assure of all of you that the law school is moving forward successfully and imaginatively. This issue of the *Advocate* describes a number of interesting endeavors taking place at the University of San Diego. I hope you will contact me (danr@sandiego.edu) if you would like any further information about these endeavors or about anything else going on around the law school. I welcome your advice and input.



DANIEL B. RODRIGUEZ
DEAN AND PROFESSOR OF LAW

Thrusters on

Theodore J. "Ted" Boutrous Jr. '87, profiled in this issue, describes the University of San Diego School of Law as "a great launching pad." A close look at his career and the distinguished careers of other USD law alumni profiled in this issue shows just how fitting that metaphor is.

In the fourteen years since he graduated as class valedictorian, Boutrous, a partner in Gibson, Dunn & Crutcher's Los Angeles office, has obtained reversals or reductions of damage awards totaling more than \$1 billion, and has been described in the *National Law Journal* as "a leading voice in the tort reform movement."

As executive director of the Utility Consumers Action Network (UCAN), Michael Shames '83 spearheaded the fight to protect consumers against ratepayer gouging during California's electricity crisis. In 2001, Shames was ubiquitous, with his image and voice seemingly on every evening news program, and his fiery rhetoric quoted in every newspaper.

In September 2001, Justice Michael J. Streit '75 became the first USD School of Law graduate to be appointed to the highest court of a state—the Iowa Supreme Court. And in 2000, Judge Richard Fields, LL.M. '88, became the first African-American judge in Riverside County's 107-year history.

Significantly, in their profiles each of these remarkable and diverse alumni talked about how critical their legal education at USD was to their later success. Their achievements demonstrate that the USD School of Law offers a first-rate education that provides its graduates with unlimited opportunities.

One more thought: The successes of USD Law alumni should not be kept secret. Please take a moment to fill out and mail to us the postcard included in this issue, so we can tell your fellow alumni and others about your recent achievements. Who knows—you might become the subject of a feature story (or at least a mention in *Class Action*) in the next issue of the *Advocate*.



George Decker

GEORGE DECKER
DIRECTOR OF PUBLICATIONS

Five New Instructors Begin

Lawyering Skills Program Debuts New Lineup

What's new in the Lawyering Skills I program? A more apt question would be, "Who's new?"—since five of the program's seven instructors are new arrivals to the USD School of Law.

"We are very fortunate to have assembled an excellent group of instructors for the Lawyering Skills I program this academic year," says Leslie Oster, program director. "They're great—they represent an infusion of energy and new ideas into the program." The five new instructors were selected from a group of more than 100 applicants.

Oster, who began teaching in the program last year, was named director in July 2001. She served as assistant dean and dean of students at University of California, Berkeley, Boalt Hall School of Law for 11 years and directed its legal writing and moot court programs before coming to USD.

The Lawyering Skills faculty also includes the following instructors:

- **Michael Beeman** graduated in 1990 from Columbia Law School, where he was editor-in-chief of the *Columbia Law Review*. After clerking for the late Hon. Alvin B. Rubin of the U.S. Court of Appeals for the Fifth Circuit, Beeman practiced as a civil litigator in Los Angeles for eight years.

- **Toni Martinson** received her J.D. in 1993, *summa cum laude*, from the University of Arizona College of Law, where she was a member of the *Arizona Law Review* and was elected to the Order of the Coif. She then worked for civil litigation firms in Southern California before joining the Lawyering Skills staff.

- **Stephanie Shingleton** comes to the Lawyering Skills faculty from Luce Forward in San Diego. Previously, she was with Pepper, Hamilton in Philadelphia. She is a 1995 *magna cum laude* graduate of Temple University School of Law, where she was managing editor of the *Temple Law Review*.

From left (seated), Leslie Oster, David Simon; (standing) Stephanie Shingleton, Toni Martinson, Heather Murr, Michael Beeman and Linda Barris.

- **David Simon** comes to USD from Guam, where he practiced in a firm specializing in banking and creditor law. A 1997 *magna cum laude* graduate of the University of Miami, Simon was a member of the *University of Miami Law Review*, and was elected to the Order of the Coif.

- **Heather Murr** joins the staff as an adjunct instructor to teach one section of Lawyering Skills in the evening program. She is a *cum laude* graduate of Hastings College of the Law, and is currently an associate with Cooley Godward in San Diego.

- In addition to the program's new instructors, **Linda Barris** re-joins USD's Lawyering Skills staff for her fourth year. A 1992 graduate of the University of San Diego School of Law, Barris worked as an attorney at various firms in town and served as a reference librarian for the San Diego County Public Law Library before joining the staff. The program's new instructors have benefited greatly from her three years of experience in the program.



Attractive, Navigable and Interactive

New Website Goes Online

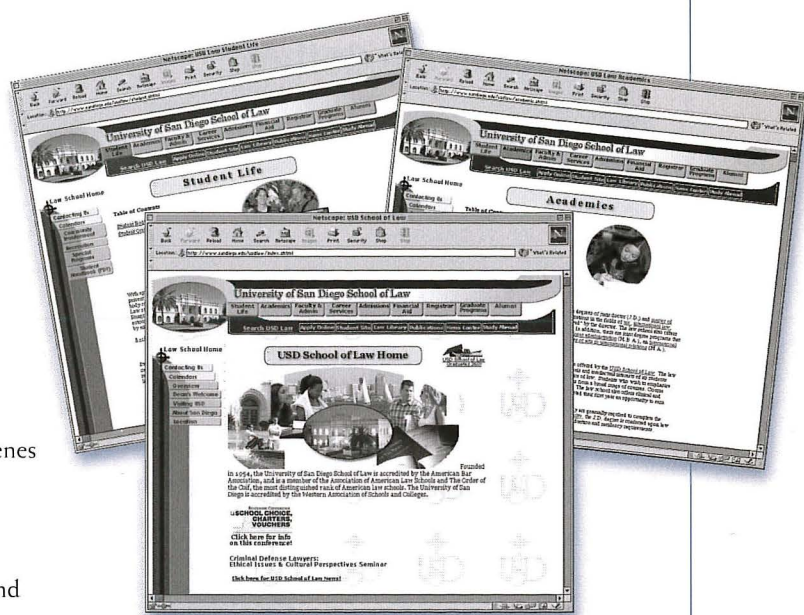
October 17, 2001 marked the debut of the USD School of Law's new and improved website. Replacing a four-year-old design, the modern and attractive website is more interactive and much easier to navigate than the previous one.

Its exciting features include:

- A full page of photos from the Class of 2001 graduation
- Photo "slide shows" of USD School of Law students and scenes
- A search engine powered by Google.com
- Online applications for the J.D. and graduate programs
- A news center
- A message form to send us your story ideas, alumni news, and comments and suggestions for the *Advocate*.

What is perhaps most remarkable about the website's overhaul, carried out between May and October 2001, was that it was done entirely "in-house," without the help (or expense) of outside contractors. And while it was a collaborative effort, with many within the School of Law community rendering help and providing feedback, one of our law students, Ethan Watts '04, skillfully performed the lion's share of the development and design work.

So check it out for yourself—the website's address is www.sandiego.edu/usdlaw.

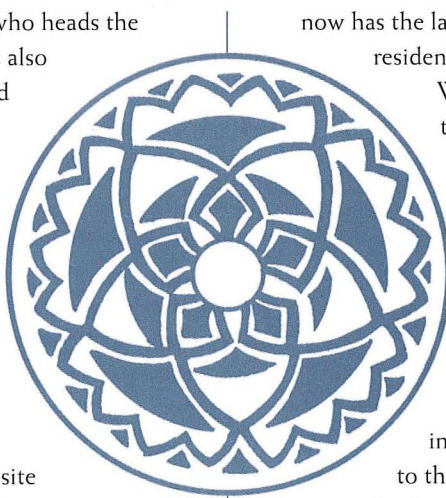


Website a Key Resource

Director Enlightens on Native American Issues

A USD School of Law professor who heads the Legal Research Center (LRC) is also known for her presentations and scholarship on Native American history, law and culture.

Nancy Carol Carter, professor and LRC Director since 1987, has created a website specifically for students, staff and interested others to view the history of Native Americans in San Diego. It also gives information on the resources that are available to Native American students at USD. She says she decided to create a Native American website after receiving a cultural awareness grant in 1998, and adds that, according to the 2000 U.S. census, California



now has the largest number of Native Americans residents of any state.

Within the last year, Carter has also made two presentations on Native American economic and cultural issues, including Indian gaming in San Diego County and Indian tribal sovereignty.

"The reason I presented something on the gaming issue was that I was unhappy with the lack of leadership in framing this issue. I like people to know the facts on this. For so long Indians were invisible. Gaming has brought their issues to the forefront," Carter says.

By the way, you can access her website at www.sandiego.edu/nativeamerican.

Fall 2001 Photo Gallery

Dean Rodriguez Speaks Aboard the U.S.S. Tarawa

On the deck of the U.S.S. Tarawa at U.S. Naval Station San Diego on Sept. 4, Dean Daniel B. Rodriguez learns about the ship's capabilities.

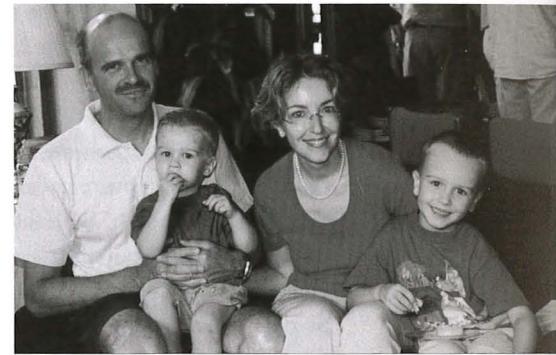


Graduate Student Fall 2001 Reception

Judy Bruner, assistant dean for graduate programs, with Appaswamy Pajanor and Beatrice Njenga.



Markus and Marlene Fichter with their sons.



Brandon Porter and Professor Laurence Claus.



Rita Roos-Niedermann and Professor Hugh Friedman.

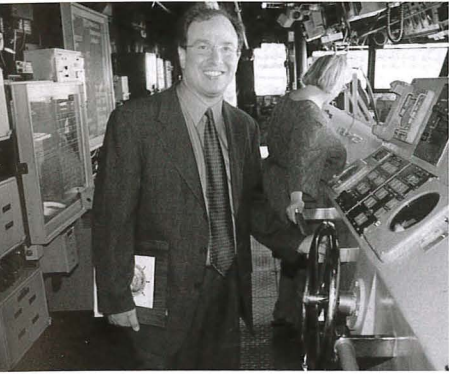
The Red Mass at USD



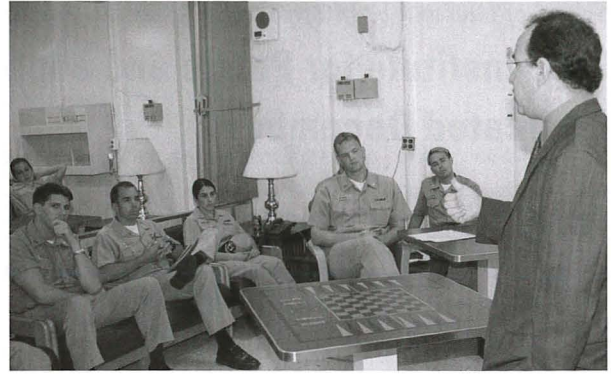
Monsignor Mark Campbell; Charles S. LiMandri, Esq.; Donald G. Rez, Esq.; Dean Daniel B. Rodriguez; and Monsignor Daniel J. Dillabough, USD Vice President, Mission and Ministry, gather before The Red Mass on October 1.

Members of the San Diego legal community assemble for the Red Mass in Founders Chapel.

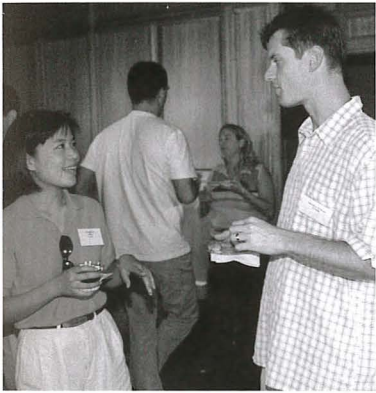




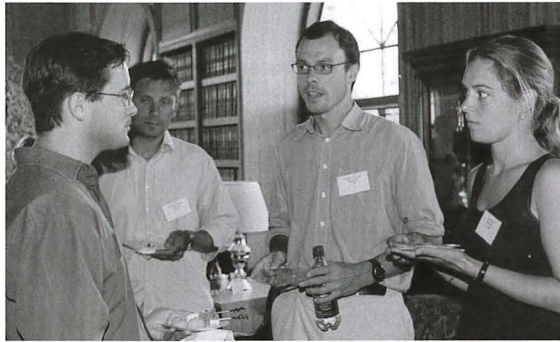
Dean Rodriguez at the helm on the bridge of the U.S.S. Tarawa.



Dean Rodriguez speaks to judge advocate general officers aboard the U.S.S. Tarawa.



Zhongli Yi and Matthew Watson.



Brandon Porter, Sinen Sorenson, Thomas Frobert and Anne Staerk.

Katja Scherbauer, Tilman Wink and Juan Carlos Arouesty.



Sabine Siehr, Barbara Moser and Professor Herbert Lazerow.

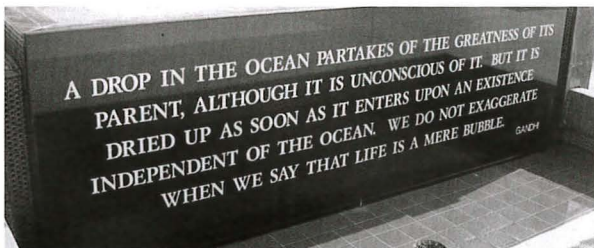


Dean Rodriguez calls participants to worship at the opening of The Red Mass.



School of Law will be Integral to its Academic Program

Kroc Institute for Peace and Justice Dedicated December 5



PHOTOS BY BRIGID ANN BENNETT



The much anticipated dedication of the Joan B. Kroc Institute for Peace and Justice (IPJ) took place December 5, 2001. Created at USD with a \$25 million gift from local philanthropist Joan B. Kroc, the IPJ's goals are to creatively promote conflict resolution, peace building, human rights and cross-cultural respect through education, research and outreach. Legal instruction will be integral to the IPJ's graduate curriculum.

Served 11 Years with UCSD CONNECT

Ekstrom Named Assistant Dean for Development and External Relations

Carole Ekstrom has been appointed Assistant Dean for Development and External Relations, effective November 1, 2001. She now directs the USD School of Law's alumni relations and fundraising efforts.

Before coming to USD, Ekstrom was membership and sponsorship director for UCSD CONNECT, a highly successful program which brought together lawyers and high technology clients in the San Diego area. She greatly increased UCSD CONNECT's membership during her 11 years with the organization and raised more than \$10 million through its fundraising programs.

"We are very, very excited Carole has come on board," says Dean Daniel B. Rodriguez. "She brings some great talents, a wide range of experience, and a vast assortment of professional friendships."

"I came here because I saw a dean, a faculty and an administration dedicated to excellence," says Ekstrom. "I am passionate about this law school. This is a school whose time has come."



2001 Distinguished Alumni Award Co-recipient

Alumnus Appointed to Iowa Supreme Court

The class of 1975 has produced an alumnus who recently became a state supreme court justice—in fact, the first USD School of Law graduate to be appointed to the highest court of a state. In September 2001, Justice Michael J. Streit was elevated to the Iowa Supreme Court by Iowa Governor Tom Vilsack. Justice Streit was also recently honored as a co-recipient of the USD School of Law Distinguished Alumni Award—an honor shared with San Diego Superior Court Judge Thomas J. Whelan '65 (see related story on page 11).

Justice Streit recently responded to questions about his new appointment:

Has your appointment to the Iowa Supreme Court changed the dynamics of the court in any particular way?
 "I am sure that I will be a contributing member to the Iowa Supreme Court in many ways. We are a seven-member court. I have served for five years on the Iowa Court of Appeals where the deliberative process of deciding cases was pretty freewheeling and energetic. In the Iowa Supreme Court, the collective decision making process is much more structured. I think I bring a certain dynamic style of conversation to the



Dean Daniel B. Rodriguez presents Justice Michael J. Streit '75 with the Distinguished Alumni Award on October 30, 2001.

bench. In my first session sitting at the conference table with the court, I was gently chastised several times about speaking out of order. I have to learn to be a better listener and to contribute to the discussion when it is my turn. I think I was supposed to have learned this in grade school. Heaven knows the nuns tried to teach me this.

The one thing I hope I will contribute to the court will be my sense of people and the public role being played by our supreme court. I do a considerable amount of public speaking to all types of groups including grade school and high school children, college and law school students. I will continue doing that and will be able to represent the court in the public role in the future."

In examining the profiles of the other Iowa Supreme Court justices, you seem to have come up the ranks in a similar fashion. Do you think you will bring a different perspective in any way to the Iowa Supreme Court?

"I bring a different perspective from my extensive trial work that I engaged in both as a trial attorney for nine years and as a trial judge for the thirteen years before I served on the Court of Appeals. Also, I come from a small town in Iowa and practiced law in a small town. Only one other justice has this background. Significantly, only one other Justice went to school away from Iowa. My education at the University of San Diego had a strong impact on my view of the law and the role it plays in everyday life."

Your background shows how devoted you have been in being involved outside of the office, particularly in public speaking and working with youth groups—will you be able to continue to do that?

"I am particularly devoted to working with young people and with people that are interested in our legal system. I have devoted considerable energies to public speaking and working with young people concerning our legal system. The best opportunity for lawyers and judges to improve the legal system and to better serve our social order is to be involved with people—to make the court system their court system. Education of our citizens about our functions and what our goals are help us do this."

continued on page 10

What are your goals in connection with your service to the Iowa Supreme Court?

"My main goal is to do justice—to give everyone an opportunity to present their concerns and matters before the court and to give them a fair and impartial decision. Besides these high goals, I hope that our Iowa Supreme Court will communicate better with the citizens of our state on what the purpose of our court is and how we serve the public in what we do."

Can you recall anything in particular about your education at the USD School of Law that helped you attain this degree of professional success?

"The education that I received at the University of San Diego was particularly helpful to me in that it impressed upon me the importance of many factors that are important to a lawyer serving our citizens. The University of San Diego helped me in many basic areas of my legal education. It contributed to my knowledge, professionalism, and gave me a broad perspective on the social implications of legal issues. USD added to my ability to communicate effectively. The University works diligently on helping young students become lawyers that think like lawyers with clarity, precision and analytic skill. Also, the University of San Diego has a well-integrated program with classroom learning and clinic work which I took advantage of while at the University. I was able to work at the San Diego City Attorney's Office my third year and had considerable experience trying cases in real courtrooms in San Diego. My work with the *San Diego Law Review* was vital to my development and eventual placement on the Iowa Supreme Court."

USD Law Faculty Featured

'84 Grad Hosts Law-Related Radio Show

You've heard of Court TV? Thanks to Bob Gaglione '84, the San Diego area has what could be called "Law Radio."

Gaglione, a partner in the law firm Gaglione, Coleman & Greene, hosts the *Primerus Law Hour*, a law-related interview program that airs Saturdays between 1 and 2 p.m. on KSDO AM 1130.

Shortly after Gaglione's firm joined the Primerus family of law firms in 1997, he was contacted by someone at Newsradio 600 KOGO in San Diego (which initially broadcast the *Primerus Law Hour*), who asked him to get involved in the program.

"The program has given me the opportunity to work with many people who I have admired for many years and I otherwise would likely have never met," says Gaglione. "Notable examples include Joan Embery, Jerry Coleman, Father Joe Carroll, Mayor Dick Murphy, Dick Enberg, Ralph Nader and Gerry Spence."

Recent programs also have featured many USD School of Law faculty members, including Associate Dean Kevin Cole and Prof. Gail Heriot on "Litigation Privileges: Are Your Confidential Communications Really Confidential?"; Dean Daniel Rodriguez on "So You Want to Go to Law School?"; Prof. Jorge Vargas on "U.S.-Mexico Relations"; Prof. Maimon Schwartzschild and Prof. Michael Ramsey on "The International and National Response to the Terrorist Attacks on America"; and Prof. Larry Alexander and Prof. Heriot on "National Security and Civil Rights."

"It's very gratifying to receive positive feedback that people enjoy the show, especially since everyone who appears on the show is doing it *pro bono* and is giving up valuable time on their weekends for public service," says Gaglione.



Bob Gaglione '84 (left) interviews Dean Daniel B. Rodriguez on *The Primerus Law Hour*.

Dedicated to Community Service

Alumnus Is First African-American Judge in Riverside County

In April 2000, Richard Fields, LL.M. '88, became the first African-American judge in Riverside County's 107-year history. "I'm the first and *only* African-American judge in Riverside County," Fields points out. "I'm hoping that will change."

Fields, who received his LL.M. in taxation from USD, began his legal career by giving legal advice to the poor through a fellowship from Howard University in Washington, D.C. He practiced civil, criminal, Social Security and tax law in California before joining the Riverside County public defender's office.

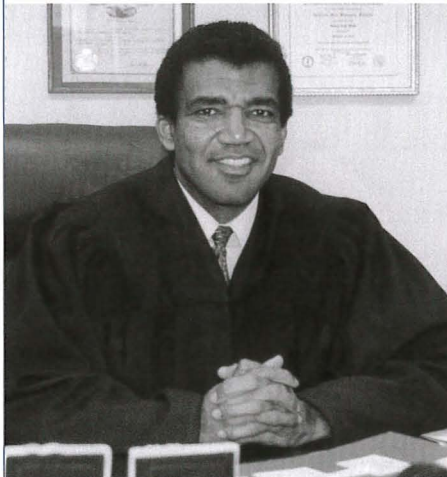
Before Fields was appointed to the Superior Court, he served as a court commissioner for more than nine years. During that time, he heard arraignments and misdemeanor jury trials, as well as unlawful detainer and small claims calendars. As a judge, he hears cases involving drug offenses and mental health issues.

Today, Fields has high praise for and fond memories of the tax law program at USD.

"I thought the tax law program was superior," says Fields. "It was great because I had a class with practical

training that taught all the IRS forms and procedures. By the time you graduated from the program, you had learned as much about business as you did about taxation—it was really good to understand the underlying transactions."

Fields has dedicated his life to community service. As a member of the Riverside Sunrise Rotary Club, he has mentored students, helped with major immunization drives, and assisted at the Inland AIDS Walk. He has also been a mock trial judge and a judicial mentor for the past nine years. Fields also has been a speaker/mentor for the program, "The Endangered Black Male: A Call to Action," and currently serves as president of the Leo A. Deegan Inn of Court. He has been cited for outstanding service by the Riverside County Board of Supervisors, and in 1997 received the outstanding achievement award of the African-American Attorneys of the Inland Empire.



The Hon. Richard Fields, LL.M. '88 is the first African-American judge in Riverside County's 107-year history.

Justice Streit and Judge Whelan Named 2001 Distinguished Alumni

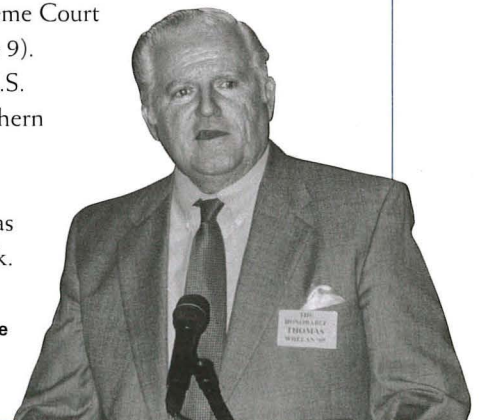
On October 30, 2001, Dean Daniel Rodriguez presented Justice Michael J. Streit '75, of the Iowa Supreme Court, and U.S. District Judge Thomas J. Whelan '65, of the Southern District of California, with the 2001 Distinguished Alumni Award.

The Award is the Law Alumni Association Board of Directors' highest honor. The presentation took place at a special alumni reception and luncheon at the Wyndham Emerald Plaza in San Diego.

In September 2001, Governor Thomas Vilsack of Iowa appointed Streit, a five-year veteran of the Iowa Court of

Appeals, to the Iowa Supreme Court (see related article on page 9). Judge Whelan became a U.S. District Judge for the Southern District of California in November 1998. He has lectured extensively and has been active in *pro bono* work.

**U.S. District Judge
Thomas J. Whelan '65**



**MICHAEL SHAMES
USES INTELLECT AND DETERMINATION TO
PROTECT ELECTRICITY CONSUMERS**

high-voltage consumer advocate



JUST AS A PRIZEFIGHTER IS always wary of the determination fueling an opponent dubbed the underdog, utility companies have learned better than to underestimate consumer advocate Michael Shames '83.

Shames, a man who loves few things more than a challenge, has been crowned the new white knight of California electricity customers. He fights the foes—utility companies—on behalf of consumers and wins on most occasions.

"A common theme throughout my life has been people telling me something wasn't possible, that it couldn't be done," Shames says. "But I'm competitive by nature, which means that being told something can't be done makes me work even harder to do it."

Others say it's more than just a fighting spirit that makes Shames a great advocate.

"Michael possesses a rare combination of great warmth toward people and a keen intellect. Those two things really are what have made him such an outstanding leader and advocate today," says Robert Simmons, a retired USD law professor and friend of Shames. "I can't think of anyone other than Michael that I'd want on my side fighting with me."

ON THE BATTLEFRONT

These days the 45-year-old can't go to the grocery store or eat at a restaurant without being stopped by someone with a question or comment on how utilities are taking advantage of consumers.

As the executive director of the Utility Consumers' Action Network, known appropriately by its acronym UCAN, Shames now makes regular appearances before the media, government entities and consumers explaining how energy, telecommunications, cable, automobile, water and even oil companies are abusing consumers.

Most recently, Shames' primary focus has been the California energy utilities. Deregulated by legislation passed in September 1997, the state's market is seriously flawed, Shames says.

In the face of periodic rolling blackouts and electricity prices that have soared from an average of 2.5 cents a kilowatt hour to an average of 30 cents a kilowatt hour, Shames has frequently asked government to step in and take over until the broken market can be fixed. While some in government have listened and taken steps to ease the brunt of the blow, Shames argues that more must be done as quickly as possible.

"What is happening to us now is... a tragedy," he says. "These people who got us into this crisis thought, 'We're smart people and there are a few people who think like us, so this has to work,' without giving any thought to how it would actually work. The consumers just got in the way of their plans."

STORY BY KIMBERLY LAMKE

PHOTOS BY RODNEY NAKAMOTO, GARY PAYNE
AND GEORGE DECKER



high-voltage consumer advocate

Shames predicted such a crisis would result from deregulating the energy market in California more than a year before the brunt of the serious rate hikes struck.

In the long term, Shames believes that local and regional partnerships are the answer to our energy woes and perhaps some of our environmental concerns. He wants to encourage energy technology companies that have developed cleaner, lower cost energy technologies to relocate to San Diego. He would also like to see the region forge an alliance with Baja California, where generation technology could be developed with lower manufacturing and assembly costs, while providing the region with ways to produce more power with less pollution.

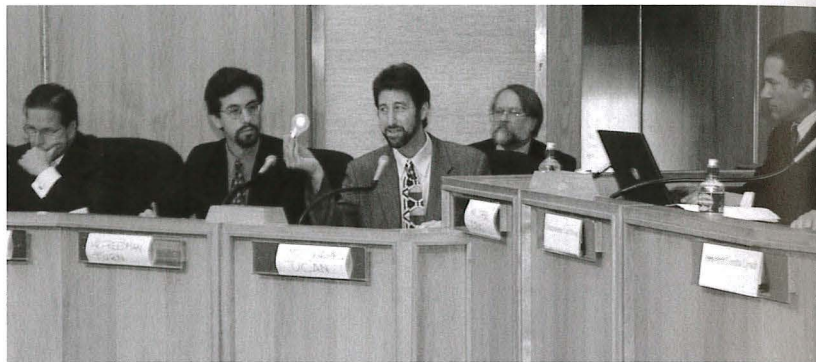
ONCE A FIGHTER, ALWAYS A FIGHTER

Shames says he's always had an interest in helping the public and protecting the environment, though it wasn't until high school that he realized that advocacy is where he would make his mark.

As a high school freshman, Shames' best friend was killed riding his bicycle to school near his home outside of Brooklyn, New York. Following his friend's death, Shames, who notes that bike paths "weren't even a thought" where he lived, lobbied the town to build a bike lane. "I was hooked," he said. "I was an activist from then on."

After graduating high school in 1974, Shames attended Washington University in St. Louis for two years, then established California residency and finished his undergraduate career at UCLA, earning dual bachelor's degrees in political science and English in 1977.

Realizing that he would need to become an attorney to be the most effective public advocate, Shames decided to attend law school. He wasn't willing, however, to owe \$100,000 at the end of his schooling. To ensure he'd graduate debt-free and be able to do the public advocacy law he desired right after graduation, Shames took a job at a mortgage company



Top: Michael Shames at UCAN's offices in San Diego; Bottom: Shames makes a point with his magical light bulb at a California Public Utilities Commission hearing in San Diego.

for a year to raise the funds for all of his law school tuition.

While deciding on a law school, Shames relocated to San Diego and began volunteering at the California Public Interest Research Group (CalPIRG) where he ran the consumer hotline.

TOOLS OF THE TRADE

While working at CalPIRG, Shames heard about the then newly-forming Center for Public Interest Law (CPIL) at the USD School of Law. Intrigued by the possibility of totally focusing his time at law school on public interest law, he went to the campus to meet Professor Robert C. Fellmeth, CPIL's new director.

Shames remembers that Fellmeth was somewhat taken aback by his total focus on practicing public interest law, but welcomed him to pursue his goals at USD.

"He first stood out when, in the first semester, he introduced his project idea, ... creating a citizens' utility board," Fellmeth recalls. "I don't think there was any such thing here at that point, and it seemed a challenge to him to see if he could move the ball forward."

Shames' goal was to put an insert in customers' electricity bills asking them to join a citizens' board if they felt rates were



Clockwise, from left: Shames with former San Diego Mayor Maureen O'Connor (center) and other leaders in the fight against the attempted takeover of SDG&E by Southern California Edison; Shames in Alaska's Kenai Peninsula; and with wife Deborah Davis in the Costa Rican rain forest.

too high. The board would then use the money to hire experts to fight future rate increases.

"In 1979, SDG&E's rates were some of the highest rates in the country. They were not being vigorous stewards of the public interest—something needed to be done," Shames says. Shames and Fellmeth both recall that the young law student's project became much more involved than they had originally planned, when the California Public Utilities Commission required Shames to put SDG&E on trial to prove the citizens' board was warranted.

"We did it together. It was a highly public and complicated case and Michael needed someone experienced with him," Fellmeth recalls. "But it was clearly his idea and his work—my role was merely procedural. It was his work that mattered."

Shames says, however, that without Fellmeth's mentoring and support, not only would he have likely lost the case, but he'd have missed learning many of the skills he needed to be the advocate that he is today.

"I remember that when we started, it was Bob and I sitting at a table, while SDG&E had four attorneys and all of their assistants sitting with them. I felt like they were going to tear us to shreds, but Bob was totally unaffected by it. He taught me you don't have to have all of that behind you to win. He was also flexible and quick on his feet, something that I have to be every day," Shames says.

The Public Utilities Commission eventually approved Shames' petition for the inserts and the Citizen's Utility Board, and in 1983 he helped usher in the birth of what is today UCAN.

With the intention of starting his own consumer law practice, Shames distanced himself somewhat from UCAN—that is, until he received a call informing him that UCAN's executive director had been fired for mismanaging the organization and asking him if could he step in until someone new could be found.

That was in 1985, and Shames has held the post ever since. He said he tried to find a new executive director, but no applicant ever seemed to possess the skill set necessary to run UCAN. Shames really settled into the position in 1989, when the group shifted into high gear to fight the merger between Southern California Edison and SDG&E. Like most of the cases he takes on, he won and the merger was defeated.



THE WORK NEVER ENDS

These days, Shames is once again aligned with a coalition of civic, legal and government groups to fight the latest injustices brought on by the utility companies. He typically begins his days with a run at 5:30 a.m., and he arrives at the UCAN offices no later than 7:30 every morning. He leaves the office usually between 5 and 5:30 p.m., unless he's traveling. After eating dinner, he usually works at his home in the Linda Vista section of San Diego, answering e-mail for about four hours.

Shames' wife of 14 years, Deborah Davis, is an entrepreneur and advocate in her own right, running an eco-friendly dry cleaning business, "Cleaner by Nature," in the Los Angeles area. She met Shames while he was working as Robert Simmons' campaign manager in his 1984 congressional bid. Today, both are still pursuing their passions and have made the decision to live apart half of the week to achieve their goals.

"He's very intelligent, very dedicated to what he is doing," Davis says. "He loves what he does and that is very appealing. We're both very committed to what we do and that's why we've made some of the decisions we have—so we can do what is important to make a difference in the world."

When evaluating his contributions, Shames says he'd change little, if anything, about his life and how he's lived it.

"I work way too much, but I feel really good about what I've done when I go to bed at night," Shames says. "I've never been that impressed with money, but I have always been motivated to make a difference. And I think I do that with what I'm doing now. I feel like I lead a good life—I'm married, I own a home, I travel, I enjoy the arts. It's a good life."

Keynote speaker, the Honorable Guido Calabresi, U.S. Court of Appeals for the Second Circuit, is greeted by USD President Alice B. Hayes.

Congratulations are in order for Kamran Khawar '01 and Babak Adib '01.



2001 Grad

On Saturday, May 26, 2001, the University of San Diego School of Law awarded diplomas to more than 360 graduates before an assemblage of about 2,000 proud relatives and friends in the Jenny Craig Pavilion.

The Hon. Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, was the main speaker and a recipient of an honorary degree. In his remarks, Judge Calabresi urged graduates to fight for equality for all, despite the challenges. Professor Thomas Smith was awarded the 2000-2001 Thorsnes Prize for Excellence in Teaching, and Professor Michael Moore was awarded the 2000-2001 Thorsnes Prize for Outstanding Legal Scholarship.



The Ulises family beams with pride for Chrissy Ulises '01.



The Jenny Craig Pavilion hosts its first commencement—the School of Law's Class of 2001.

Terri Bonny '01 glows with anticipation of a bright future.



Christina McClurg '01 stands tall as she poses with her family.



Sylvia Esparza '01 is all smiles on graduation day.



PHOTOS BY PABLO MASON

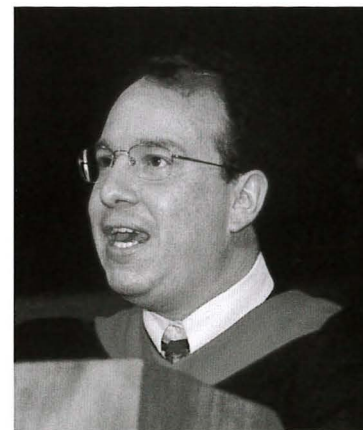
uation

"The fact is that we are part of a profession which is deeply imbedded in the American social fabric and is therefore one in which all Americans have a vested interest and a stake. Law and the legal system are part of the thread which holds together our polity, our society, and perhaps to an extent we perceive only dimly, our culture. It is true in a very deep and significant sense that the contours of our legal system and the nature of our profession are not exclusively the prerogative of lawyers, but are part of the life of citizens—of all citizens.

And that is exactly the way it should be. Everyone in this wonderful sports facility—not only those sitting on the basketball floor, but those friends and relatives sitting proudly in the stands on this graduation day—has a very important stake in how the legal system operates. Not to worry you too much, but they have a stake in how you all perform your professional roles. How you choose to occupy your roles as lawyers will affect our lives, and their lives, and the lives of those not even born.

So, my advice to those of you who might be irritated at the fact that your cab driver believes he knows as much about the conditions for a valid contract or the free exercise of religion or the law of springing interests as those of you who have parted with tens of thousands of dollars and three or four years of your blood, sweat and tears, I say: Cut them some slack. The fate of the legal system may be in your hands, but the consequences of you messing things up—which, as University of San Diego law grads I know you will not do—will come crashing down on their heads."

Dean Daniel B. Rodriguez
University of San Diego School of Law



Dean Rodriguez addresses the 2001 graduating class.

What more could you ask for? Mike Lewis '01 surrounded by family and friends.

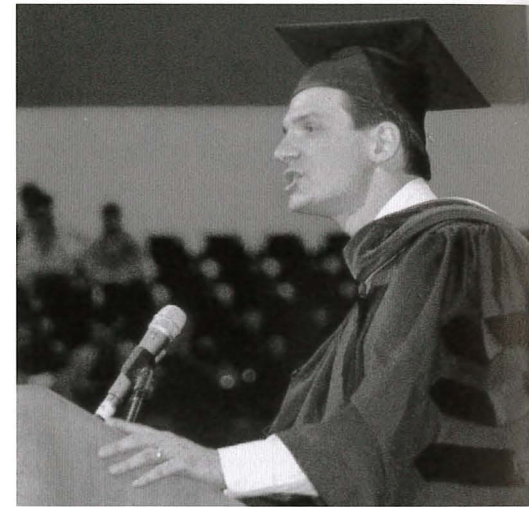


2001 Graduation

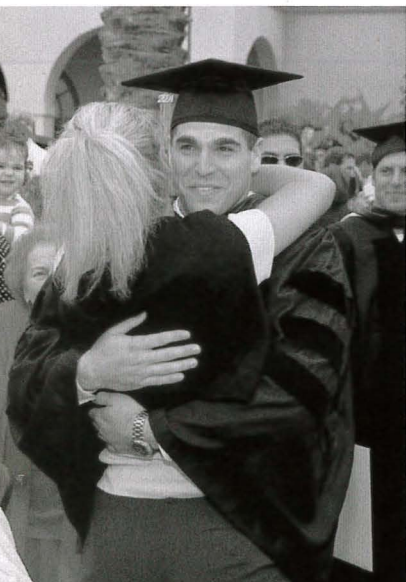
"In fact, it is a common view that the legal profession is the target of more cynicism than any other profession. Just turn on the television or go to the movies. The picture isn't pretty. If the lawyer isn't some greedy evil villain or the devil himself, then she's either a bumbling idiot or dancing with an imaginary baby. And, of course, there are the lawyer jokes that we all know too well.

However, what often goes unnoticed are all the good things we can do with our degrees. Sure, a J.D. helps bring financial security, but there is so much more we can accomplish. Classmates, when we walk out of this hall today, we will have the capability, the responsibility, to give back to society. Every single one of us will have the power to better the world we live in, be it through our daily jobs, our pro bono efforts, or simple community involvement. We must become the change we want to see."

John A. Jurata, Jr. '01
Valedictorian



Valedictorian John A. Jurata, Jr. '01
inspires his fellow classmates.



Precious moments are shared between
Truth Fisher '01 and Kelly Healy '01.

A celebratory hug for
Kenneth Jay '01.



Graduates Receive Awards

Center for Public Interest Law and Children's Advocacy Institute

Outstanding Contributor to the California Regulatory Law Reporter:

Jenny Li

Outstanding Public Interest Advocate Award:

Jonathon Steer

James A. D'Angelo Outstanding Child Advocate Award:

Policy Clinic: Eva Turella

Dependency Clinic: Steven Andreacola, Caroline Clark

Legal Clinic Awards

Outstanding Civil Clinic Intern:

Mark Lee

Outstanding Criminal Clinic Interns:

Timothy Connors (Prosecutor), Carlos Guzmán (Defense)

Outstanding Land Use Clinic Intern:

Helen Ghio

Outstanding Tax Clinic Intern:

Maria Vasquez

Outstanding Environmental Clinic Intern:

Professor Robert & Dolores Simmons Award for Excellence in Environmental Law Practice:

Lisa Cawley

International Academy of Trial Lawyers Award

Excellence in Advocacy Course and Trial Court Work:

John A. Jurata, Jr.

Jenny Li '01 is recognized as Outstanding Contributor to the California Regulatory Law Reporter by Professor Julie Fellmeth '83.

Community Defenders, Inc. Award

A Demonstrated Commitment to Indigent Criminal Defense:

Tiffany Tisen

American Bankruptcy Institute Medal of Excellence Award

Christopher DeSaulniers

National Association of Women Lawyers Award

Holly Sullivan

Appellate Moot Court Program

Board Members:

Roland Achtel, Erin Alexander, Jeffrey Carvalho, Lara Clinton, Marcus DeBose, Kathryn Felice Zeitung, Michael Fernandez, Truth Fisher, Brian Fogarty, Kelly Menck, Victor Ou, Kaelyn Romey, Michael Samardzija, Kristian Trocha, Stefanie Valentini, Sidney Watts, Heather Wells

Chair Award:

Brian Fogarty

Practicing Law Institute Awards

For Excellence in Moot Court:

Roland Achtel, Erin Alexander, Lara Clinton, Marcus DeBose, Truth Fisher, Brian Fogarty, Kaelyn Romey, Heather Wells

A special quality shows through as Diana Githens presents Brian Fogarty '01 with the Chair Award from the Appellate Moot Court Program.



Mark A. Lobello Award

Excellence in Moot Court:

Brian Fogarty

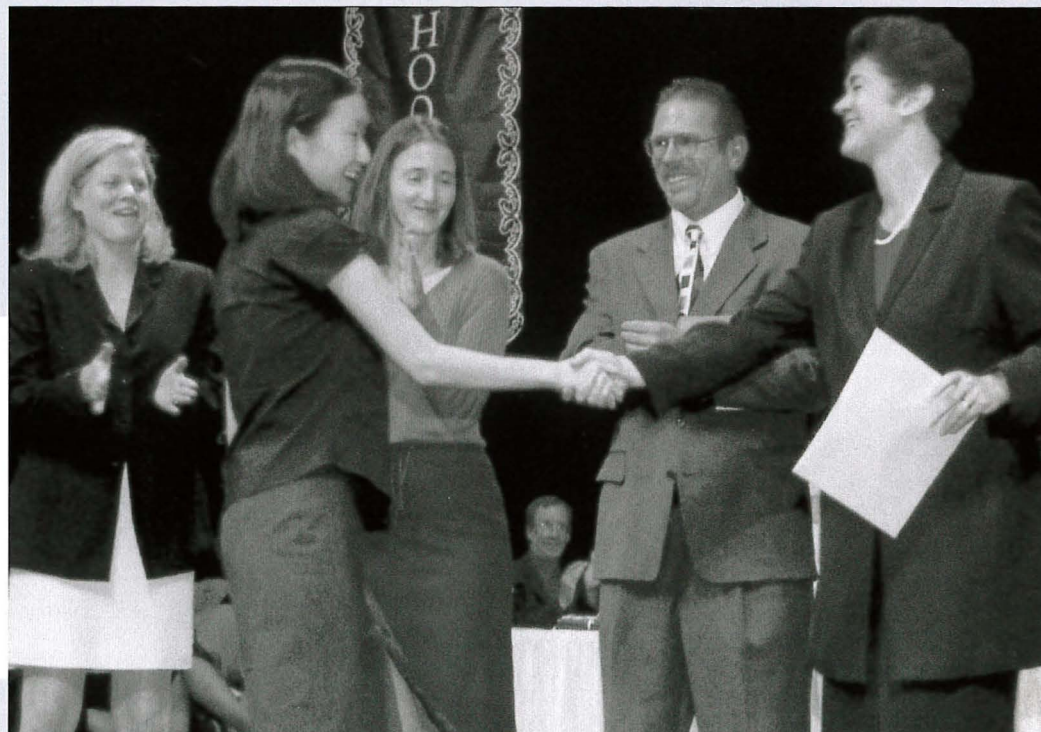
Mock Trial Program

Karla Bell, Souleymane Diallo, Melissa Fleming, Caroline Karachairlian, Leanne Le Mon, Jason Murphy, Elizabeth Schulte, Eric Strongin, Zaki Zehawi

American Board of Trial Advocates Award

Outstanding Trial Competition Team:

Jason Murphy, Eric Strongin



2001 Graduation

Thorsnes, Bartolotta and McGuire Award

Excellence in Trial Advocacy:
Zaki Zehawi

Order of Barristers Awards

Karla Bell, Jeffrey Carvalho, Souleymane Diallo, Caroline Karachairlian, Mary Loeb, Kelly Menck, Jason Murphy, Victor Ou, Michael Samardzija, Eric Strongin, Stefanie Valentini, Zaki Zehawi

Statue of Justice:

Brian Fogarty

Journal of Contemporary Legal Issues Award

Contributors (11:1):

Teresa Boyd, Christina McClurg, Rochelle Strub, John Walters II, Dana Warstler

Managing Editor (11:1):

Rochelle Strub

Managing Editor (11:2):

Catherine Moscarello

Contributors (12:1):

Steven Andreatcola, Michael Arciero, Amy Au, Gustavo Bravo, Peter Chasey, Patrick Desmond, Jill Ealy, Kathryn Felice Zeitung, Todd Jacobsen, Harun Kazmi, William Marden, David Melilli, Aaron Roberts, Michael Samardzija, Laura Thompson, Pamela Wong

Chapter Editors (12:1):

Katherine Felice Zeitung,
Michael Samardzija

Student Editor (12:1):

Laura Thompson

Law Review Awards

Members:

Marc Baumgartner, Eric Broutman, Kevin Cahill, Erin Clary, Clark Davidson, Christopher DeSaulniers, John English, Jr., Kathryn Felice Zeitung, Caroline Karachairlian, Mark Lee, Matthew Morache, Joshua Pearson, Marc Ramme, Thomas Ryan, Jon Schimmer, Claudia Simon, Calvin Whang

Editors:

Erin Alexander, Lisa Beresford, Dana Blake, Teresa Boyd, Brian Fogarty, James Garrett, Shelley Harrington, David Hepler, Neil Hyytinen, Katie Jacobsen, John A. Jurata, Jr., Catherine Kowalewski, Michael Lewis, Jennifer McGibbons, Alfred Peterson, Jamie Smith, Kim Snyder, Matthew Tessieri

Editor-in-Chief:

David Hepler

San Diego International Law Journal

Members:

Peter Karvelis, Kamran Khawar, Maha Sarah, Owen Smigelski, Sean Topp

Editors:

Jon Edgett, Thomas Glynn, Elizabeth Green, Bethany Nelson, Barry Raspotnick, Kaelyn Romey, Ryan Ruggiero, Robert Song, Eric Strongin, Shawn Weber, Sonia Williams, Niosha Yeganeh, Zaki Zehawi

Editor-in-Chief:

Ryan Ruggiero

Distinguished Service Award

Outstanding Service to the Law School:

Stelios Chrisopoulos

The Honorable Gerald Brown Progress Award

Greatest Increase in Grade Point Average, First to Third Year:

Eric Strongin



Professor Laura Berend '75 proudly presents the Community Defenders, Inc. Award to Tiffany Tisen '01.

Joseph P. Busch, Jr. Criminal Justice Award

Outstanding Student in Criminal Justice:

Anita Jog

Irvin J. Kahn Award

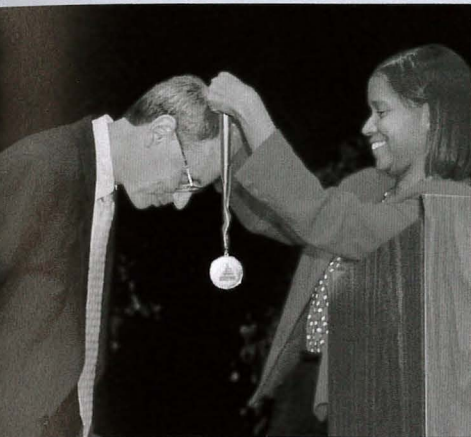
Excellence in Real Property:

Neil Hyytinen



John A. Jurata, Jr. '01 is next in line as Professor Mike Kelly of the Law Review honors Dave Hepler '01 and other editors.

Professor Mary Jo Wiggins awards Christopher De Saulniers '01 the American Bankruptcy Institute Medal of Excellence.



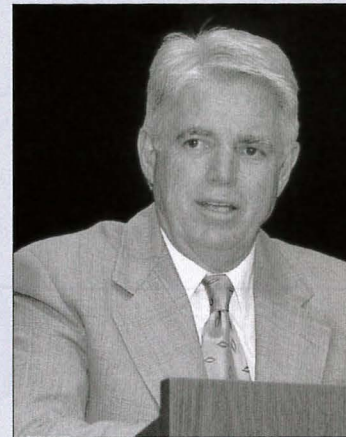
Professor Paul Horton prepares to award graduates associated with the *Journal of Contemporary Legal Issues*.



Handshakes and smiles abound as Dean Rodriguez congratulates René Lochmann for achieving the highest cumulative GPA in the LL.M. Comparative Law Program.



Michael Thorsnes '68 says a few words about the Thorsnes, Bartolotta and McGuire Award for Excellence in Trial Advocacy (awarded to Zaki Zehawi '01).



Ralph Gano Miller Tax Award

Excellence in Taxation Law:
Michael Lewis

Brundage and Zellman Award

Excellence in Labor Law:
Alfred Peterson

Owen Stark Heriot Award

Outstanding Student who is a veteran or current member of the Armed Forces:
John A. Jurata, Jr.

Homer Kripke Memorial Award

Excellence in Corporate and Commercial Law:
Claudia Simon

Randolph A. Read Law and Psychiatry Award

Outstanding Contribution to Law and Psychiatry:
Tasha Soroosh

Judge Theodore Tannenwald, Jr. Award

Excellence in Federal Tax Policy:
Anne Ligman

James R. Webb Environmental Law Award

Outstanding Student in Environmental Law:
James Packer

Alec L. Cory Pro Bono Award

For Contribution, During Law School Years, to Pro Bono Causes:
Kelly DeBie, Elizabeth Jablecki

Paul, Plevin & Sullivan Award

Highest Cumulative Grade Point Average in the General Master of Laws, Masters of Laws in Business & Corporate Law, and Master of Laws in International Law Program:
Michael Gilbert

Froman & Wagner, LLP Award

Highest Cumulative Grade Point Average in the Masters of Laws in Comparative Law Program:
René Lochmann

Luce, Forward, Hamilton and Scripps Award

Highest Cumulative Grade Point Average in the Masters of Laws in Taxation Program:
Robert Scofield

Legal Scholarship Awards

Highest Cumulative Grade Point Average, Evening Division:
Katie Jacobsen

Highest Cumulative Grade Point Average, Day Division:
John A. Jurata, Jr.

Valedictorian Award

John A. Jurata, Jr.

The Order of the Coif

Class of 2001 Members:

Margaret Hays Adams
Erin Morgan Alexander
Marc Charles Baumgartner
Lisa Suzanne Beresford
Teresa Marie Boyd

Sara Elizabeth Bush
Kevin F. Cahill
Peter Louis Chasey
Erin Frances Clary
Clark Lanier Davidson
John A. English, Jr.
Melissa Blume Fleming
Victoria Elena Fuller

Shelley R. Harrington
David Andrew Hepler
Raymond Bill Hom
Neil Stave Hyytinen
Katie Jacobsen
John A. Jurata, Jr.
Michael P. Lewis
Matthew Morache

Elizabeth Suzanne Parker
Marc Maurice Ramme
Barry R. Raspotnik
Thomas R. Ryan V
Jon Paul Schimmer
Claudia Katherina Simon
Kim Snyder
Matthew Adam Tessieri

The School of Law Welcomes Three New Faculty Members

Two for Tax and One from Down Under

Three distinguished professors have recently joined the faculty at USD School of Law. Hailing from different states and countries, including Massachusetts, Australia and California, they bring with them a unique blend of intelligence, wit and experience to their new jobs.

KAREN BURKE

In between working on her approach shots and putting technique, Professor Karen Burke can be found using her expansive knowledge and experience teaching tax law at the USD School of Law.

"I grew up in California playing golf, and I used to play on a faculty league at the University of Minnesota—it was great fun," says Burke, speaking from her third-floor office in Warren Hall.

A Warren Distinguished Professor at the USD School of Law, Burke was most recently the Dorsey and Whitney Professor at the University of Minnesota. She is a Stanford Law School graduate and also holds a Ph.D. from Harvard University in history. Her doctoral thesis at Harvard focused on the German iron, steel and coal cartels of the late 19th and early 20th centuries, and she spent two years in the Ruhr region of Germany doing research for her thesis.

Burke says she decided last year to make San Diego her new home and return to her native California. She brings with her extraordinary writing and teaching experience.

"Our tax program is greatly strengthened by the arrival of Karen Burke... (she) is a highly regarded tax scholar and will compliment the rest of our distinguished tax faculty as well as our adjunct faculty who teach in the LL.M. tax program," says Judy Bruner, Assistant Dean and department head of the School of Law's graduate studies division. "After an intensive search to hire in the tax area, we were very fortunate to have been able to successfully recruit Karen Burke. She held a chaired professorship at the University of Minnesota, which has a very good tax program."

Augmenting her teaching and academic credentials, Burke has real-world experience practicing tax law, which she gained working for Sullivan & Worcester in Boston in the early 1980s.

In addition to extensive scholarship in the area of Social Security reform, Burke has also authored and co-authored several books and anthologies on federal income taxation and federal wealth transfer taxes.

STORY BY MATTHEW CUNNINGHAM

PHOTOS BY RODNEY NAKAMOTO



"It feels wonderful to join a school with such a great faculty and resources." **LAURENCE CLAUS**

She is currently working on a forthcoming three-volume publication on the taxation of business entities (with Yin and Lang).

According to Associate Dean Paul Caron of the University of Cincinnati College of Law, the addition of Professor Burke to the faculty at USD School of Law is "quite a coup for USD" and "(she) will contribute mightily to USD's growing national reputation for having one of the best scholarly and teaching faculties in the country."



"I grew up in California playing golf, and I used to play on a faculty league at the University of Minnesota—it was great fun." **KAREN BURKE**

LAURENCE CLAUS

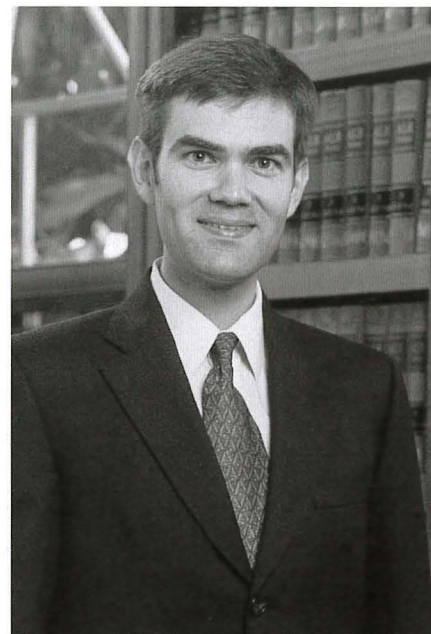
"I really feel delighted to be here in San Diego," says the young Australian native who has spent the last few years in the colder climates of Chicago, Illinois and London, England.

Professor Laurence Claus adds that it was a pleasure to arrive somewhere where he was welcomed as warmly as the weather. "It feels wonderful to join a school with such a great faculty and resources."

As this is his first professorship, Claus reflected on his decision to take up the teaching career path and says that it was based on his collective experiences clerking for three different judges.

Claus clerked for the respected judges Frank Easterbrook of the Seventh Circuit, U.S. Court of Appeals; Sir Ronald Wilson in Australia; and the Honorable John Macrossan, Chief Justice of Queensland, Australia. Claus says that his three mentors provided much guidance and inspiration in deciding to teach law.

"Each was unique and shaped my views in so many ways—becoming a law professor has been a direct result of clerking," he recalls. "One judge was a socialite, witty and engaging, always charming to a fault. One was an amazing humanitarian and believed that one's gifts should bene-



fit society as a whole. The third one was just an absolute genius—he taught me in every conversation to view the world with such intellectual rigor and that in any argument, logic should never be sacrificed to sentiment."

Former Chief Justice of Queensland, John Macrossan, says of his experience working with Claus: "He came to (work) for me as the youngest clerk I had ever engaged in my career as Judge of the Supreme Court of Queensland... it was not simply a formal judge/clerk (associate) relationship that we enjoyed—a lively discourse was always fitted in with whatever we had to do. As (Claus) builds his career, I believe he will remain a goodwill ambassador for faraway Queensland."

Professor Claus was born in Adelaide, Australia and graduated with his first

"Right now I'm very happy and satisfied juggling my teaching and research interests." GRAYSON MCCOUCH

college degree at age 19. He then embarked on his law school career and finished at age 23. By the age of 30, he had received his doctorate of philosophy in law from the University of Oxford in England. While living and studying in England, Claus worked as a foreign service national attorney for the United States Department of Justice in London.

"This is really my first position that doesn't have an expiration tag on it" Claus says of his new professorship at the USD School of Law. "Every clerkship or practicing position thus far was for a particular time frame, and now I feel like I can be open to accomplish so much more and stay here until I'm an old man if I like."

GRAYSON MCCOUCH

Professor Grayson M.P. McCouch recently gave up the humid shores of south Florida for the dry and sunny shores of San Diego, but has practiced and taught law in several U.S. states and cities.

A native of Massachusetts, McCouch was awarded his undergraduate degree at Harvard University (*magna cum laude*) and then came to the west coast for law school. He graduated in 1982 from Stanford Law School. McCouch then began a brilliant legal career with a research fellowship in Germany, where he studied intellectual property law and completed a research project on the "public lending right" in German copyright law. He then clerked for Judge Hugh Bownes, United States Court of Appeals for the First Circuit, and then returned to Massachusetts to practice law with Sullivan & Worcester in Boston. McCouch also received an LL.M. in



taxation from Boston University School of Law in 1990. McCouch settled into a 10-year professorship at the University of Miami in Coral Gables, Florida, and also served as a visiting professor at the University of Missouri-Columbia School of Law and the UCLA School of Law before coming to USD.

"Right now I'm very happy and satisfied juggling my teaching and research interests," says McCouch.

According to Assistant Dean Judy Bruner, "Our students also share in my enthusiasm for his hiring. Many have made a special effort to drop by and tell me what a good teacher he is and how much they are learning."

These days, McCouch also writes and researches extensively on tax law and related topics. He is the co-author of *Federal Estate and Gift Taxation* (with Bittker

& Clark) and *Federal Wealth Transfer Tax Anthology* (with Caron and Burke).

Paul Caron, University of Cincinnati professor and a co-author with Professor McCouch says, "Grayson was delightful to work with, producing first-rate work on his portions of our books and offering me insightful comments on my portions. I again saw the type of persons he and Karen Burke are when they rebuffed my idea to list us as co-authors in alphabetical order... they instead insisted my name appear first because I had conceived the idea. Their graciousness simply blew me away."

McCouch's classes are noted for their intellectual rigor. He says, "Fortunately, the advanced tax courses tend to attract students in the J.D. and graduate tax programs who are already seriously interested in the field. Many of them have prior experience in tax, finance or related areas, which makes for a stimulating classroom environment."

And speaking of classroom environments, McCouch has been known to teach occasionally accompanied by one of his pets. As an enthusiastic dog owner, he was known at the University of Miami School of Law to bring along his dogs—a Labrador named Minnie and his German shepherd named Hanni.

"My Florida students enjoyed the dogs, it was something different for them," he recalls.

Whether it's at the dog park, on the golf course, or in the hallways of Warren Hall, these three new professors will surely bring a new level of excitement and expertise to what they do best—teaching.

TED BOUTROUS GAINS PROMINENCE BY ERASING MORE THAN \$1 BILLION IN DAMAGE AWARDS



Damages Control

STORY BY GEORGE DECKER

PHOTOS BY TONYA MCCAHERN

What an overly generous jury gives, Theodore J. "Ted" Boutros Jr. '87 can take away.

In recent years, Boutros, a partner with Gibson, Dunn & Crutcher, an international law firm with more than 750 attorneys, has succeeded in obtaining reversals or reductions of damage awards totaling more than \$1 billion. His most notable wins include:

- Persuading a federal district court to overturn the largest libel verdict in history (\$222 million) based on lack of evidence and "serious misconduct" of the plaintiff during discovery and trial;
- Persuading a Northern California trial court to set aside a \$290 million punitive damage verdict—the second largest product liability verdict ever assessed against an automobile manufacturer; and
- On October 19, 2001, persuading the U.S. Court of Appeals for the 4th Circuit to overturn a \$259 million verdict, including \$250 million in punitives, against an automobile manufacturer.

The National Law Journal observes that Boutros has "achieved prominence as a leading voice in the

tort reform movement, challenging the fairness and constitutionality of punitive damages all the way... up to the U.S. Supreme Court." *Washingtonian Magazine* states that "he has made a name for himself challenging 'excessive' damage awards."

What's the secret of his success? "We have come up with creative attacks on punitive damages," Boutrous explains. "We're not afraid to go to the root cause of the issue—my colleagues and I are not afraid to grab the issues by the throat. Once you get the court to think in terms of fundamental fairness, and not just another damage award, it gives you a big leg up on setting the award aside."

In the long run, however, Boutrous sees legislation as the solution to excessive punitive damage awards. "Limits should be calibrated to the nature of the wrong, and should be decided by the legislature," he says. "That's the best and only way to fix the problem. In the criminal justice system, what if the jury could impose any penalty on you? That would be a frightening system."

"...A GREAT LAUNCHING PAD"

Boutrous, 41, was born in Los Angeles, but spent his childhood years alternating between southern California and North Dakota, where his father had a law practice. During high school, Boutrous first began thinking about becoming a lawyer. In college, his love of writing led him to consider a career in journalism, but Boutrous ultimately decided that a legal career would combine a number of things he loved doing—writing, analysis and arguing principles.

After graduating Arizona State University in 1984 with a B.S. in political science, Boutrous entered the University of San Diego School of Law, where he distinguished himself as Editor-in-Chief of the *San Diego Law Review* and class valedictorian. Boutrous was awarded his Juris Doctor *summa cum laude* in 1987.

"My years at the USD School of Law were both intense and enjoyable," Boutrous recalls. "It was a fantastic experience—the professors were terrific. Even today I turn to the principles I learned in Professor Virginia Nolan's torts class. I thought the quality of the professors was extremely high. USD was a great launching pad."

Boutrous' professors thought highly of him, as well.

"Ted was outstanding as a student and as my research assistant," recalls Professor Edmund Ursin, who taught Boutrous' class on tort theory. "I worked with him as he organized a symposium on tort reform that featured leading academics and members of the bar. That symposium, and others in years that followed, brought the *San Diego Law Review* to the attention of tort professors across the country."

"I remember Ted very well," says Professor Herbert Lazerow, who taught Boutrous property law. "He was a very bright student, interested in ideas and pressing judicial statements to their logical conclusions—which often demonstrated the illogic of their conclusions. I would have expected him to be an outstanding practitioner."

During his last year of law school, Boutrous was recruited by Gibson, Dunn & Crutcher. After graduation, he became an associate in the firm's Washington, D.C. office. The nation's capital was the center of appellate practice, and Boutrous decided that it would be a great place to start his legal career.

"My initial plan was to practice law in Washington, D.C. for a couple of years and then return to California," Boutrous says. "I didn't realize that I would be staying in Washington for 13 years." He returned to California in 1999, and now practices from his firm's Los Angeles office.

For Boutrous' first assignment at Gibson, Dunn & Crutcher, his supervising partner Ted Olson (now Solicitor General of the United States) asked him to research each Supreme Court justice's view of the "excessive fines" clause of the 8th Amendment to the U.S. Constitution, as Olson was about to argue a case in the U.S. Supreme Court on the constitutionality of punitive damages.

"I received that assignment on my first day of work, and these issues are a huge part of my work now," says Boutrous. "It was a great opportunity. Ted Olson and I hit it off. He was head of the firm's Constitutional and Supreme Court Practice Group at that time. The day I received my California bar results, I was in the gallery of the U.S. Supreme Court. I learned at that point—just before the session started—that I had passed the Bar. From day one at Gibson, Dunn & Crutcher, I've had interesting work."

CLINTON, LEWINSKY AND STARR

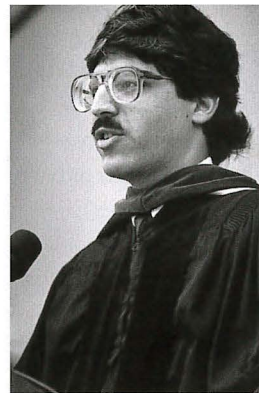
In addition to making a name for himself dismantling huge punitive damage awards, over the past 14 years Boutrous has litigated a fascinating array of other kinds of high-profile cases, often for famous clients.

For example, in 1997 he represented 13 major news media organizations in a Supreme Court proceeding against a list of respondents that included President Clinton, Monica Lewinsky and Kenneth Starr. Boutrous sought to obtain for his clients access to secret judicial proceedings and records relating to executive privilege and other legal issues arising from Starr's grand jury investigation of President Clinton.

"It was a wild experience—extremely intense and fast moving,"



Left: Ted Boutrous '87 gazes upon the Los Angeles skyline from the Gibson, Dunn & Crutcher law library. Below left: Boutrous giving the valedictory address at the USD School of Law Commencement, May 23, 1987.



he recalls. "We would be in the office watching CNN, and the reporters would be at the courthouse locked out of the hearing. Reporters would call me and I would quickly run down to the courthouse with written motions. It was a grand jury investigation, but there was so much public discussion of it."

Boutrous argued that the public should have access at least to the legal arguments in the grand jury proceedings. "There really wasn't precedent," he says. "We traced back historically to see what had happened in other high-profile grand jury cases. We started with the Aaron Burr trial. The courtroom was packed then—they were public proceedings. Our next example was the Watergate fight, in which Judge Sirica had held grand jury proceedings in open court."

In the end, the D.C. Circuit Court of Appeals gave Boutrous' clients limited access to the legal arguments in the grand jury proceedings. "The court, as we expected, was very cautious," he says. "Ultimately, the D.C. Circuit established a rule and released thousands of pages of redacted briefs. It was a heavily contested issue."

In 1993, Boutrous represented Jonathan Pollard, a naval civilian intelligence analyst who had been convicted of spying for Israel, in his appeal to set aside his plea agreement.

"The prosecutors had agreed not to seek a life sentence, but they did everything they could to obtain a life sentence except use the words 'life sentence,'" explains Boutrous. "We lost 2-1 in the D.C. Circuit, and couldn't obtain Supreme Court review. There was a huge outpouring of support for Pollard from people around the world—his punishment was disproportionate."

WHAT'S NEXT?

Gibson, Dunn & Crutcher brought Boutrous back to California to take advantage of opportunities to expand the firm's appellate and constitutional law practice in the western United States. His leadership positions within the firm (Boutrous co-chairs its Appellate and Constitutional Law, and Media Law practice groups, and serves on its Management and Executive committees) consume a lot of his time, but he hasn't cut back on his caseload. "It just means that I work more hours," Boutrous laughs.

He met his wife, Helen Garrett-Boutrous '87, in their first-year contracts class at the USD School of Law. While they lived in Washington, D.C., she served as an attorney for the Department of Transportation and Department of Agriculture, and later taught constitutional law (undergraduate) at Georgetown University. She is now completing her Ph.D. in political science at Georgetown.

Boutrous wants to keep building his appellate and media practice at Gibson, Dunn & Crutcher and get more involved in local politics. "We're immersing ourselves in the community here in California," he says. "I haven't thought about running for office, but California is a wonderful political scene."

When Boutrous was a law student at USD, did he have any inkling that he would someday reach his current level of professional success?

"I'm a very optimistic person, and my experience at USD was so positive," he says. "I thought that there were so many opportunities that all I had to do was work hard and I would eventually succeed."

class action

Class Action is an update on the personal and professional news of your classmates and other alumni. Please submit information and photographs to the *Advocate*, USD School of Law, Publications Department, 5998 Alcalá Park, San Diego, CA 92110-2492. You may also e-mail your news to: lawalum@sandiego.edu.

'66

VERN SCHOOLEY was elected Counselor of the Ball Hunt American Inn of Court. Schooley is a partner at the Long Beach firm, Fulwider, Patton, Lee & Utecht., LLP, where he practices patent and trademark law.

'70

DAVID L. DEVORE was appointed by California Governor Gray Davis to the Alpine Superior Court in May 2001. Alpine County is just south of Lake Tahoe. DeVore had been a partner at the South Lake Tahoe firm of Feldman, Shaw & DeVore and had served as a *pro tem* judge in Alpine and El Dorado counties.

'74

DAVID S. CASEY JR. has been elected vice president of the Association of Trial Lawyers of America. His new position

was announced at the recent ATLA convention in Montreal. He is the only San Diego attorney currently serving on the board. Casey is a senior partner with Casey Gerry, Reed & Schenk. He specializes in serious personal injury, wrongful death, and business and consumer fraud cases. Additionally, he is a member of the Consumer Attorneys of San Diego, the San Diego Trial Lawyer's Association, the American Board of Trial Advocates, the Trial Lawyers for Public Justice, the International Academy of Trial Lawyers, and the International Academy of Barristers.



DAVID S. CASEY, JR. '74

'75

STEVEN TOOLE has recently become president-elect of the Washington State Trial Lawyers Association. He will assume his responsibilities in August 2002. He currently works at his own law firm in Bellevue, Washington.

'76

CARL WOLF is the 2001 recipient of the AIDS Legal Referral Panel (ALRP) Clint Hockenberry Lifetime Achievement Award. He was one of the founding attorneys of the ALRP in the early days of the AIDS epidemic when he served as a board member of Bay Area Lawyers for Individual Freedom (BALIF), the local lesbian and gay bar association. In addition to handling pro bono cases as a

volunteer attorney since the inception of the panel in 1983, Wolf also served on the ALRP Board of Directors from 1988-1992 and was the 1991 recipient of the State Bar of California's Wiley Manuel Award for pro bono service. Wolf has been practicing law in San Francisco since 1976 and is the senior partner in Callaway & Wolf representing plaintiffs in tort litigation.

'78

JAN FLADEBOE has been a foreign service officer since 1998. He retired from the Marine Corps as a lieutenant colonel and also worked as a Russian Foreign Service Officer in the American Embassy in Moscow.

WENDY WILES (COCHRAN) KASE returned to graduate school at Northwestern University, where she received her degree in psychotherapy. She now has her own small practice and also works at a divorce firm, helping or coaching their clients through divorce. She has a twelve-year old son, Wiles Kase.

'79

ANNE SEGAL has been appointed as a magistrate judge for Dona Ana County, New Mexico. She says that it is a "great job."

'80

STEPHEN P. DOYLE is president of Brookfield Homes San Diego and president of the San Diego County Building Industry Association. He is also an active board member for the California Building Industry Association, the National Association of Home Builders, and the San Diego Regional Chamber of Commerce.

PHILIP LINDSLEY has recently been appointed to the State Bar of California's Judicial Nominees Evaluation Commission. He practices in San Diego, specializing in probate, elder law and mediation services.

PHILIP MATRICARDI received the REALTOR Achievement award from the Seattle-King County Association of Realtors (SKCAR) for outstanding contributions at both the local and state levels. He serves as a director on SKCAR's board and is an active member of the Governmental and Public Affairs Committee. He also represents the association on an oversight group for the *Northwest Reporter*, a trade publication, and was commended for his leadership in producing and hosting SKCAR's weekly radio program.

MONTY A. MCINTYRE has become president-elect of the San Diego County Bar Association. His one-year term will begin in December 2001. He is of counsel with Seltzer Caplan McMahon Vitek in San Diego.

'83

ROBERT FRANCAVILLA, a partner in the San Diego firm of Casey, Gerry, Reed & Schenk, has been recognized as an Outstanding Trial Lawyer by the Consumer Attorneys of San Diego (CASD). Francavilla was honored recently during a special dinner hosted by CASD at the Wyndam Emerald Plaza Hotel. He has been with Casey, Gerry, Reed & Schenk for more than 15 years, focusing his practice on personal injury, product liability and highway design matters.

'84

BOB GAGLIONE is a partner of Gaglione, Coleman & Greene, which has moved to the top floor of the Symphony Towers building in downtown San Diego. The firm handles civil litigation, and business and real estate transactions.



ROBERT FRANCAVILLA '83

ALEXANDER Z. TALMADGE, JR. is a Democratic candidate for Philadelphia District Attorney. In his practice, he serves clients in matters of criminal defense, domestic relations and zoning. He was elected three times as the city commissioner presiding over the electoral process for the city of Philadelphia. He has also served as the legal advisor to the Philadelphia Zoning Board of Adjustments on legal matters relating to zoning code regulations.

GLENN WECHSLER and his wife recently celebrated the birth of their fourth daughter, Ryleigh. He and his firm in Walnut Creek represent financial institutions throughout California in foreclosure litigation matters.

SUSAN YECK and her husband, Ron Sample, celebrated the birth of their first child, Olivia Grace, on November 24, 2000. Susan and Ron have a law practice together in the Mammoth Lakes area of California.



DENNIS DOUCETTE '86

'85

EARL M. FORTE works at Blank Rome Comisky & McCauley in Philadelphia, Pennsylvania. He has been representing the Committee of Unsecured Creditors in the Chapter 11 proceeding of TransWorld Airlines. He has also been appointed to a hearing panel of the disciplinary board of the Pennsylvania Supreme Court, which oversees attorney discipline, barment and disbarment.

'86

DENNIS DOUCETTE has been a corporate partner for Luce Forward Hamilton & Scripps in San Diego for 15 years. He is a member of Luce Forward's executive committee, overseeing 215 attorneys in the firm's San Diego, Del Mar, La Jolla and Los Angeles offices. He also co-manages the newly opened Del Mar office. Additionally, he is a member and former president of the San Diego Venture Group, a prominent organization that connects local entrepreneurs with capital providers.

'87

KNEAVE RIGGALL has been appointed an adjunct professor at Loyola Law School to teach in their LL.M. taxation program. He also continues to practice in South Pasadena, California.

SHELLEY BROWN RODRIGUEZ has been appointed Deputy District Attorney for the Twenty-Second Judicial District, which includes all of Dolores and Montezuma counties in Colorado. She has taught at the Denver extension of the University of St. Francis, College of Health Arts and at Metropolitan State College of Denver, School of Professional Studies, Paralegal Studies Department. She has been a partner in the Intercultural Communications Achievement Network (ICAN) since 1992. She has also worked as a staff attorney for the Office of Legislative Legal Services in Denver, Colorado and as the legal consultant and department chairperson of the Paralegal Department at CBM, Inc. in San Antonio, Texas.

'88

BYRON PEARSON writes that he received his Ph.D. in American history from the University of Arizona in 1998. He has taught U.S. history at the University of Tulsa and the University of Arizona, and now is an assistant professor of history at West Texas A&M University.

PHIL ROITMAN and his wife, Laura, announce the birth of their second child, Rachel, on March 1, 2001. Phil recently joined the firm of Lefkoff, Duncan, Grimes & Miller in Atlanta, Georgia, where he concentrates his practice in trusts and estates with an emphasis on estate and tax planning for business owners and investors.

'89

VIVIAN VELICHKOFF DOERING will serve as president of the American Association of University Women, Escondido-San Marcos branch during the 2001-2002 term. She currently serves on the Law Library Justice Foundation Board of Trustees.

MICHAEL WILDERMUTH says that after finishing law school he married his high school sweetheart, Lisa, and now they have three children, nine-year-old Rebecca, six-year-old Nicole, and one-year-old John. He has settled in the town that he grew up in, Westlake Village, Calif., and in 1998 joined the local 11-attorney firm of Nevers, Palazzo, Maddux & Packard. Before joining his current firm, Michael was insurance coverage counsel for CNA Insurance Companies in Los Angeles.

'90

KATHRIN S. MAUTINO was appointed by the government of Finland and credentialed by the U.S. Department of State to serve as the honorary consul for Finland in San Diego, Imperial and Riverside counties. In addition, she is a certified specialist in immigration and nationality law. She is the managing partner for the law firm Mautino and Mautino in San Diego.

JAMES C. SHERWOOD was elected by the California Young Lawyers Association board as its representative for a one-year term on the Board of Governors. He handles complex business litigation matters for Dowling, Aaron & Keeler in Fresno, Calif.

'91

TED WACKER and his wife, Erin, have two children, (two-year-old) Kelly Marie and (eight-month-old) John Riley. He works as a plaintiff's representative in products liability, mass torts, and general personal injury claims for Robinson, Calcagnie & Robinson in Newport Beach, Calif.

'92

ELIZABETH RYNER made partner at the San Diego office of Pillsbury Winthrop. She was one of eight new female partners at Pillsbury Winthrop in 2001.

'93

MARC GAMBERDELLA has been a financial consultant with Smith Barney since February of 1997. For individual investors, his practice includes all facets of estate, retirement, and financial planning, asset management, stock option planning, and a variety of lending services. For businesses, he advises on retirement plans of all sizes, as well as providing asset management services. Drawing on his experience in

civil litigation, he works with attorneys (plaintiff and defense) and their clients in managing settlement proceeds, including structured settlements. Marc reports he is thoroughly enjoying life as a "recovering attorney." He lives in Santa Barbara, Calif., with his wife Liz, and children, 3-year-old Genaro and 1-year-old Gianna. Marc can be reached at marc.j.gamberdella@rssmb.com.

LAURA GUADALUPE MORTON and her husband, Joseph Paul Coleman III, welcomed their first child, Joseph Paul Coleman IV, on April 4, 2001. She has left the office of the Public Defender for Baltimore, Maryland and now works as a legal editor for Lexis/Nexis. Her new job allows her to stay home with her son.

KENNETH S. ROBERTS made partner this year at Lyon & Lyon in Irvine, Calif. His practice encompasses patent litigation and prosecution and other property matters.

'94

DANIEL BEAN is a candidate for a seat on the Jacksonville Bar Association in Florida. He currently works as a law clerk for Judge John H. Moore II. Prior to his clerkship, Daniel served as a legal assistant attorney, both in the criminal defense division, and then in the prosecution division. Afterwards, he joined the private sector with Mark Gray. He and his wife, Cindy, reside in Mandarin, Florida, with their daughter, Kaylee and son, Riley.

MICHEL DUQUELLA was one of twelve attorneys who recently made partner at Littler Mendelson. Michel works at the firm's San Diego office.

DEBORAH ENGEL recently transferred from the San Diego City Attorney's criminal division to the civil division, real property unit.

MATTHEW T. WAKEFIELD became partner at Ballard, Rosenberg, Golper & Savitt in University City, Calif. The firm practices labor and employment law on behalf of management. Matt and his wife, Diana, live in Arcadia, Calif. with their six-year-old son, Lucas, and their four-year-old daughter, Morgan.

'95

JOHN ARENS and his wife, Cathy, had their second child, Allison Grace, on December 28, 2000. They are now expecting their third child to be born in January 2002. They live in Greenbrae, Calif.

KEVIN HALLIGAN currently works for the Los Angeles County District Attorney, prosecuting felony jury trials. He enjoys surfing, golfing, and salsa in his spare time.

MARK S. LESO married in September 2000. He and his wife recently adopted a six-year old boy, Nicholas. They also celebrated the birth of their daughter, Alexandra, in March 2001. Mark works at Bai Pollock Malcahey & Blueweiss in Bridgeport, Connecticut.

CHRISTIAN F. MAHR has been working at the United Nations High Commissioner for Refugees (UNHCR) in London since July 2001. He had been a visiting fellow at the Center for International Studies at MIT. He married Miyoko Sumiya in 1996. They are proud parents of Noelle Aiko, who was born in 1999.

PATRICK Q. SULLIVAN works for the Torrance, Calif. office of the City Attorney. He writes that he, and his wife Jennifer, have a new son, Kieran Patrick, born March 31, 2001.

'96

RICHARD AMES recently joined the San Francisco office of Thelen, Reid & Priest, where he practices asbestos defense and commercial litigation. On September 1, he married Amy Baird Briggs, who is also a practicing attorney in San Francisco. They currently live in Oakland with their two dogs.

DEBRA MORSE recently joined the office of Kalafer & Associates in San Diego, litigating medical negligence and elder abuse cases.

'97

KRISTIN M. JOHNSON has joined the law firm of Klinedinst, Fliehm & McKillop in San Diego as an associate. She was previously an associate with Walsh & Furcolo. She is still doing civil litigation work with an emphasis on construction, insurance, and employment law matters.

WILLIAM E. O'NEILL joined the Lendrum Law Firm in San Diego this year. He will continue to specialize in the representation of individual and business clients in the areas of product liability, employment, serious injury, copyright, trademark, insurance and general business litigation.

'98

MARCEL C. STEINEGGER became partner at the firm of Froriep Renggli in Zurich, Switzerland. Steinegger's preferred areas of practice include international corporate and commercial law, structuring and restructuring companies, white-collar crimes as well as civil and criminal litigation.

'99

DR. THOMAS BUETTNER and his wife, Alexandra, were married on July 14, and live in Bad Homburg, Germany. He joined the firm Forstmann, Uzeist & Collatz in Frankfurt. His work focuses on pharmaceuticals, foodstuffs and biotechnology law.

'00

ASHLEY F. HALL-HICKLIN accepted a position with the La Jolla Pharmaceutical Company as a regulatory affairs associate. The company develops therapeutics for antibody-mediated autoimmune diseases, such as lupus. She is involved in the development of regulatory strategy and policies, the preparation and review of numerous types of regulatory filings, and the regulatory compliance of the FDA market approval process for drugs and biologics.

ANNE LEE recently joined the San Diego law firm of Brobeck, Phleger & Harrison, representing emerging growth and public companies with a focus on public and private finance.

TREVOR RUSH and his wife, Kathy, welcomed their first child in April, a daughter named Marina. Trevor is a J.A.G. with the U.S. Navy, working as a prosecutor in the Trial Service Office in San Diego.

IN MEMORIAM

The University of San Diego School of Law community would like to extend its deepest sympathy to family and friends.

Alumni
HON. RAMONA L. GODOY PEREZ '72



HON. RAMONA L. GODOY PEREZ '72

academic year in review

faculty footnotes

A catalog of the faculty's publications and presentations for the 2000 calendar year, as well as profiles on and excerpts from five professors who discuss their diverse research interests.

Lawrence A. Alexander

Warren Distinguished Professor of Law

Publications:

"Freedom of Speech." *International Library of Essays in Law and Legal Theory*. (Aldershot, England and Burlington, VT: Ashgate/Dartmouth Publishing Co., 2000).

"Legal Rules and Legal Reasoning." *Collected Essays in Law*. (Aldershot, England and Burlington, VT: Ashgate/Dartmouth Publishing Co., 2000).

Journal of Legal Theory. Co-editor. (Conneticut: Cambridge University Press, 2000).

"Incitement and Freedom of Speech," *Freedom of Speech and Incitement Against Democracy*. (London: Kluwer Law International, 2000).

"Nonjudicial Interpretation of the Constitution," (co-authored) *Encyclopedia of the American Constitution*. 2nd Edition. (New York: Macmillan, 2000).

"Stare Decisis," *Encyclopedia of the American Constitution*. 2nd Edition. (New York: Macmillan, 2000).

"Deontology at the Threshold," 37 *San Diego Law Review* 893 (2000).

"Insufficient Concern: A Unified Conception of Criminal Culpability," 88 *California Law Review* 931 (2000).

"Rules, Rights, Options and Time," 6 *Legal Theory* 337 (2000).

"Theory's A What Comes Natcherly," 37 *San Diego Law Review* 777 (2000).

"The Uncertain Relationship Between Libertarianism and Utilitarianism," (co-authored) 19 *Quinnipiac Law Review* 657 (2000).

Presentations:

Presenter, Section on Jurisprudence. AALS Annual Meeting. Washington, D.C. January.

Presenter, Law Section of the National Academy of Science. Washington, D.C. January.

Commentator, USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

Moderator, Conference on Genes and the Just Society. USD School of Law. January.

Presenter, International Association for the Philosophy of Law and Social Philosophy (AMINTAPHIL) Conference on Globalization. USD School of Law. March.

Moderator, Analytic Legal Philosophy Conference. New York, NY. April.

Participant, Conference on Legal Interpretation, Judicial Power and Democracy. Melbourne, Australia. June.

Participant, Conference on Religion in our Schools, Thomas Jefferson School of Law. San Diego. October.

Presenter, University of North Carolina School of Law Faculty Workshop. Chapel Hill, NC. October.

Participant, Conference on Egalitarianism, Responsibility and the Law. National Humanities Center. NC. October.

Moderator, Conference on Genes, Liberty, and Responsibility. Tucson, AZ. December.

Stuart M. Benjamin

Publication:

"Proactive Legislation and the First Amendment," 99 *Michigan Law Review* 281 (2000).

Presentation:

"Proactive Legislation and the First Amendment." Presented at the USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

Laura M. S. Berend

Herzog Endowed Scholar 2000-2001

Presentations:

Participant, AALS Conference on Clinical Legal Education: Albuquerque, NM. May.

"Life in One Corner of the Criminal Justice System." Presented at the Law and Society 2000 Annual Meeting. Miami Beach, FL. May.

"Search and Seizure in California."

Presented for the Defense Investigators Training Accreditation Academy. Thousand Oaks, CA. July.

Darrell D. Bratton

Presentation:

Commentator, USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

Roy L. Brooks

Warren Distinguished Professor of Law

Publications:

Civil Rights Litigation: Cases and Perspectives. Co-authored. 2nd edition. (Durham, NC: Carolina Academic Press, 2000).

Civil Rights Litigation: Cases and Perspectives. Teacher's Manual. (Durham, NC: Carolina Academic Press, 2000).

Civil Rights Litigation: Cases and Perspectives. Statutory and Constitutional Supplement. (Durham, NC: Carolina Academic Press, 2000).

Legalines – Civil Procedure. 5th ed. (New York: Harcourt Brace Jovanovich, 2000).

"Critical Theory Applied to Title VII," (co-authored) *California Labor & Employment Law Quarterly* 9 (Spring).

"Review of Daniel Kryder, *Dividend Arsenal: Race and the American Stage During World War II*," (Black Issues Book Review, 2000).

Presentations:

"Are Black Reparations Constitutional?" Presented at the TransAfrica Forum. Washington, D.C. January.

"Reflections on Reparations." Presented at the Conference on Repairing Historical Injuries. University of British Columbia. Vancouver, B.C. February.

"Basketball's Lessons for Life." Presented at the Monte Vista High School Girl's Varsity Basketball Banquet. San Diego. March.

NO CONSTITUTIONAL PREEMPTION

Ramsey Finds That The States Have Foreign Policy Powers

Having considerable interest in constitutional law and international travel, it seems a natural fit that Professor Michael Ramsey would explore the constitutional framers' intent in deciding who may determine this nation's foreign policy.

After much study of the Constitution and prevailing state and federal law, Ramsey concludes that the U.S. Constitution does not prohibit states from becoming involved in foreign policy. Instead, he says U.S. foreign policy is often guided by some sort of general intuitive sense adopted by the courts that all foreign policy should be determined solely by the federal government. His explanation can be found in his article, "The Power of the States in Foreign Affairs: The Original Understanding of Foreign Policy Federalism," published in the *Notre Dame Law Review*.

"I can find no general restriction on states in regard to foreign policy in the Constitution," Ramsey says. "I'm arguing that we not try and invent some theories here, but instead go with what the framers of the Constitution wrote."

Ramsey writes that the Supreme Court, deciding against the state of Oregon in the case of *Zschernig v. Miller* in 1968, was the first step in the wrong direction with regard to the courts determining foreign policy powers. *Zschernig* was the first case in which the Court found there to be constitutional foreign policy preemption. In the decision, the Court found that the state of Oregon entered into the realm of foreign policy when it passed a state law prohibiting the inheritance of property by residents living in nations where the inherited property could be confiscated and used for the good of the state.

Ramsey believes that while the Constitution provides no basis for such a decision, and would like the Supreme Court to overturn the *Zschernig* decision, even if a state did pass a statute that interfered with the nation's foreign relations, all Congress would have to do is pass a law overturning the state statute.

"I'm not saying that the law being examined in *Zschernig* was a smart law and should have been upheld, but I don't see anything in the Constitution that prohibits a state from making such a law," Ramsey said.

Ramsey, who completed his undergraduate work in international relations at Dartmouth in 1986, says he has always had an interest in international affairs and has enjoyed teaching the subject at USD over the last six years. He is on sabbatical this year so he can complete a book he is writing on foreign affairs. In the book, Ramsey will also make the case for the court and lawmakers to stick to the text of the Constitution when making foreign policy decisions.

"I'd like to see people be OK with states having foreign policy power," Ramsey said. "And in a broader sense, I'd like us to stick to the Constitutional text in foreign affairs, instead of this notion of what we believe the framers meant when the Constitution was written."



"Asking the Right Questions." Presented at ABC News online debate *Taking Sides: Slavery Reparations*. USD School of Law. June.

Karen C. Burke

Publications:

"Reassessing the Administration's Proposals for Reform of Subchapter K," 86 *Tax Notes* 1423 (2000).

"Social Security Reform: Risks, Returns and Race," Co-authored. 9 *Cornell J. L. & Pub. Pol'y* 633 (2000).

Presentation:

"Privatizing Social Security." University of Minnesota School of Law. March.

Nancy Carol Carter

Presentations:

"Indian Gaming in San Diego County." Presented at the USD Faculty and Curriculum Diversity Program. USD School of Law. October.

"Borders Within Borders: Indian Tribal Sovereignty." Presented at the San Diego Association of Law Libraries Workshop on U.S./Mexico Border Questions. USD School of Law. October.

Laurence Claus

Publication:

"Federalism and the Judges: How the Americans Made Us What We Are," 74 *Australian Law Journal* 107.

Kevin L. Cole

Presentation:

Moderator, A Debate: "Miranda Revisited: The Future of Police Interrogation." USD School of Law. March.

Lynne L. Dallas

Presentations:

"Defining Trust." Presented for the Corporations in Society, Part I: Fundamental Considerations in Development B Trust, Greed and Harm. Annual Meeting of Law and Society. Miami, FL. May.

"Diversity and Stakeholder Capitalism." Presented for the Corporations in Society, Part II: Gender, Race, and Social Discourse. Annual Meeting of Law and Society. Miami, FL. May.

"Understanding Corporations' Responses to Shareholders' Proposals under the Power Coalition Model." Presented at the Feminism and Legal Theory Conversations: Corporations and Capitalism. Cornell Law School. Ithaca, NY. June.

"Trust and Multinational Corporations." Presented at the 12th Annual Meeting of the Society for the Advancement of Socio-Economics. London School of Economics. London, England. July.

Robert C. Fellmeth
Price Professor of Public Interest Law

Publications:

"California Children's Budget 2000-2001," Editor and contributor. *California Children's Regulatory Law Reporter*. Vol. 2, No. 2.

Children's Advocacy Institute: Newsnotes. Editor. August.

California White Collar Crime: Criminal Sanctions and Civil Remedies. Co-authored. (New York: Lexis Publishers, 2000).

Report on California Horse Racing Board Enforcement: A High Stakes Challenge. USD Children's Advocacy Institute.

"Amicus Curiae Brief, James W. O'Brien v. Secretary of State." California Supreme Court. March.

"Amicus Curiae Brief, Jenifer Troxel v. Tommie Granville." U.S. Supreme Court.

Presentations:

"The Status of Abused Children." Keynote address to the California Alliance of Child and Family Services Annual Conference. San Diego. February.

"Antitrust Developments." Presented to the San Diego County Office of the District Attorney. San Diego. February.

"Media and Competition: *Portland v. AT&T*." Keynote address to Pacific Telesis. Santa Clara University. March.

"Teen Father Issues." Presentation at the 49th Annual Conference of the National Child Support Enforcement Association. San Diego. July.

"Principles of Deregulation (What Can and Did Go Wrong)." Keynote address at the National Conference of the National Association of State Utility Consumer Advocates. San Diego. November.

The Power of the States in Foreign Affairs*

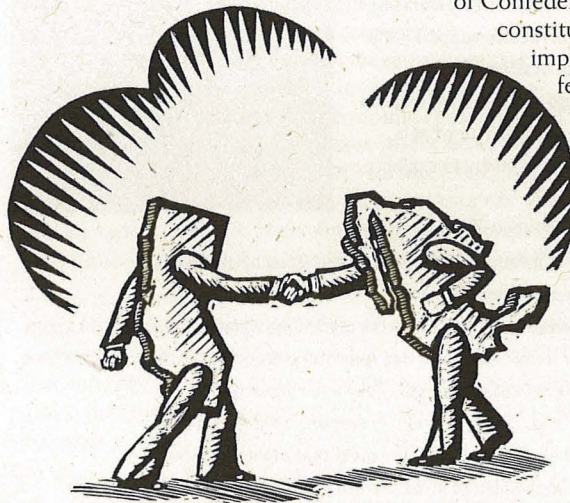
BY MICHAEL D. RAMSEY

As elaborated below, permitting state interference is not structurally irrational. It does not prevent national supremacy in foreign policy—as state activities can be overridden by Congress or by treaty—but limits presidential foreign relations power. When the Supreme Court speaks of non-Article VI preemption of state activities that "impair the effective exercise of *the Nations's* foreign policy," it means *the President's* foreign policy—because, of course, state activities impairing congressional foreign policy or treaty-based foreign policy would be preempted by Article VI. But did the constitutional generation envision a President who could pursue a unilateral foreign policy backed up by, in effect, presidential lawmaking power to preempt state activities that stood in its way? Or did they think that presidential power in foreign affairs should be checked by the need to secure congressional (or senatorial) cooperation to give the policy the force of law? Without more, it is obvious which system the constitutional generation chose, even if, from our perspective, it might seem that one is practically more efficacious than the other.

Nonetheless, the conventional view continues, the framers told us which system they preferred through statement emphasizing that need for national uniformity in foreign affairs. Part II of this Article also rejects that claim. Undoubtedly the Constitution was intended to give the federal government broad foreign relations powers and to redress the nation's dismal international performance under the Articles of Confederation. The need for national supremacy if foreign policy is a central theme in early constitutional thought. But, again, how was supremacy achieved: through a discretionary power of Congress (or President-plus-Senate) to preempt state activity by statute or treaty—

already an enormous improvement over the Article of Confederation— or by a generalized constitution exclusion of the states

implemented by the President or the federal courts without legislative actions? As shown below, the much-quoted statement of the framers are inconclusive upon the question. Thus non-Article VI preemption in foreign affairs is neither inherent in the structure of a federal system not compelled by the general outlook of the founding generation. Unless it has a basis in constitutional text, therefore, there seems little reason to think it a proper original interpretation of the Constitution.



* An excerpt from "The Power of the States in Foreign Affairs: The Original Understanding of Foreign Policy Federalism," 75 Notre Dame Law Review 341 (1999). (footnotes omitted)

PROTECTING INVESTORS

Partnoy Examines Legal Implications of Market Crashes

In his fifth year of teaching law students, Professor Frank Partnoy is passionate about financial markets, even when dealing with issues few others "really seem to care about or understand."

Partnoy, who teaches classes on corporations, deals and white-collar crime for the USD School of Law, has had an interest in financial markets since he completed his undergraduate work in math and economics at the University of Kansas in 1989.

Partnoy's recent article, "Why Markets Crash and What Law Can Do About It," published in the *University of Pittsburgh Law Review*, is an examination of some of the theories developed to explain the failure of financial markets and what, if any, responsibility the makers and enforcers of laws have to help shield the public from the blow of a market crash.

"I really wanted to take a look at whether legal rules can do anything to prevent a market crash, or ease the pain when one does crash," Partnoy said. "The law brings an important perspective to business and finance... especially in this area."

Partnoy's examination of the why markets fail led him to explore three different theories behind crashes in greater detail. In his article, he examines each and argues they all have merit.

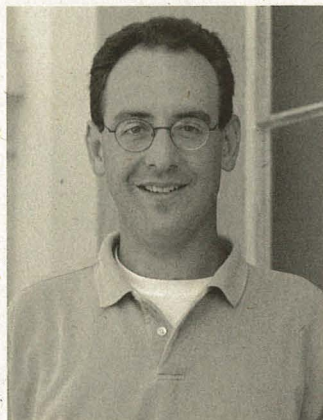
The first theory, dubbed "cognitive error," describes a market process with investors moving through four stages of investment behavior, resulting in a market crash. "Moral hazard," the second theory, in which financial market guarantees cause investors to take risks with the false belief that they will receive support if the market crashes, also contributes to market crashes. Finally, "information asymmetry," a theory that suggests that an imbalance in the information provided to investors, as opposed to what is known by issuers of stocks, also has merit as a theory to explain market failure.

Later in the article, Partnoy examines the above theories, as well as proposed legal remedies designed to soften the blow dealt to investors, by examining what could have been done in the Asian markets crash of 1997.

Partnoy argues that several mistakes were made leading to the market problems in Asia in the late 1990s. He proposes that a better functioning legal and regulatory structure could have eased the pain of such a crash in Asia, and perhaps could have even prevented it.

"There are several proposals in my article," Partnoy said. "Preventing countries from placing controls on the flow of capital and abolishing circuit breakers that create an information gap between sophisticated and unsophisticated investors are just two of the things I suggest where the law can make market crashes less devastating."

Partnoy is now working on an article examining finance as it relates to patent lengths and will also be presenting a paper titled, "The Future of Derivatives Regulation," at the Fifth Annual Brookings-Wharton Papers on Financial Services Conference in Washington D.C. in January 2002.



"The Ethical Dangers of Advising Clients Who Deal with Local Government." William L. Todd Jr., American Inns of Court. Fourth District Court of Appeal. San Diego. November.

Ralph H. Folsom

Publications:

Handbook of NAFTA Dispute Settlement. Co-authored. Vol. 2. (Ardsley, NY: Transnational Publishers, 2000).

International Business Transactions Practitioner's Treatise. Co-authored. Supplement. (St. Paul, MN: West Publishing Co., 2000).

NAFTA Law and Business. Co-authored. Supplement. (London: Kluwer Law International, 2000).

NAFTA: A Problem-Oriented Coursebook. Co-authored. (St. Paul, MN: West Group, 2000).

NAFTA: A Problem-Oriented Coursebook. Documents Supplement and Teacher's Manual. (St. Paul, MN: West Group, 2000).

State Antitrust Laws. 2000 Supplement. (New York: Matthew Bender & Co., 2000).

Wills, Trusts, Probate Litigation, and Incapacity, Powers of Attorney and Adoption 3d, Probate Jurisdiction and Procedure 2d. Supplement. Connecticut Estates Practice. (Rochester, NY: Lawyers Cooperative Publishing Co., 2000).

"Négotiations économiques internationales: un point de vue américain," *Droit et Pratique du Commerce International*. (2000).

Presentations:

"Legal Environment of International Business." USD School of Business. April.

"The World Trade Organization." Louisiana State University Law Center. Baton Rouge, LA. July.

"NAFTA and Intellectual Property Law." Widener University School of Law. Wilmington, DE. October.

"Non-Tariff Trade Barriers Under NAFTA." University of New Mexico School of Law. Albuquerque, NM. October.

C. Hugh Friedman

Publication:

California Practice Guide: Corporations. Update. 2 vols. (Encino, CA.: The Rutter Group, 2000).

Presentations:

Presenter, Corporate Directors Forum, "Director of the Year 2000." Newport Beach, CA. February.

Moderator, "Panel on Emerging Issues in Air Quality." Challenges and Solutions: Statewide Air Quality Conference for Local Elected Officials. San Diego. May.

"Education in Corporate Governance." Presented at the Corporate Governance Institute. San Diego State University College of Business. San Diego. May.

Moderator, "The Great Debate: Securities Litigation 2000." Corporate Directors Forum. La Jolla, CA. September.

"Corporate Governance Today." Presented at San Diego Daily Transcript's Roundtable. San Diego. October.

Steven Hartwell**Presentation:**

Moderator, "Proposition 22: A Debate." USD School of Law. February.

Walter W. Heiser**Publication:**

"Minimum Interest Approach to Personal Jurisdiction," 35 *Wake Forest Law Review* 110 (2000).

Presentations:

"Minimal Contacts Approach to Personal Jurisdiction." Presented at the Second Annual Faculty Research Colloquium. USD School of Law. January.

Panel member, "Designing Quality Clinical Education in Overseas Law School Programs." Skills Training Committee Program of the ABA Section on Legal Education and Admissions to the Bar. ABA Annual Meeting. London, England. July.

Gail Heriot

Herzog Endowed Scholar 2000-2001

Publications:

"Review of Richard Epstein, Torts," 3 *Green Bag* 2d 219 (2000).

"Review of Standardized Minds: The High Price of America's Testing Culture and What We Can Do to Change It," *Heterodoxy* (2000).

Why Markets Crash and What Law Can Do About It*

BY FRANK PARTNOY

Some scholars may respond to the argument that markets crash with: "so what?" Just as every day trader gets his or her due, every market participant knows there is the potential for both loss and gain. The fact that markets decline 20% is no different from the fact that markets decline 2%, or 0.0002%. Of course, there are more (and bigger) winners and losers during crashes. But, the response goes, there are no real net losses, and over long periods of time the stock market remains the best investment, despite the risk of a market crash.

This response has two flaws. First, crashes are allocatively inefficient. Market efficiency is important because participants in an efficient market are able to transact at prices that reflect fundamental values. A financial system allocates resources among savers and borrowers. Prices change to reflect new information as it becomes available. To the extent prices do not reflect fundamental values, resources are misallocated at parties transact based on incorrect prices. Therefore, price movements beyond what is justified based on changed fundamental will result in allocative inefficiency, and real cost.

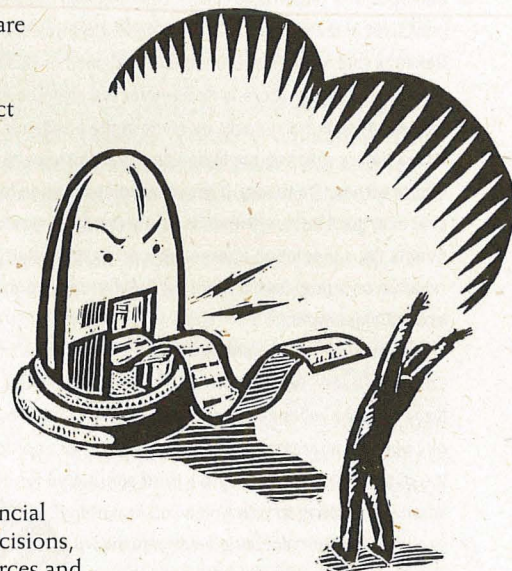
Such allocative inefficiency is especially acute in financial markets—as compared to markets for goods and services—because financial assets are critical to saving and investment decisions, which drive the allocation of economic resources and economic growth. If financial asset prices do not reflect fundamental values, investors will be more uncertain about investing in such assets, particularly over the long term. Such uncertainty will hamper investment critical to real economic growth. If the financial system is inefficient, the economy is not operating efficiently an economic growth will be lower than it otherwise would have been.

Second, financial instability is closely linked to real economic performance. Financial instability, or excessive volatility, has real negative effects, and inefficiency in financial markets may be correlated with high financial asset price volatility. For example, financial institutions operating in volatile market will face liquidity concerns during periods of sharp downward price movements. Problems in one financial market may spread quickly to other markets, a phenomenon often referred to as "contagion."

Conversely, financial stability can be thought of as a "public good." The consumers of this good are users of financial services, including buyers and sellers of stocks and bonds, as well as bank depositors and financial intermediaries. Regulators can improve society's welfare by providing financial stability (i.e., avoiding crashes), just as they provide other public goods.

Thus, crashes matter in real terms. To the extent law can prevent crashes, society is better off. This is true whether the result is improved allocative efficiency or the provision of financial stability, a public good.

* An excerpt from "Why Markets Crash and What Law Can Do About It," 61 *University of Pittsburgh Law Review* 741 (2000). (footnotes omitted).



COMPENSATION FOR RELIANCE RARELY PROVIDED

Stop Relying on the Reliance Interest, Kelly Urges

Professor Michael Kelly says it's time for the law to stop living in the past and finally abandon the reliance interest—in both contract and tort.

"What gives?" Kelly asks. "Why can't people give up the reliance interest? Why do they hold onto it?"

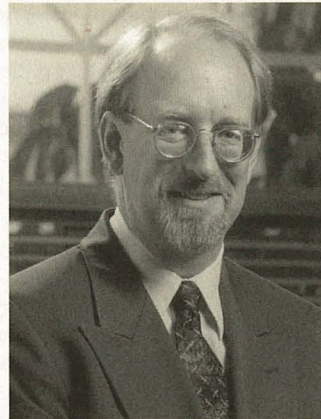
Kelly, who first challenged the notion of using reliance interest in determining contract damages in a 1992 article titled "The Phantom Reliance Interest in Contract Damages," published in the *University of Wisconsin Law Review*, revisited the concept in "The Phantom Reliance Interest in Tort Damages," published in 38 *San Diego Law Review* 169 (2000).

He argues that there is no need for the reliance interest and that such an interest does not resemble a tort remedy, as some in the academic world assert. He further argues that cases where reliance could be used in preference to expectation, reliance isn't the remedy courts turn to. "In theory, it requires compensation for lost opportunities," Kelly writes. "In practice, such compensation is rarely provided—unless one counts the expectation interest as a proxy for opportunities lost in reliance on a promise. In theory, it justifies recoveries that may exceed expectation."

Since 1936 and the publishing of "The Reliance Interest in Contract Damages," written by Lon Fuller and William Purdue, Kelly says the reliance interest has been identified by scholars as one of three interests contract law might seek to protect. In short, the authors attempt to create a third alternative for courts to use when not wanting to turn to the "all or nothing" of restitution or expectation when deciding a damage award.

"I've tried to figure out why people hang onto this theory, and when experts have come forward with possible theories, I have addressed them in my work," Kelly says. "When there's silence, you have to try and guess what keeps people sticking with it [the reliance interest]."

Kelly, who has been teaching courses on contracts and remedies and family law since starting at USD in 1988, points out that it is always hard to get good ideas publicized. He's also found it tough to understand why people persist in embracing the reliance interest, when in practice the principle is hardly used.



Presentations:

Moderator and contributor, "Federalism in the Current Supreme Court Term." Federalist Society, Annual Conference for Law Professors. Washington, D.C. January.

"California After Proposition 209." Presented for the Executive Council at the Meeting of the ABA Section on Business Law. Carlsbad, CA. January.

"Debate on Affirmative Action." Presented to the Annenberg Public Policy Center at the University of Pennsylvania. Philadelphia, PA. May and June.

"Democracy in California: Sesquicentennial Reflections on Equality and Liberty in the Golden State." Presented to Claremont McKenna College. Claremont, CA. October.

Guest Speaker, San Diego County Hate Crimes Conference. San Diego. October.

Paul Horton

Publication:

"Contemporary Issues in California Family Law," Editor. Symposium Issue. 11 *Journal of Contemporary Legal Issues* i-676 (2001).

Presentation:

Commentator, USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

Heidi M. Hurd

Publication:

"Moral Rights and Legal Rules: A Natural Law Theory," 6 *Legal Theory* 423 (2000).

Presentations:

"Moral Combat." Presented at the University of Erlangen-Nurnberg. Erlangen, Germany; and the University of Parma Law School. Parma, Italy. February.

Participant, Liberty Fund Conference on Natural Law, Moral Independence, and Civil Liberties. Dallas, TX. February.

"Is it Wrong To Do Right When Others Do Wrong?" Presented at the Columbia Legal Theory Workshop. Columbia University Law School. New York, NY. February.

"Living in the Past: Burkean Conservatism and Originalist Interpretation." Presented at the Conference on Legal Interpretation,

Judicial Power and Democracy.
Melbourne University School Law.
Melbourne, Australia. June.

"Why Liberals Should Hate Hate Crime Legislation." Presented at the Conference on Hate Crime Legislation, Georgia State University, Center for Ethics. Atlanta, GA. April; and at the Loyola Law School Faculty Workshop. Loyola Law School. Los Angeles, CA. September.

Participant, Liberty Fund Conference on The Development of Western Property Rights. Emigrant, MT. October.

Michael B. Kelly

Publication:

"The Phantom Reliance Interest in Tort Damages," 38 *San Diego Law Review* 169 (2000).

Presentations:

"The Phantom Reliance Interest in Tort Damages." Presented to the AALS Section on Remedies. Annual Meeting of the Association of American Law Schools. Washington, D.C. January.

"W[h]ither the Reliance Interest."

Presented at the Second Annual Faculty Research Colloquium. USD School of Law. January.

"Reflections on Remedies." Presented at the Remedies Discussion Forum. Louis D. Brandeis School of Law. University of Louisville. Louisville, KY. April.

William H. Lawrence

Publications:

The Law of Personal Property Leasing.

Co-authored. Supplement. (St. Paul, MN: West Group, 2000).

The Law of Sales Under the Uniform Commercial Code. Co-authored. Supplement. (St. Paul, MN: West Group, 2000).

Herbert I. Lazerow

Publication:

"The United States-France Income Tax Treaty," 26 *International Tax Journal* 29 (2000).

Grayson M. P. McCouch

Publications:

"Social Security Reform: Risks, Returns and Race." Co-authored. 9 *Cornell J. L. & Pub. Pol'y* 633 (2000).

The Phantom Reliance Interest in Tort Damages*

BY MICHAEL B. KELLY

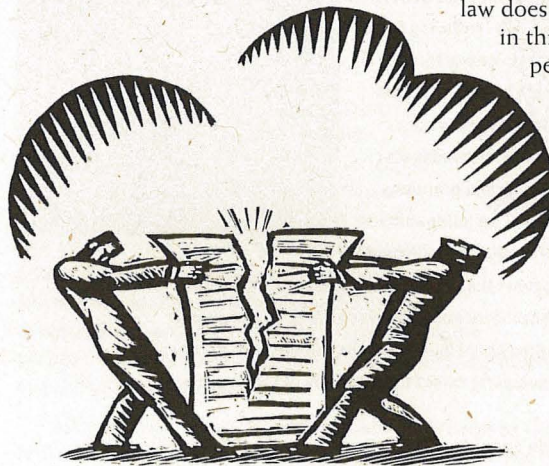
The reliance interest has fascinated me for some time. As a measure of damages for breach of contract, it seems theoretically unjustified and flawed in its implementation. In theory, it requires compensation for lost opportunities. In practice, such compensation is rarely provided—unless one counts the expectation interest as a proxy for opportunities lost in reliance on a promise. In theory, it justifies recoveries that may exceed expectation. Yet, even if progenitors refuse to endorse that implication. Why, then, does the reliance interest have continuing appeal?

One explanation has emerged from discussions with academics: The reliance interest seems apt to some because it resembles tort remedies. Expectation is available only in contract, not in tort. Tort is perceived as the realm of reliance recoveries. That inconsistency may make people uncomfortable. Scholars who see contract as simply a subset of tort naturally prefer that tort remedies apply in each context. Similarly, scholars seeking unified principles underlying remedies generally might be drawn to prefer the reliance interest in contract. The perception that reliance governs in tort appears to contribute to the continuing popularity of the reliance interest in the face of scholarly challenges.

This article challenges the assumption that the reliance interest is a tort remedy. To the extent that tort remedies can be broken down into expectation and reliance at all, tort remedies usually resemble expectation more closely than they resemble reliance. The project shall proceed in three stages. It will focus first on misrepresentation, the one tort where the reliance interest makes theoretical sense. Despite the justification for employing the reliance interest, it appears that tort law does not limit recoveries to reliance even in this context. Second, focus will shift to personal injury actions. In these cases, it makes very little difference whether we call the remedy reliance or expectation; the same results will apply in almost every case. In cases where it might make a difference, however, there is no support for the suggestion that tort law prefers reliance to expectation. Finally, the article will assess the implication of this discussion. Fundamentally, it concluded that the reliance interest does not respond to concerns about remedies at all. Its primary rationale centers on liability. That conclusion may seem familiar.

I offered it as a possible explanation in my earlier work. Exploring the analogy to tort remedies reinforces the view that the reliance interest is simply an effort to preclude enforcement of promises where reliance did not exist, even when they are part of a bargain.

* An excerpt from "The Phantom Reliance Interest in Tort Damages" 38 *San Diego Law Review* 169 (2000). (footnotes omitted).



POTENTIAL NEW ROLE FOR CONGRESS

Rappaport Proposes Alternative to Independent Counsel

In light of the recent terrorist attacks and war on terrorism, the public has paid little attention to the Independent Counsel and the future of that office. But Professor Michael Rappaport believes that once the storm has calmed, attention will again focus on the position that made Kenneth Starr one of the most widely known figures of the late 1990s.

Rappaport, who teaches administrative law, legislation and constitutional history at the USD School of Law, has taken an in-depth look at the future of the Independent Counsel and has put his thoughts into an essay recently published in the *University of Pennsylvania Law Review* titled, "Replacing Independent Counsels with Congressional Investigations."

When he came to USD in 1991, Rappaport already had exposure to the faults of the Independent Counsel statute. In 1988, he was one of the attorney-advisors who worked for the U.S. Justice Department in their legal challenge to the constitutionality of the law establishing the office.

In his article, Rappaport suggests that because the Independent Counsel statute has expired, a new arrangement should be developed in which the Congress, not an Independent Counsel, would investigate executive wrongdoing.

"The Independent Counsel was unconstitutional and bad policy," Rappaport says. "But I believe leaving the executive branch to investigate itself is bad also, so something else must be done."

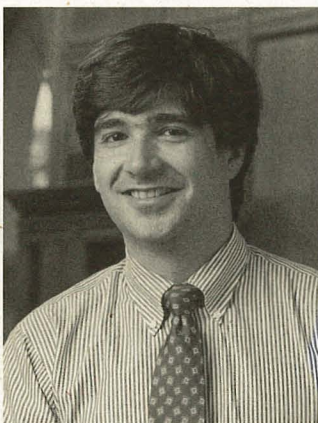
Referring to the Independent Counsel statute as "suffering from serious policy defects," Rappaport says the statute nearly forced those who held the office to find the person being investigated had engaged in misconduct, or risk appearing inadequate. He also believes giving the Counsel power without making the investigator accountable to voters was a violation of the democratic process.

Instead of continuing to grasp onto the idea of an Independent Counsel, or moving to a system where the executive branch would in some way investigate itself, Rappaport suggests that each party appoint members to a committee whose responsibility would be to scrutinize possible misconduct by the executive branch. Avoiding the pitfalls of other congressional investigations deemed too partisan, Rappaport suggests that members from the each party select the members of the opposing party they'd like appointed to the committee.

"Some people have said this theory wouldn't work, and well, some people just don't like moderates," Rappaport says about his proposed selection process. "But, just because the other side would be choosing members doesn't mean they'd necessarily choose moderates. You could even modify the scheme where each side could veto a set number of nominees... it could work."

Rappaport says that he doesn't see a new statute being passed soon, but he hopes that when the time comes to institute a new practice for investigating the executive branch, his idea will be looked at more closely.

"The role of academics is to examine ideas and put them out there," he says. "It's unlikely to have a short-term impact, but when it does come up, they can pick up my idea and run with it."



Federal Estate and Gift Taxation, 8th ed.
Co-authored. (Aspen Law & Business, 2000).

Presentation:

"Estate and Gift Taxation: Options for Reform," Virginia Tax Study Group, University of Virginia School of Law. March.

John H. Minan

Publication:

The Law of Personal Property Leasing.
Co-authored. Supplement. (St. Paul, MN: West Group, 2000).

Presentations:

Presenter, Policy Makers Panel on Antifouling Strategies. University of California. California Sea Grant Extension Program. San Diego. September.

"Dealing with Supplemental Environmental Projects." Presented to the California Water Quality Coordinating Committee. Sacramento, CA. November.

"Proposed Changes to the Enforcement Policy under the Porter Cologne Act." Presented to The Environmental Breakfast Club. San Diego. November.

Jean Montoya

Publication:

State v. Johnson: Problems and Case File. (Notre Dame, Indiana: National Institute for Trial Advocacy, 2000).

Michael S. Moore

Warren Distinguished Professor of Law

Publications:

Educating Oneself in Public: Critical Essays in Jurisprudence. (Oxford: Oxford University Press).

"Opfer und Vergeltung: Eine Erwiderung auf George P. Fletcher," *Die Stellung des Opfers im Strafrechtssystem*. (Munich: Carl Heymanns Verlag KG, 2000).

"Law as Justice," 18 *Social Philosophy and Policy* 115 (2000).

"The Metaphysics of Causal Intervention," 88 *California Law Review* 827 (2000).

"Remembrance of Things Past," 74 *Southern California Law Review* 239 (2000).

"Theories of Areas of Law," 37 *San Diego Law Review* 731 (2000). Also presented at the AALS Annual Meeting (Jurisprudence Section). Washington, D.C. January.

Presentations:

"Theories of Areas of Law." Presented for the Jurisprudence Section of the AALS Annual Meeting. Washington, D.C. January.

"Victim's Rights and Retribution." Presented at the Roundtable on Mercy and Retribution. University of Pennsylvania Institute for Law and Philosophy. Philadelphia, PA. January.

"Causation in the Law." Presented to the Universitat Erlangen-Nurnberg. Erlangen, Germany. February.

Respondent, Conference in Honor of Michael Moore's *Placing Blame*. University of Pennsylvania. Philadelphia, PA. February.

"Causation." Presented to USD law faculty. USD School of Law. March.

Educating Oneself. Presented Chapter 1 to the Columbia University Center for Law and Philosophy. New York, NY. April.

Participant and organizer, University of Pennsylvania Institute for Law and Philosophy's Roundtable on the Philosophy of International Law. Philadelphia, PA. April.

Referee and Commentator, Scott Shapiro's "Authority" Inaugural Meeting. Stanford-Yale Junior Faculty Forum. New Haven, CN. May.

"Natural Rights Judicial Review and Constitutional Interpretation." Presented at the Monash University Conference on Legal Interpretation, Judicial Powers and Democracy. Melbourne, Australia. June.

"Justifying the Natural Law Theory of Constitutional Interpretation." Presented at the Conference on the Constitution and the Good Society. Fordham University. New York, NY. September.

Participant and organizer. Conference on Welfarism, Roundtable on Welfare Economics. USD School of Law Institute for Law and Philosophy. USD School of Law. October.

Grant H. Morris

Publications:

"The Evil That Men Do: Perverting Justice to Punish Perverts," 2000 *University of Illinois Law Review* 1199 (2000).

"The Shortest Article in Law Review History: A Brief Response to Professor Jensen," 50 *Journal of Legal Education* 310 (2000).

Replacing Independent Counsels with Congressional Investigations*

BY MICHAEL B. RAPPAPORT

Now that the nation has apparently discarded the Independent Counsel statute, with what should we replace it? While most commentators propose that the executive branch investigate itself, this Essay argues that Congress should investigate executive wrongdoing.

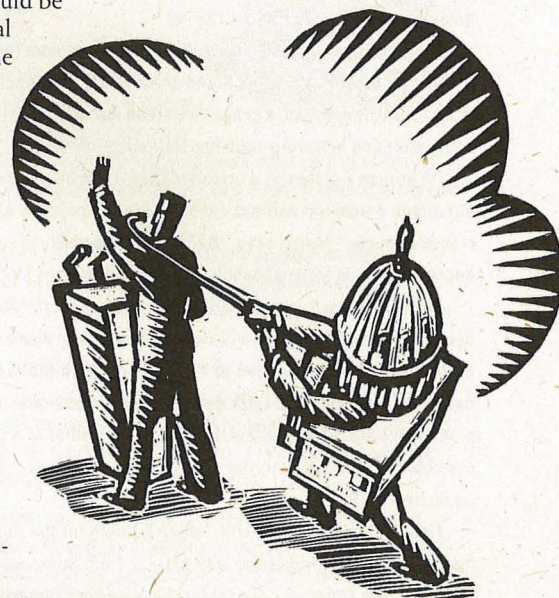
Although the existing congressional investigation process is flawed, it can be improved. Congress should establish a committee with the sole function of investigating executive branch misconduct. Because it is essential that the committee not spend its time engaged in partisan disputes, each political party should choose the committee members from the opposing party.

Congress should also provide the investigation committee with adequate powers. The committee should be empowered to bring a civil action in federal court in order to enforce its subpoenas. The committee should also have the power to allow its staff to question witnesses who are under oath so that committee members are not overly burdened by their investigative duties.

This congressional investigative system would be superior to executive branch investigations. Under this system, the persons conducting the investigation would be both independent of the presidential control and accountable to the voters. The committee members would also tend to be political moderates and to have integrity. In addition, the system would not give the investigators an undue incentive to find that the targets of the investigations were guilty. Finally, congressional investigation would avoid the many problems created when criminal prosecutions are used to monitor executive misconduct.

Although the original Constitution envisioned that Congress would monitor and remedy executive misconduct, modern innovations have led to a system that relies primarily on executive branch investigations. It is now time to return to the Constitution's approach and to construct an investigative system based on it. As is so often the case, we do best when we build on the foundations erected by the Framers.

* An excerpt from "Replacing Independent Counsels With Congressional Investigations" 148 *University of Pennsylvania Law Review* 1595 (2000) (footnotes omitted).



CHALLENGING INDEFINITE DETAINMENT

Even Sexually Violent Predators Have Rights, Morris Points Out

With a history of studying how the law can better protect the rights of the mentally ill, USD School of Law Professor Grant Morris has again taken up his pen, this time arguing for the rights of criminals many would not consider protecting – those deemed “sexual predators.”

Morris, who has taught Torts, and Law and Mental Disorder at the USD School of Law since 1973, is on phased retirement from teaching, but is still hard at work on articles dealing with the law and how it affects the treatment of those regarded as mentally ill or mentally disabled.

In one of his most recent articles, “The Evil That Men Do: Perverting Justice to Punish Perverts,” published in the *University of Illinois Law Review* last year, Morris questions the constitutionality of legislation permitting the indefinite detention of criminals categorized as Sexually Violent Predators (SVPs).

Morris argues that SVP laws discriminate against these prisoners. He suggests that although the Supreme Court found one SVP law as constitutional in *Kansas v. Hendricks*, a properly framed equal protection claim could succeed in having such legislation overturned.

“A person’s status as a prisoner should not be used as an automatic committal without the same review process as other mental patients,” Morris says. “Society has the ability to successfully deal with serious criminal behavior in ways other than SVP laws.”

Morris’ desire to protect the rights of the mentally ill dates back to his childhood, when his severely mentally disabled brother was institutionalized at 7 years old. Since that time, Morris has had a personal, and later developed a professional interest, in mental disorders and the law. He is also the author of a book on the subject, “Mental Disorder in the Criminal Process,” that was published in 1993.

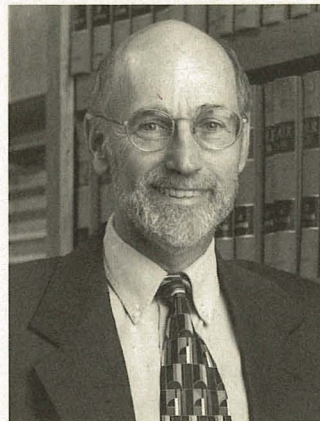
Nearly 40 years ago Morris began fighting for the rights of the mentally ill. After graduating with his J.D. from Syracuse University College of Law, he went to work in the Office of Counsel for the New York Department of Mental Hygiene in 1964.

“I was struck by the way the institutions were run,” Morris says. “It was terrible. The conditions were usually horrendous, it was a life of hopelessness, especially for prisoners who were found to be too dangerous and confined indefinitely... most times without even being charged with a crime.”

Yet, when the Supreme Court overturned *Baxstrom v. Herold* in 1966, which had allowed for such indefinite confinements, Morris believed such injustice being committed by the state would be nearly a thing of the past. Now, with SVP laws in place, the same type of imprisonment is happening again.

He said he hopes his article spawns a challenge of the constitutionality of SVP laws, on *ex post facto* law making claims, as well as on the grounds that they violate double jeopardy laws and the prisoner’s right to due process.

“In the end, with these types of cases, the worst crime is committed by the state when it misapplies the law and discriminates against these people by confining them after they’ve served their time,” Morris says.



Presentation:

“Teaching with Zest.” Law Librarian Development Presentation. USD School of Law. November.

Frank Partnoy

Publications:

“Adding Derivatives to the Corporate Law Mix,” 34 *Georgia Law Review* 598 (2000).

“Why Markets Crash and What Law Can Do About It,” 61 *University of Pittsburgh Law Review* 741 (2000). Also presented at Northeastern University School of Law. Boston, MA. March.

Presentations:

“Why Markets Crash and What Law Can Do About It.” Presented at Northeastern University School of Law. Boston, MA. March.

“Financial Derivatives and Popular Culture.” Presented at the Law and Society Annual Conference. Miami, FL. May.

“Derivatives Regulation and the U.S. Thrift Industry.” Keynote Address for the Office of Thrift Supervision West Region Annual Conference. Rohnert Park, CA. August.

“Finance Entrepreneurs and Short-Duration Intellectual Property.” Presented at the Law & Entrepreneurship Conference. Lewis & Clark Northwestern School of Law. Portland, OR. October.

“Synthetic Common Law.” Presented to the University of North Carolina School of Law. Chapel Hill, NC. October.

Moderator and Contributor, Conference on Financial Derivatives. USD School of Law. November.

Saikrishna B. Prakash

Presentations:

“The Essential Meaning of Executive Power.” Presented at the Second Annual Faculty Research Colloquium. USD School of Law. January.

“Executive Power During the Clinton Administration.” Presented at the ABA Administrative Law Section Conference. Washington, D.C. October.

Richard C. Pugh

Publications:

International Income Taxation: Code and Regulations: Selected Sections 2000-2001.

Coordinating Editor. (Chicago, IL: Commerce Clearing House, 2000).

"Policy Issues Relating to the U.S. Taxation of Foreign Persons Engaged in Business in the United States Through Agents: Some Proposals for Reform," 1 *San Diego International Law Journal* 1.

Arti Kaur Rai

Presentations:

"Deference and the PTO: The Cases of Biotechnology and Computer Software." Presented at the USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

"Addressing the Patent Gold Rush: The Role of Deference to PTO Patent Denials." Presented at the Conference on Re-Engineering Patent Law. Washington University School of Law. St. Louis, MO. April.

"The Information Revolution Reaches Pharmaceuticals: Balancing Innovation Incentives, Cost, and Access in the Post-Genomics Era." Presented at the Conference on Intellectual Property in the Twenty-first Century. University of Illinois College of Law. Champagne, IL. April; the Annual Health Law Teachers' Conference. Case Western Reserve University Law School. Cleveland, OH. June; the University of Pennsylvania Center for Bioethics. Philadelphia, PA. October; the University of Pennsylvania Law School. Philadelphia, PA. November; and the UT/UC Berkeley Advanced Patent Law Institute. Berkeley, CA. November.

"Comments on Health Care Fraud and Abuse." Presented at the Conference on Managed Care. University of Chicago Law School. Chicago, IL. December.

Michael D. Ramsey

Publications:

"The Myth of Extraconstitutional Foreign Affairs Power," 42 *William and Mary Law Review* 379 (2000).

"The Power of the States in Foreign Affairs: The Original Understanding of Foreign Policy Federalism," 75 *Notre Dame Law Review* 341 (1999).

"International Law in Ferment: A New Vision for Theory and Practice." Summary proceedings of the 94th Annual Meeting of the *American Society of International Law* 48.

The Evil That Men Do: Perverting Justice to Punish Perverts*

BY GRANT H. MORRIS

To the ancient Israelites, equal protection of the laws was not merely a constitutional amendment; it was a fundamental precept, commanded of them by God. It was applicable, not just to members of their faith, but also to strangers who came within the jurisdiction of their laws. In the book of Leviticus, at the end of *lex talionis*, the Israelites were instructed: "Ye shall have one manner of law, as well for the stranger, as for the home-born, for I am the Lord of your God." And in Deuteronomy, they were told: "Thou shalt not pervert the justice due to the stranger..."

A stranger is more than just someone we do not know. A stranger can be someone who has different beliefs, or whose customs are different, or even who performs acts that are not acceptable to the evaluating group of insiders. In applying our laws and our system of justice to strangers, however, we must accord equal protection not just to those who are not like us, but also, to those we do not like.

We may despise sentence-expiring convicts, believing that they have not been punished enough. If the State of Kansas had not entered into a plea agreement with Leroy Hendricks that provided for a sentence of five to twenty years, he could be been tried and convicted of crimes that would have imposed a sentence of forty-five to 180 years. He would not have been eligible for parole until 2007, when he would be seventy-three years old. Even if he earned all good-time credit, the law would not have required his release until 2074, when he would be 140 years old. Surely, by that ripe, old age his dangerous proclivities would have diminished. And yet, we blame Hendricks because the State willingly agreed to a far shorter sentence in lieu of criminal trial.

We may detest mentally incompetent criminal defendants. After all, their current mental condition precludes a trial for a crime they may have committed. They may be guilty, but we will never know. We may hate insanity acquittees. After all, their mental condition at the time they acted precludes the imposition of punishment for a criminal act that they committed. We believe we have been cheated because we cannot extract the full pound of flesh to which we feel rightfully entitled. We blame them because we cannot hold them legally blameworthy.

If we could, we would classify these people as "mentally disordered offenders" or as "super criminals." But we cannot so brand them. Sentence-expiring convicts have paid their debt to society; mentally incompetent criminal defendants and insanity acquittees have not debt to pay. If we could, we would lock them up and throw away the key. But we cannot do so. Equal protection prevents us from acting on our prejudices to discriminate against them.

Our attitude towards them suggests that we do not understand or fully appreciate our own system of justice. We may punish those have done evil. Our criminal process permits us to do so. We may incapacitate those who, if not prevented, will do evil. Hendricks expands the civil commitment process to permit us to do so. But we may not, through the guise of incapacitation, single them out for further confinement. When we do so, we pervert justice. Then we, not they, are evil.

* An excerpt from "The Evil That Men Do: Perverting Justice to Punish Perverts," 2000 *University of Illinois Law Review* 1199 (2000). (footnotes omitted).



academic year in review faculty footnotes

Presentations:

"The Essential Meaning of Executive Power." USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

"State Law, Customary International Law, and the Need for Federal Legislation." Presented to the American Society of International Law. Washington D.C. April.

"Waiver of Private Claims for Forced Labor in Japan during World War Two: Opinion on the Interpretation of Article 14(b) of the Treaty of San Francisco." Testimony before the U.S. Senate Judiciary Committee. Washington, D.C. June.

"The Difficulties of Suing Foreign Governments in U.S. Court as a Barrier to Efficient Risk Allocation in International Investment." Presented to the University of Nice. Nice, France. July.

Michael B. Rappaport

Publications:

"The Case for Supermajority Rules," *Policy Review* 45 (Dec. 1999 & Jan. 2000).

"Replacing Independent Counsels with Congressional Investigations," 148 *University of Pennsylvania Law Review* 1595 (2000).

"Supermajority Rules," *Encyclopedia of the American Constitution*. Co-authored. Vol. 5. 2nd Edition. (New York: Macmillan, 2000).

Presentations:

Moderator, Panel on Originalism. Federalist Society Faculty Conference. Washington, D.C. January.

Participant, Liberty Fund Conference on the Four Horsemen. Alexandria, VA. April.

Participant, Institute for Justice Conference on Consumer Rights. Washington, D.C. October.

Participant, Conference on Welfarism; Roundtable on Welfare Economics. USD School of Law Institute for Law and Philosophy. USD School of Law. October.

Daniel B. Rodriguez

Publications:

"Administrative Law and the Case Method," 38 *Brandeis Law Journal* 303 (2000).

"Legal Process," *Encyclopedia of the American Constitution*. 2nd edition. (New York: Macmillan, 2000).

"State Constitutionalism and the Domain of Normative Theory," 37 *San Diego Law Review* 523 (2000).

Presentations:

Panel participant and co-convenor, AALS Workshop on "Emerging Themes in Administrative Law." Washington, D.C. March.

Participant, Ford Foundation Conference on "The State of State Constitutions." Center for State Constitutional Studies. Rutgers-Camden Law School. Camden, NJ. May.

Participant and consultant, GTZ Conference on Reform of Budget Law in the People's Republic of China. Beijing, China. June.

Participant and Commentator, Western Regional Law Teachers of Color Conference. Oahu, HI. June.

"Foreign Narcotics Kingpin Act." Testimony before U.S. Congress Judicial Review Commission. Washington, D.C. September.

"Localism and Lawmaking." Presented at the Faculty Workshop Presentation. Seton Hall University School of Law. Newark, NJ. September.

Participant, Conference on Welfarism; Roundtable on Welfare Economics. USD School of Law Institute for Law and Philosophy. USD School of Law. October.

"Foreign Narcotics Kingpin Act." Presented at the ABA Fall Administrative Law Conference. Washington, D.C. October.

"Home Rule, Municipal Finance, and State Prerogatives." Presented at the National Tax Association Annual Meeting. Santa Fe, NM. November.

Maimon Schwarzschild

Publications:

"Value Pluralism and the Constitution," *Encyclopedia of the American Constitution*. 2nd Edition. (New York: Macmillan, 2000).

"Rosenberger v. Rector," *Encyclopedia of the American Constitution*. 2nd Edition. (New York: Macmillan, 2000).

"The Uncertain Relationship between Libertarianism and Utilitarianism," (co-authored) 19 *Quinnipiac Law Review* 657 (2000).

Presentations:

Commentator, Second Annual Faculty Research Colloquium. USD School of Law. January.

"Two Kinds of Globalism." Presented at the International Association for the Philosophy of Law and Social Philosophy (AMINTAPHIL) Conference on Globalization. USD School of Law. March.

"Interpreting Jewish Law and Interpreting the U.S. Constitution." Presented at the Spanish and Portuguese Synagogue. New York, NY. March.

"Mad Dogmas and Englishmen: How Other People Interpret and Why." Presented at the International Conference on Legal Interpretation, Judicial Power and Democracy. Monash University and the Australian National University. Melbourne, Australia. June.

"Religion in the Schools." Presented at the Faculty-Student Colloquium. Thomas Jefferson School of Law. San Diego. October.

Emily Sherwin

Publications:

"An Exchange on the Nature of Legal Theory: Introduction," 37 *San Diego Law Review* 727 (2000).

"Epstein's Property," 19 *QLR* 697 (2000).

"Rules and Judicial Review," 6 *Legal Theory* 299 (2000).

Presentations:

Presenter and moderator, AALS Section on Jurisprudence, Theory and Law. Washington, D.C. January.

Participant, Conference on Fairness and Efficiency. USD Institute for Law and Philosophy. USD School of Law. October.

Virginia V. Shue

Publication:

State Computer Law: Commentary, Cases, and Statutes. Co-authored. Supplement. (St. Paul, MN: West Group, 2000).

Bernard H. Siegan

Presentations:

"Deregulating Zoning." Presented at the Annual Convention of the American Institute of Architects. Philadelphia, PA.

March.

"Recent Developments in Property Law." Presented to the Real Property Law Section of the State Bar of California. La Jolla, CA. April.

"Comments on Houston's No Zoning." Presented to the Claremont Institute Advisory Council for Center in Local Government. Newport Beach, CA. October.

Allen C. Snyder

Publications:

A Practical Guide to California Evidence. Update. (Notre Dame, Indiana: National Institute for Trial Advocacy, 2000).

California Evidence Code with Objections. (Notre Dame, Indiana: National Institute for Trial Advocacy, 2000).

Presentations:

"Teaching Alternative Dispute Resolution." Presented to the Partners for Democratic Change, Bulgaria and the American Bar Association CEELI Project. Sofia, Bulgaria. February.

"Assessing and Improving Student Performance in Experienced-Based Learning." Presented to the University of Oregon School of Law. Eugene, OR. August.

Jorge A. Vargas

Publications:

"Is the International Boundary between the United States and Mexico Wrongly Demarcated? An Academic Inquiry into Certain Diplomatic, Legal and Technical Considerations Regarding the Boundary in the San Diego-Tijuana Region," 30 *California Western International Law Journal* 2115 (2000).

"Mexico's Foreign Investment Regulations of 1998," 23 *Houston Journal of International Law* 1 (2000).

"The Pantoja Map of 1782 and the Port of San Diego," 46 *The Journal of San Diego History* 118 (2000).

Presentations:

"The International Dimension of Legal Practice." Presented at the Multi-Cultural Law Day 2000. USD School of Law. February.

"Mexican Ethnic Law." Presented at the TransBorder Institute. USD School of Law. March.

"Human Rights Violations by U.S. Border

Patrol Agents: Deportation or Exile?" Presented at the Conference on U.S. Immigration Policy to the 21st Century. University of California. San Diego. April.

"Border Issues: Mexico and the United States. Bordering on Insanity." Presented at the San Diego Law Libraries Fall Workshop. San Diego. October.

"Who is an International Lawyer?" Presented to the USD International Law Society. USD School of Law. October.

"Mexico's Presidential Election." Presented to the Invisible University. USD School of Law. November.

Charles B. Wiggins

Presentation:

"Mediating in the Shadow of the Legislature." Training coordinated and prepared for the Oregon Dispute Resolution Commission, Oregon Department of Land Conservation and Development, and the Oregon Governor's Office. Oregon. Fall.

Mary Jo Wiggins

Presentations:

"An Update on Recent Amendments to the Federal Rules of Bankruptcy Procedure." Presented before the Federal Conference of Chief Bankruptcy Judges. San Diego. January.

"Careers in Commercial Litigation and Bankruptcy Law Practice." Presented to the USD School of Law. April.

Moderator and contributor, "The Global Perspective," *The Journal of Contemporary Legal Issues* Conference on the Future of Intersectionality and Critical Race Feminism. San Diego. October.

Paul C. Wohlmuth

Presentations:

"Infrastructure." Presented at the Plenary Session on Legal and Political Systems of the Millennial World Congress of the Systems Sciences. Toronto, Canada. July.

"Regulatory Dynamics and Public Policy: The Role of the Institute for Law and Systems Research in the National Science Foundation Grant Project on The Political Regulation of Time Ecologies." Presented to California government research staff and policy analysts.

Sacramento, CA. November.

Christopher T. Wonnell

Presentations:

"Expectation, Reliance, and the Two Contractual Wrongs." Presented at the Annual Meeting of the Association of American Law Schools. Washington, D.C. January; and at the USD Law Second Annual Faculty Research Colloquium. USD School of Law. January.

"*Lochner v. New York* as Economic Theory." Presented at the Conference on Welfarism; Roundtable on Welfare Economics. USD School of Law Institute for Law and Philosophy. USD School of Law. October.

Fred C. Zacharias

Publications:

"The Fallacy That Attorney-Client Privilege Has Been Eroded: Ramifications and Lessons for the Bar," Symposium Issue. *Professional Lawyer* 39 (1999).

"Guilty Pleas," *Encyclopedia of Crime and Justice*. (New York: Free Press, 2000).

"Professional Responsibility, Therapeutic Jurisprudence, and Preventive Law," 5 *Psychology, Public Policy, and Law* 909 (2000).

"The Uniqueness of Federal Prosecutors," (co-authored) 88 *Georgetown Law Journal* 207 (2000).

Presentations:

Moderator, Joint Panel of Professional Responsibility and Criminal Law Sections AALS Annual Meeting. Washington, D.C. January.

"Discipline of Prosecutors." Presented to the AALS Annual Meeting, Joint Panel of Professional Responsibility and Criminal Law. Washington, D.C. January.

"Lawyers as Conscientious Objectors." Presented at the Oregon Law Institute program *When Worlds Collide: How to be a Legally Ethical and Religious Lawyer in Difficult Times*. Portland, OR. November.

"Limited Retainer Agreements." Presented at the Annual Meeting of the ABA Section on Standards of Tax Practice. San Diego. Winter.

Faculty and student groups hosted a variety of extracurricular events, many of which are listed below. They enriched the School of Law's intellectual life during the 2000-2001 academic year.

"Maneuvering through Law School: How to Have a Successful Law School Experience," sponsored by La Raza Law Students Association, September 2000.

"School Vouchers: Rescuing Low-Income School Children or Unconstitutional Charade?," a debate on Proposition 38. Guest speakers Clint Bolick, Litigation Director, Institute for Justice, and Beverly Tucker, Chief Counsel, California Teachers Association. Sponsored by the Federalist Society, September 2000.

"The Death Penalty," Criminal defense specialist and USD Law Adjunct Professor John Cotsirilos, sponsored by the Criminal Law Society, October 2000.

"Who is an International Lawyer? A Lawyer's Role in International Law and Diplomacy," Professor Jorge A. Vargas, USD School of Law, sponsored by the International Law Society, October 2000.

Conference on "The Future of Intersectionality and Critical Race Feminism," featuring Daniel B. Rodriguez, Dean and Professor of Law, USD; Mary Jo Wiggins, Professor of Law, USD; Beverly Moran, Professor of Law, University of Wisconsin; Adrienne Wing, Professor of Law, University of Iowa; Laura Padilla, Professor of Law, California Western School of Law; Gloria Sandrino, Professor of Law, California Western School of Law; Sean Scott, Professor of Law, Loyola Law School; Angela Harris, Professor of Law, University of California, Berkeley; Regina Austin, Professor of Law, University of Pennsylvania; Rachel Moran, Professor of Law, University of California, Berkeley; Emily Sherwin, Professor of Law, USD; Paulette Caldwell, Professor of Law, New York University School of Law; Devon Carbedo, Acting Professor of Law, University of California, Los Angeles; Mitu Gulati, Acting Professor of Law, University of California, Los Angeles; Deborah Merritt, Professor of Law, Ohio State University College of Law; Jean Montoya, Professor of Law, USD; Jerome Culp, Professor of Law, Duke University

School of Law. Sponsored by the *Journal of Contemporary Legal Issues*, October 2000.

Tax Symposium, featuring James Clark, Chief Counsel of the House Ways and Means Committee, and Jim Sowell, Associate Tax Legislative Counsel of the Treasury Department, sponsored by the Tax Law Society & Graduate Programs Office, October 2000.

12th Annual National Criminal Procedure Moot Court Competition, including guest judges California Supreme Court Justice Ming Chin, California Court of Appeals Justice Richard Huffman, and U.S. District Court Judge Rudi Brewster, sponsored by the Appellate Moot Court Board, October 2000.

"Roundtable on Freedom of Expression," sponsored by the Institute for Law & Philosophy, October 2000.

"Conference on Financial Derivatives," featuring panelists Peter H. Huang, University of Pennsylvania; James Krause, Esq., Krause & Kalfayan; Kimberly D. Krawiec, UCLA; and moderated by Frank Partnoy, USD School of Law; sponsored by the Office of Development and Alumni Relations, November 2000.

"Hate Crimes," Hector M. Jimenez, Esq., San Diego Office of the District Attorney, Hate Crimes Unit, sponsored by La Raza Law Students Association, November 2000.

"Women in the Law: Meeting the Challenges of Life after Law School," Fourth Annual Recent Alumni Reception, sponsored by the Women's Law Caucus, November 2000.

"Achieving Success by Striking a Balance," Rayna Stephan, Esq., sponsored by the Women's Law Caucus, November 2000.

"Issues and Practice in Environmental Law," Marco Gonzalez, Esq., sponsored by the Surf Law Society and the Environmental Law Society, November 2000.

"Conscience, Law, and Personal Integrity: Thomas More and Professional Responsibility in the New Millennium," Conference on Legal Ethics featuring San Diego attorneys James E. Chodzko and Michael D.

McGlinn; Gerard D. Wegemer, Professor and Director of the Center for Thomas More Studies at the University of Dallas; Judge Robert J. O'Neill (retired), San Diego Superior Court; Professor Maimon Schwarzschild and Professor Thomas A. Smith, USD School of Law; and Dean Daniel B. Rodriguez, USD School of Law. Co-sponsored by the USD School of Law and the St. Thomas More Society of San Diego, January 2001.

"Political Participation and Civil Rights in Uganda," Hon. Miria Matembe, Ugandan Minister of Ethics and Integrity; sponsored by USD School of Law and the Kroc Institute for Peace and Justice, January 2001.

Symposium on "Liberalism and Illiberals," featuring Daniel B. Rodriguez, Dean, USD School of Law; Professor Maimon Schwarzschild and Professor Larry Alexander, USD School of Law; Mark D. Rosen, Chicago-Kent College of Law; Nomi Maya Stolzenberg, USC Law School; Gay Morgan, University of Waikato (New Zealand); Cindy Holder, University of British Columbia; Michael Blake and Nancy Rosenblum, Harvard University; and Gerald Doppelt, UCSD Department of Philosophy; sponsored by the *Journal of Contemporary Legal Issues*, February 2001.

"International Whale Migration," Professor Jorge A. Vargas, USD School of Law, sponsored by the International Law Society and the Environmental Law Society, February 2001.

"Why a Law Professor is a Believer in the Lord Jesus Christ," USD Law Professor Darrell Bratton, sponsored by the Christian Legal Society, February 2001.

"Crossfire: The Supreme Court Decision in Bush v. Gore: Principled or Partisan?," featuring USD Law Professor Michael D. Ramsey and moderated by the Hon. H. Lee Sarokin, USD Distinguished Jurist-in-Residence, U.S. Court of Appeals (retired), February 2001.

"Domestic Violence Issues," Panel discussion featuring Kim Pearce, Director of Passages; Lynne Merrill, Legal Co-Coordinator; Kathy Touzel, Director of Becky's House and Casa de Paz; and Kenneth White, USD Law Student Domestic Violence Clinic, sponsored by the Women's Law Caucus, March 2001.

"Observations on the Modern Affirmative Action Debates," 17th annual Nathaniel L. Nathanson Memorial Lecture, featuring Lee C. Bollinger, President, University of Michigan, March 2001.

Public Interest Law Summit: "Taking the Offensive," a two-day public interest law conference featuring national experts in public interest advocacy. Conference participants included: *Session on Campaign Finance Reform:* Scott Harshbarger, President/CEO, Common Cause; Frank Clemente, Director, Public Citizen Congress Watch; Charles Lewis, Executive Director, Center for Public Integrity; Nick Nyhart, Executive Director, Public Campaign; E. Joshua Rosenkranz, Executive Director, Brennan Center for Justice, New York University School of Law; *Session on Legislative Reform:* Matthew Myers, President, Campaign for Tobacco-Free Kids; Jamie Court, Executive Director, Foundation for Taxpayer and Consumer Rights; Charles R. Halpern, Chairman of the Board, Demos: A Network for Ideas and Action; Gene Kimmelman, Co-Director, Washington D.C. Office of Consumers Union; Wendy Wendlandt, National Political Director, National Association of State PIRGs; *Session on Court Strategy:* Robert C. Fellmeth, Price Professor in Public Interest Law and Executive Director of the Center for Public Interest Law, USD School of Law; Alan B. Morrison, Co-Founder, Public Citizen Litigation Group; Theodore M. Shaw, Associate Director/Counsel, NAACP Legal Defense and Educational Fund; Nadine Strossen, President, American Civil Liberties Union; Patricia Sturdevant, Co-Founder, National Association of Consumer Advocates; *Session on Agency Reform:* Joan Claybrook, President, Public Citizen; David G. Hawkins, Director of Air and Energy Program, Natural Resources Defense Council; Jim Hightower, former Texas Agriculture Commissioner; David A. Swankin, President and CEO, Citizen Advocacy Center; and Sidney M. Wolfe, M.D.,

Director, Public Citizen Health Research Group. Featured Speakers included California Attorney General Bill Lockyer with the keynote address delivered by Ralph Nader, Consumer Advocate and former Presidential Candidate. March 2001.

"Class Action Slavery Suit," USD Law Professor Roy Brooks, sponsored by the Black Law Students Association, March 2001.

Second Annual Environmental Law Conference: "Energy and the Environment," featuring Michael Shames, Executive Director, Utility Consumers' Action Network; D. Dwight Worden, Esq., Worden, Williams, Richmond, Brechtel & Gibbs; Fred Ortlieb, Deputy City Attorney, City of San Diego; Shirley Rivera, Principal, Resource Catalysts; Melanie McCutchan, Air Toxics Policy Associate, Environmental Health Coalition; Lisa Gomez, Associate Attorney, Latham & Watkins; Professor Richard Wharton,

Director, USD Environmental Law Clinic; sponsored by the Environmental Law Society, March 2001.

"Careers in the Law," Panel discussion featuring USD Law alumni, sponsored by the Office of Development & Alumni Relations, the Alumni Board of Directors, and the Office of Career Services, April 2001.

"Women in Solo Practice," Lilia Velasquez, USD Law alumna and attorney specializing in immigration and nationality law, sponsored by the Women's Law Caucus, April 2001.

"Police Brutality & Racial Profiling: Reality or Illusion?" a panel discussion featuring Jordan Budd, General Counsel, ACLU of San Diego County; Sergeant Rob Luis, Special Assistant to San Diego Chief of Police David Bejerano; Samuel Paz, Esq. and Sonia Mercado, Esq.; sponsored by La Raza Law Students Association and the Black Law Students Association, April 2001.

USD-UCSD Law, Economics, and Politics Workshop, 2000-2001

The Law, Economics, and Politics Workshop Series is a collaborative effort sponsored by the University of San Diego School of Law and the University of California at San Diego, Department of Political Science. The series is hosted by Dean Daniel B. Rodriguez of USD and Professor Mathew D. McCubbins of UCSD, and features distinguished scholars from around the country as well as from USD and UCSD. Lectures rotate between the two venues and provide a forum for the exchange of ideas as well as foster fruitful collaborations between two distinguished and unique academic institutions in San Diego.

David B. Spence, Assistant Professor, Legal & Regulatory Environment of Business, University of Texas-Austin: "A Public Choice Case for the Administrative State," October 2000.

Howard A. Shelanski, Chief Economist, Federal Communications Commission; Acting Professor of Law, University of California, Berkeley (on leave): "Antitrust Divestiture in Network Industries," November, 2000.

Eric Rasmussen, Olin Senior Research Fellow, Harvard Law School; Professor of Business and Economics and Public

Policy and Sanjay Subhedar Fellow, Kelley School of Business, Indiana University: "Ballot Spoilage in Florida in the 2000 Election," December 2000.

Edward P. Schwartz, Associate Professor, Department of Government, Harvard University and Lecture on Law, Harvard Law School: "A General Model of Judicial Decision-Making: Ideology, Information, and Judicial Consistency," January 2001.

John A. Ferejohn, Carolyn S.G. Munro, Professor of Political Science and Senior Fellow of the Hoover Institution, Stanford University; Visiting Professor of Law and Politics, New York University School of Law: "Institutionalizing Judicial Independence," February 2001.

Elizabeth Garrett, Professor of Law and Deputy Dean, University of Chicago Law School, and **Adrian Vermeule,** Professor of Law, University of Chicago Law School: "Institutional Design of a Thayerian Congress," February 2001.

Rick Hasen, Professor of Law and **William M. Rains,** Fellow at Loyola Law School (Los Angeles): "Bush v. Gore and the Future of Equal Protection Law in Elections," March 2001.

A listing of the faculty colloquia presented during the 2000-2001 academic year

Thomas Bell, Professor of Law, Chapman University, USD School of Law Visiting Professor: "Escape from Copyright: Market Success v. Statutory Failure in the Protection of Expressive Works," September 2000.

David A. Skeel, Professor of Law, University of Pennsylvania Law School: "Repudiating the New Deal with Chapter 11 of the Bankruptcy Code," September 2000.

Thomas C. Grey, Nelson Bowman and Marie B. Sweitzer Professor of Law, Stanford Law School: "Accident: The Structure and Domain of Tort Law," September 2000.

Jeffery Atik, Suffolk University Law School and Visiting Professor, Loyola Law School (Los Angeles): "Democratizing the WTO," September 2000.

Gillian K. Hadfield, Faculty of Law, University of Toronto: "Privatizing Commercial Law: Lessons from the Middle and the Digital Ages," October 2000.

Mark J. Roe, Milton Handler Professor of Law, Columbia Law School: "Rents and Their Corporate Law Consequences," November 2000.

Richard J. Ross, Professor of Law, Indiana University School of Law: "Communications Revolutions and Legal Culture: An Elusive Relationship," November 2000.

Sanford V. Levinson, W. St. John Garwood and W. St. John Garwood Jr. Centennial Chair in Law and Professor of Government, University of Texas – Austin School of Law: "Why the Canon Should be

Expanded to Include the *Insular Cases* and the Saga of American Expansionism," November 2000.

Jacqueline E. Ross, Indiana University School of Law, USD Law School Visiting Professor: "The Problem of Multiple Punishment: Double Jeopardy, Double Counting, and the United States Sentencing Guidelines," December 2000.

Keith N. Hylton, Professor of Law, Boston University School of Law: "Antitrust Intent," December 2000.

Ian Ayres, Townsend Professor, Yale Law School: Presentation on Campaign Finance, February 2001.

Neal Devins, Goodrich Professor of Law and Lecturer in Government, William & Mary School of Law: "Congressional Factfinding and the Scope of Judicial Review: A Preliminary Analysis," February 2001.

Steven P. Goldberg, Professor of Law, Georgetown University Law Center: "Spinoza and Modern American Law," February 2001

Sai Prakash and **Michael Ramsey**, Professors of Law, USD School of Law: "The Executive Power Over Foreign Affairs," February 2001.

Richard Speidel, Beatrice Kuhn Professor of Law, Northwestern University School of Law and Visiting Professor, USD School of Law: "Revising UCC Article 2: A View from the Trenches," March 2001.

John Harrison, Professor of Law and Class of 1966 Research Professor, University of Virginia Law School: "Nobody for President," April 2001.

**Third Annual USD Faculty Research Colloquium-
January 2001**

William H. Lawrence: "A Lessor's Meaningful Residual Interest: Using TRAC Leases as an Object Lesson" (with **John H. Minan**)
Commentator: **Tom Smith**

Lynne Dallas: "A Comparative Analysis of Corporate Boards of Directors in the United States and Boards of Directors in the Emerging Market Economy of Slovenia: Diversity and Stakeholder Capitalism"
Commentator: **Frank Partnoy**

Shaun Martin: "The Radical Necessity Defense"

Commentator: **Jean Montoya**

Ed Ursin: "Enterprise (No-Fault) Liability and Judicial Lawmaking" (**Ursin** and **V.E. Nolan**)

Commentators: **Maimon Schwarzschild**, **Hugh Friedman**, **Bob Fellmeth**

Chris Wonnell: "*Lochner v. New York* As Economic Theory"

Commentator: **Sai Prakash**

Mark Seidenfeld, Professor of Law, Florida State University College of Law: "Cognitive Loafing, Social Conformity and Judicial Review of Agency Rulemaking," April 2001.

Seana Shiffrin, Assistant Professor of Law, UCLA Law School: "Egalitarianism, Choice-Sensitivity, and Accommodation," May 2001

Tom Smith, Professor of Law, USD School of Law: "Partnership Law, Economics & Evolutionary Biology," June 2001.

Paul Caron, Professor of Law, University of Cincinnati Law School (USD School of Law Summer Visitor): "Teaching Tax Through the Classic Cases," June 2001.

Dennis Lilly, Professor of Law, University of Santa Clara Law School (USD School of Law

Summer Visitor): "The New Tax Act," June 2001.

Todd Weiler, Faculty of Law, University of Toronto (USD School of Law Summer Visitor): "Minimum Standards of Regulatory Treatment in International Law," July 2001.

Larry Alexander, Professor of Law, USD School of Law: "Freedom of Speech as a Human Right," July 2001.

Daniel B. Rodriguez, Dean and Professor of Law, USD School of Law: "Construing Budget Bills," July 2001.

Thanks to Professor Michael Rappaport, Professor Sai Prakash, and Professor Herbert Lazerow who coordinated the faculty colloquia series, and to Professor Frank Partnoy and Professor Shaun Martin who coordinated the Third Annual Faculty Research Colloquium.

on the docket

DECEMBER 4, 2001

Bar Swearing-in Breakfast
Contact the Office of Development and
Alumni Relations
619-260-4692

DECEMBER 5, 2001

Joan B. Kroc Institute for Peace and
Justice dedication
Contact the Institute for Peace and
Justice
619-260-7509

DECEMBER 13, 2001

Maudsley Fellows Reception
Contact the Office of Development and
Alumni Relations
619-260-4692

JANUARY 18, 2002

The USD School of Law and School of
Education Conference on School
Choice issues. Visit the website at
www.sandiego.edu/soe/conference.
Contact Kellard Dunks
619-260-7585

JANUARY 25-26, 2002

Conference on "The Most Difficult
Issues Criminal Defense Lawyers
Face: Ethical Issues and Cultural
Perspectives"
Contact Professor Laura Berend
619-260-2345

FEBRUARY 5, 2002

Law Alumni Board meeting
Contact the Office of Development and
Alumni Relations
619-260-4692

FEBRUARY 13, 2002

Nathaniel L. Nathanson Memorial
Lecture
Guest Lecturer: John H. Garvey, Dean of
Boston College Law School
Contact Theresa Hrenchir, Director of
Special Projects
619-260-7438

FEBRUARY 27, 2002

Alumni Advisor Program – Careers in the
Law event
Contact the Office of Development and
Alumni Relations
619-260-4692

MARCH 2002

University of San Diego Spring Moot
Court Competition
Contact Olga Alvarez
Appellate Moot Court Board
619-260-4530

MARCH 2002

Board of Visitors Meeting
Contact the Office of Development and
Alumni Relations
619-260-4692

MARCH 2002

Recent Alumni Chapter (RAC) Happy
Hour
Contact the Office of Development and
Alumni Relations
619-260-4692

MAY 2002

Hughes Career Achievement Award
Contact the Office of Development and
Alumni Relations
619-260-4692

MAY 6, 2002

Law Alumni Board Meeting
Contact the Office of Development and
Alumni Relations
619-260-4692

MAY 24, 2002

Graduation Awards Ceremony
Contact the Office of Development and
Alumni Relations
619-260-4692

MAY 25, 2002

Commencement Ceremony
Contact the Office of Development and
Alumni Relations
619-260-4692

JUNE 2002

Law Alumni Board Appreciation Dinner
Contact the Office of Development and
Alumni Relations
619-260-4692



Students gather around a television in Warren Hall on Sept. 11, riveted by news of the terrorist attacks on America. Photo by Janelle Snyder '04

parting shot



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